



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

REPORT OF THE AUDIT DIVISION  
ON THE  
KENNEDY FOR PRESIDENT COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Kennedy for President Committee ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038(a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037".

In addition, Section 9039(b) of Title 26 of the United States Code, and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The Committee registered with the Federal Election Commission on October 29, 1979 as the principal campaign committee of the Honorable Edward M. Kennedy, a Democratic candidate for the nomination to the office of the President of the United States. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from January 1, 1980 through August 31, 1980, the final coverage date of the last report filed at the time of the audit. <sup>1/</sup> The Committee reported a beginning cash balance of \$409,168.91, total receipts of \$11,804,166.54, total expenditures of \$11,953,427.73, and a closing cash balance on August 31, 1980 of \$259,907.72. As of August 31, 1980, the Committee reported expenditures of \$9,782,864.70 subject to the overall expenditure limitation.

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<sup>1/</sup> In accordance with standard Audit Division practice, a review was made of the Committee's expenditures through December 31, 1980, to verify that each was a qualified campaign expense and to determine the accuracy of the Statement of Net Outstanding Campaign Obligations as of November 28, 1980. Although the Threshold Audit Report covered the period October 29, 1979 through December 31, 1979, the unavailability of records at that time necessitated that the majority of the tests conducted in this audit cover the period October 29, 1979, through August 31, 1980.

B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Stephen E. Smith, Chairman, Ms. Carolyn A. Reed, Treasurer from inception to June 13, 1980, and Mr. William C. Oldaker, Treasurer from June 13, 1980 to the present.

C. Scope

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

II. Audit Findings and Recommendations  
Relating to Title 2 of the United States Code

A. Reporting Errors and Omissions

Section 434(b)(1)(2) and (4) of Title 2 of the United States Code states that each report shall disclose the amount of cash on hand at the beginning of the reporting period; and for the reporting period and the calendar year, the total amount of all receipts and disbursements.

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person who makes a contribution(s) to the committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 432(c)(1)(2) and (3) of Title 2 of the United States Code states, in part, that the treasurer of a committee shall keep an account of all contributions received, the name and address of any person who makes any contribution in excess of \$50, together with the date and amount, and the identification of any person making a contribution(s) aggregating more than \$200 during a calendar year, together with the date and amount.

1. Background

During the period audited, the Committee opened 200 bank accounts. Seven (7) of these accounts were maintained at the national campaign offices. The remaining 193 accounts included 63 accounts maintained at the state level, and 130 scheduling accounts. Scheduling accounts were used to fund specific events, and were separate from the funding of state offices.

The Committee's procedures provided for funding the state and scheduling accounts with transfers solely from the national accounts. All contributions received at the state and scheduling level were to be forwarded directly to the national office for deposit into a national account. Expenditure information for the state and scheduling accounts was forwarded to the national office for inclusion in the monthly reports. All expenditures from all accounts were to be itemized on Schedules B-P regardless of amount. Due to the fact that only \$3,103.52 in unitemized expenditures were reported during the period October 29, 1979 through August 31, 1980, and that our tests identified expenditures not itemized that were in an amount in excess of \$3,103.52, any disbursement not found itemized was considered an unreported disbursement.

2. Unreported Expenditures

a. National Accounts

Our review of the Committee's expenditure records for the period October 29, 1979 through August 31, 1980 revealed that 34 expenditures totaling \$73,916.15 were not reported. The expenditures appeared to be for normal Committee operating expenses and the Audit staff found no apparent reason for this failure to report. Further, Committee officials were unable to determine the cause of this problem.

The interim audit report contained a recommendation that the Committee amend its reports to include the 34 expenditures noted above. On May 19, 1981, the Committee submitted an amended report covering calendar year 1980, itemizing 29 of the 34 expenditures, totaling \$71,591.63. A Committee official stated that the remaining five (5) expenditures comprised the unitemized operating expenditure figure contained in the 1979 year end report. Based on the dollar amount, it is possible that four (4) of these expenditures comprised the unitemized operating expenditure figure on the 1979 year end report.

Recommendation

Since the Committee has materially complied with the recommendation, the Audit staff recommends that no further action be taken on this matter.

b. State and Scheduling Accounts

A review was made of the 193 state and scheduling accounts maintained by the Committee. The results of our tests disclosed a material error rate in the Committee's reporting of expenditures from these accounts.

During the audit fieldwork the Committee was in the process of reviewing their files and preparing amended expenditure schedules to include previously unreported state and scheduling expenditures. A comparison of our test results to the amended schedules indicated that the filing of the amended schedules would materially correct the Committee's reports. The amended schedules contained \$220,526.54 in previously unreported activity.

The interim audit report contained a recommendation that the Committee file the amendment mentioned above. The Committee stated in its written response to the audit report that they had included in the 1980 amendment, filed on May 19, 1981, state and scheduling account expenditures totaling \$207,409.04, which were previously unreported. Our review of the amendment disclosed that it actually included \$210,153.89 in expenditures. The Committee explained that the discrepancy between the dollar amount of the state and scheduling account expenditures included in the comprehensive amendment filed and the proposed amendment originally reviewed by the Audit staff, was a result of the proposed amendment not reflecting all expenditure amount corrections. Upon receipt of the amendment, the test results were again compared and it was determined that the amendment as filed materially complies with the recommendation.

Recommendation

The Audit staff recommends no further action on this matter.

3. Miscellaneous Adjustments

In addition to the matters noted above, our review of the Committee's available bank records and tests of the receipt and expenditure records revealed that the Committee's reported activity was misstated due to the following:

a. \$9,000.00 of reported contributions which were returned by the bank due to insufficient funds improperly adjusted on Committee reports; and

b. a \$9,181.66 overstatement of expenditures due to mathematical errors.

The interim audit report contained a recommendation that the Committee amend its reports to adjust for the reporting errors noted above. The amended reports filed by the Committee on May 19, 1981, included these adjustments.

Recommendation

The Audit staff recommends no further action in this matter.

B. Missing Records

Section 432(c) and (d) of Title 2 of the United States Code states, in part, that a treasurer of a political committee shall keep an account of all contributions received on behalf of such political committee, and any disbursements made, including a receipt, invoice, or cancelled check for each disbursement in excess of \$200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that each person required to file any report or statement under this subchapter shall maintain records, including bank records, with respect to the matters required to be reported from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

In addition, Section 9033.1(a)(3) of Title 11 of the Code of Federal Regulations requires a candidate receiving matching funds to keep and furnish to the Commission any records, including bank records for all accounts.

In addition to numerous verbal requests, the Audit staff made eight (8) written requests, beginning on October 23, 1980, for the production of various missing bank records. These requests were presented to the Committee's staff who were available to the Auditors on a daily basis and were working with the records being requested. Due to the substantial delays the Auditors encountered in the receipt of many requested documents and records, particularly bank records, the Commission sent a letter to the candidate, on December 3, 1980, which requested cooperation from the candidate and Committee personnel concerning the production of these records. At the conclusion of the audit fieldwork, the Committee had still not obtained and provided all requested records pertaining to the bank accounts.

The final list of missing bank account records was given to the Committee and discussed with them on January 9, 1981. The list included twenty-one bank accounts which were missing statements, cancelled checks, and/or deposit slips. These missing bank records were needed in order to verify reported figures and could have resulted in additional corrections to the Committee's reports. Committee officials stated that they would attempt to obtain the missing records and provide them for our review.

The interim audit report contained a recommendation that the Committee provide the bank records for our review. Subsequent to the audit fieldwork the Committee provided records for 18 of the 21 bank accounts. For two (2) of the bank accounts the records which were not provided consisted of cancelled checks associated with three (3) bank statements. The remaining one (1) account was lacking one (1) bank statement. It should be noted, however, that the Audit staff was able to include the expenditures connected with these accounts in the overall expenditure review of the state and scheduling accounts. For two (2) of these accounts, the Committee provided letters sent to the banks requesting these records.

### Recommendation

Since the Committee has provided the majority of the records requested, the Audit staff recommends that no further action be taken on this matter.

#### C. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provides, in part, that no candidate for the office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or \$200,000.00, adjusted by the Consumer Price Index.

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the office of President of the United States with respect to a particular State shall be allocated to that State.

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific State shall be attributed to that State, and that expenditures by a Presidential Candidate for use in two (2) or more States, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures.

A review of the Committee's system for allocating expenditures to states revealed a number of areas where allocations were not performed. An extensive review was made of all expenditures relating to the states of New Hampshire and Iowa since these were the only states where the limitations were approached.

The Committee maintained monthly state allocation reports which contained a listing by state of all expenditures allocated to the states from the national operating accounts and state and scheduling accounts. A comparison of the allocation reports to the FEC Forms 3Pc, "Allocation of Primary Expenditures by State for a Presidential Candidate", filed by the Committee from inception through August 31, 1980 revealed more expenditures reported on the Forms 3Pc than contained on the allocation reports. Committee personnel were unable to provide the Audit staff with workpapers to support the reported 3Pc totals nor could they provide an explanation for the differences. Various expenditure testing performed on the allocation reports verified that, with the exception of specific categories of expenditures noted below, the allocation of expenditures contained on the allocation reports were substantially correct. Therefore, the allocation report totals were used as a base to which additions and/or adjustments to the expenditure totals for New Hampshire and Iowa were made.

In addition to the national accounts, the Committee maintained 14 New Hampshire accounts (all in New Hampshire) and 23 Iowa accounts (22 in Iowa and one (1) in Nebraska) from which expenditures were made but were not allocated. Reconciled totals from these accounts were added to the state allocation report totals to yield a grand total of \$227,736.65 allocable to New Hampshire and \$421,376.94 allocable to Iowa.

The interim audit report also identified the following categories of expenditures as containing errors or omissions requiring adjustments to the above totals for New Hampshire and Iowa.

1. March and April, 1980, Expenditures

A review of the state allocation reports revealed that the Committee did not allocate any expenditures made from the national operating accounts during the months of March and April, 1980. A review of the check copies which contained the Committee's state allocation codes for that time period was performed to identify expenditures relating to the New Hampshire and Iowa campaigns. The results of that review required additional allocations of \$34,786.01 to New Hampshire and \$8,917.22 to Iowa.

2. Media

The Committee did not allocate any expenditures from its national operating accounts to its media firm for the purchase of radio, television, or newspaper advertising even though the media firm had supplied the Committee with detailed information with which to do so. The documentation supporting the allocations maintained by the media firm was reviewed by the Audit staff. The review disclosed allocations of \$48,347.81 to New Hampshire and \$85,668.82 to Iowa.

3. Payroll

The Committee did not allocate to the respective states either the salaries of individuals who, according to payroll registers, were assigned to state offices (field personnel) or individuals who were assigned to specific events in one (1) or more states (advance personnel). In addition, neither unemployment taxes nor the employer's portion of FICA taxes were allocated. The Audit staff identified total payroll related expenses (gross payroll, unemployment taxes, and employer's FICA) of \$83,506.34 allocable to New Hampshire and \$127,327.08 to Iowa.

4. Per Diem and Expense Reimbursements

A review of per diem and expense reimbursement payments and the documentation maintained by the Committee (i.e., reimbursement request forms with attached invoices and receipts, indicating a destination) supporting these expenditures identified an additional \$2,432.38 allocable to New Hampshire and \$2,852.09 to Iowa.

In addition to the above, the Audit staff identified \$20,084.24 in expenditures which were not adequately documented to allow an allocation determination. These expenditures were supported solely by a cancelled check which did not identify the state(s), if any, to which the expenditures were allocable nor were these expenditures allocated to any state by the Committee. Per diem payments accounted for \$18,840.00 and expense reimbursements for the remaining \$1,244.24.

5. Outstanding Debt

A review of the Committee's Statement of Net Outstanding Campaign Obligations as of November 28, 1980, and the Committee's list of accounts payable and billings and invoices supporting these payables, identified outstanding debts totaling \$3,242.18 which were related to the Committee's New Hampshire campaign and \$10,970.84 to Iowa.

6. Other Vendor Payments

An analysis of other vendor payments and the documentation maintained supporting these payments (i.e., including bills, invoices, and check stubs containing the Committee's allocation codes) from the operating accounts and a review of expenditures from September 1, 1980 through November 30, 1980, identified additional amounts of \$28,171.79 allocable to New Hampshire and \$47,287.44 allocable to Iowa.



The interim audit report included a final summary of Committee expenditures allocable to New Hampshire totaling \$428,223.16 and Iowa totaling \$704,400.43.

The Audit staff recommended in the interim audit report, that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect these adjustments within 30 days of receipt of the report. In addition, a recommendation was made that the Committee provide the Audit staff with sufficient documentation to allow an allocation determination for those expenditures noted as not adequately documented in II.C.4. above. With respect to other state allocation errors, a recommendation was made that no action be taken since it would have no effect on the Committee's compliance with those state limitations.

In its response to the interim audit report received on May 19, 1981, the Committee provided documentation verifying that the expenditures noted in II.C.4. were not allocable to either New Hampshire or Iowa. The Committee also stated that its method of analyzing state by state expenditures was to review, with the assistance of two (2) accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purpose of influencing the nomination in that particular state and then if all or any of the expenditure could be allocated to an exempt expenditure category.

The Committee provided the Audit staff with a computer printout which included all expenditures which were noted in the interim audit report as being allocable to New Hampshire and Iowa. Each expenditure on the printout was allocated into one (1) or more exempt (not subject to the expenditure limit) or non-exempt (subject to the expenditure limit) categories as follows:

Non-Exempt Category

1. Primary

Exempt Category

1. Compliance
2. Fundraising
3. Phone/Travel-Interstate
4. National Press
5. Other

Due to the methodology employed by the Committee in preparing its response, the expenditure categories presented by the Committee do not correspond to those contained in the interim audit report. Therefore, the remainder of the staff's analysis does not address the same categories of expenditures contained in the interim report but generally addresses the categories as presented by the Committee. However, certain of these categories have been combined for ease of presentation.

a. Compliance and Fundraising

In its response the Committee stated: "During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditures in a manner consistent with salary allocation."

The Committee asked a public accounting firm to develop the methodology and establish the percentages to be used in allocating costs to exempt functions. The firm stated in a letter that it used a sample of four (4) states <sup>2/</sup> from which it computed a weighted average percentage of fundraising and compliance time. The Committee stated that the selection of the states was on a judgemental basis and the information pertaining to each employee was based on interviews with the official who directed the campaign activity in that state. Using this procedure the firm determined that 17% of payroll costs related to fundraising and 22% related to compliance.

Overhead expenses were isolated and the percentages noted above were applied to all overhead expenses allocating an amount to exempt compliance and fundraising. The Committee also determined the amount of time spent on compliance and fundraising activities for field staff and charged a portion of those individual's salaries to exempt compliance and fundraising. In addition, a review of the computer printout supplied by the Committee reveals that the Committee has allocated what appears to be 10-17% of each advance person's salary to fundraising. Since no information was provided in the Committee's response concerning the compliance and fundraising percentages applied to advance staff salaries, it is not known how those percentages were derived. <sup>3/</sup>

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<sup>2/</sup> The four (4) states were New Hampshire, Iowa, New York, and Ohio.

<sup>3/</sup> The Audit staff has adjusted the totals allocated to advance staff salaries for the difference between a seven day work week and the five day work week which was used by the Audit staff in arriving at the total in the interim report.

Although it appears justifiable that a portion of overhead and payroll related costs can be charged to exempt categories, the limited information which has been provided concerning the procedures used does not allow the staff to make a determination concerning the reasonableness of the allocation.

All that has been provided by the Committee is a letter from the accounting firm explaining in general terms the procedure it followed to arrive at the percentages. The letter states that the amount of compliance and fundraising time spent by individuals in the four states was determined through discussions with the state desk people directing the campaign activity in that state. Workpapers prepared by the accounting firm supporting the discussions and calculations noted in the letter were not available for the Audit staff's review at the time the Committee's response was received. In the absence of these workpapers the Audit staff has no information concerning the questions asked of the campaign officials interviewed, how the interviewers defined "compliance" and "fundraising", on what basis the persons interviewed assigned percentages to each staff members' activities, or any other records (i.e. time sheets, job descriptions, etc.) which were used as a basis for determining the percentages. In addition, the Committee has not provided the definition of the types of expenditures to which the overhead percentages would be applied. Further, the Committee stated in its response that they recognized the need for establishing these percentages during the campaign; however, the Audit staff was provided no evidence or information to indicate that the information used by the accounting firm was obtained during the campaign. The timing of the interviews is an important factor to take into consideration when determining the reasonableness of the resulting percentages, because the calculations were based on a single individual's recollection of activities.

Therefore, other than those expenditures which could be clearly identified as relating to compliance and fundraising activities, no adjustments have been made to the expenditures allocable to New Hampshire and Iowa based on the Committee's response.

#### Recommendation

Except as noted above, based upon the documentation thus far submitted by the Committee to the Commission, no adjustments to the amounts allocable to New Hampshire or Iowa have been made. The Audit staff recommends that additional documentation verifying the accuracy and reasonableness of the Committee's compliance and fundraising allocations be submitted within 30 days of receipt of this report. This documentation should include but is not limited to:

- a. all workpapers generated by the Committee and/or accounting firm used to derive the compliance and fundraising allocations;
- b. questions asked of the individuals interviewed;
- c. job descriptions and/or time sheets for the individuals for whom salaries were allocated;
- d. a description of the duties of the individuals interviewed;
- e. the basis for the selection of the four (4) states used; and
- f. any other documentation which the Committee believes would support their allocations.

b. Interstate Travel and Communications

In its response the Committee stated "The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2(c)(2) to the national expenditure limitations."

The Committee provided the Audit staff with workpapers which they stated would support the Committee's allocation of long distance telephone charges to an exempt category. The workpapers indicate that all calculations for determining the amount of long distance telephone charges allocated to an exempt category for New Hampshire <sup>4/</sup> were based on reviewing two (2) telephone bills. The workpapers state that 62% of the total amount of all telephone bills were long distance and that 27% of the long distance calls were out of state. The 27% was then applied to all phone charges for New Hampshire, both those made at campaign headquarters and those contained on hotel bills and expense reimbursement forms, and the resulting amount allocated to an exempt expenditure category. The Audit staff is unable to verify the accuracy of these percentages since the Committee provided only the summary pages for the telephone bills which did not include the itemized listing of phone calls. Further, it would appear that if the percentage calculations are correct, a sample consisting of two (2) selected telephone bills is not statistically valid.

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<sup>4/</sup> No records were provided for the Iowa computations.

The Commission, in a meeting on June 9, 1981, determined that only long distance telephone charges originating in a particular state made within that state or to another state, other than national headquarters, were required to be allocated. Letters were mailed to the affected presidential candidate committees on July 2, 1981, notifying the committees of the new determinations concerning the allocation of the telephone charges. The letter also stated that the committees had 30 days from receipt of the letter, to submit to the Audit Division an amended state allocation schedule, thereby reducing the amount previously allocated for such expenditures. The committees were also instructed to provide computational schedules including copies of bills, expense vouchers, or any other documentation supporting such an amendment. The Committee received the letter by certified mail on July 7, 1981. Since the Committee has not provided the Audit staff the documentation requested in the letter, no change to the total amount allocated in the interim report has been made.

The Audit staff has adjusted the total allocable to New Hampshire by \$7,054.97 and Iowa by \$1,956.66 for other interstate charges (interstate travel and delivery services) for which adequate documentation was provided.

#### Recommendation

Except as noted above, based upon the documentation thus far submitted by the Committee to the Commission, no adjustments to the amounts allocable to New Hampshire or Iowa have been made. The Audit staff recommends that additional documentation verifying the accuracy and reasonableness of the Committee's interstate travel and long distance telephone allocations be submitted within 30 days of receipt of this report. This documentation should include but is not limited to:

- a. itemized telephone bills for all telephone numbers for which charges have been allocated to an exempt category;
- b. expense and travel reimbursement forms including receipts and invoices (i.e., airline tickets, gas receipts, etc.) verifying interstate travel for those items not previously documented; and
- c. Committee generated workpapers including adding machine tapes derived from the information above.

#### c. Media Expenditures

In its response the Committee stated that it had reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by the vendor (which was found to be acceptable by the Audit staff

during the fieldwork) was incorrect. 5/ They further stated: "The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV station to allocate the cost of a broadcast." However, other than a letter from their media firm explaining that they had recalculated the media costs based on "County Coverage Reports (CCR)" rather than on the basis of "Area of Dominant Influence (ADI)" 6/ no other workpapers supporting the reallocation of media expenditures was supplied to the Audit staff with the response. The letter from the media firm does not provide an explanation of the method used for determining the number of eligible voters in the County Coverage Reports.

At the time the Committee's response was received they indicated that the reduction of total media expenditures allocable to New Hampshire and Iowa contained on the computer printout was an estimate and that the media firm had not completed their calculations.

On June 11, 1981, the Committee provided the final figures for the media allocations. The Audit staff does not object to the use of the CCRs for the allocation of media expenditures; however, based on the review of these allocations and the supporting documentation, the Audit staff noted the following:

1. It appeared that the Committee's media vendor simply applied New Hampshire and Iowa CCR percentages to those media buys previously allocated to these states under ADI but did not (re)allocate to these states any buys previously not allocated under ADI which would be required under CCR. There are 10 out-of-state stations which overlap New Hampshire according to CCR data. The Committee made media buys at five (5) of these stations for which no (re)allocations have been made. 7/ The dates of these buys are not known to the Audit staff at this time to verify that the buys were all subsequent to the New Hampshire primary and would, in fact, not require such an allocation.

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5/ As noted earlier in this report, although provided with the media allocation totals by their media firm the Committee had not allocated any media costs.

6/ The Area of Dominant Influence (ADI) is a geographic design which defines each television market, exclusive of another, based on measurable viewing patterns. County Coverage Reports detail for every county, net weekly circulation (number of different households viewing the station in a week), for every station, whether the county is within or outside the station's ADI.

7/ Two (2) of these were Springfield, Massachusetts stations, two (2) were Burlington, Vermont, and one (1) was New Bedford, Massachusetts.

2. \$1,450 in media buys at one (1) of the Burlington, Vermont TV stations referred to above were reviewed during the audit fieldwork that were denoted "N.H. primary". These expenditures did not require an allocation to New Hampshire under the ADI method but most likely would on the basis of CCR. The Committee's revised figures did not include any allocation to New Hampshire for these purchases.

3. On July 8, 1981, the Committee provided the Audit staff with schedules indicating that refunds from various New Hampshire and Iowa stations had been received and that \$5,327.86 and \$3,502 should be deducted from the New Hampshire and Iowa allocations, respectively. These schedules were dated November 18, 1980 while the media firm's CCR reallocations were dated May 18 and 21, 1981. Therefore, it appears that the refunds are calculated under ADI percentages while the time buys are now (re)allocated under CCR percentages.

The above matters have been discussed with the Committee's controller who requested clarification and/or additional information from their media firm representative. With respect to item number 1., the media firm representative stated that the reallocation was done "from scratch" and that all buys at the five (5) stations with a New Hampshire overlap were subsequent to the New Hampshire primary.

With respect to item number 2., the media firm representative advised that his assistant may have missed the Burlington, Vermont buys. A copy of the invoice in question was provided to the Committee's controller who was to forward it to the media representative. The Committee's controller stated that any necessary corrections would be provided to the Audit staff.

With respect to item number 3., he agreed that the refunds would require an allocation adjustment calculated on the basis of CCR percentages.

Due to (1) the possible omission of the Burlington, Vermont media buys from the Committee's reallocations, (2) the timing of the Massachusetts and Vermont primaries (March 4) in relation to the New Hampshire primary (February 26) and that the media firm asserts that no Massachusetts or Vermont buys were prior to February 26, and (3) the fact that the Committee's revised media allocations are again subject to change (on the basis of eligible Democratic votership), no changes have been made to the Audit staff's original media allocations, except for minor revisions resulting from other updated information.

Recommendation

Except as noted above, based upon the documentation thus far submitted by the Committee to the Commission, no adjustments to the amounts allocable to New Hampshire or Iowa have been made. The Audit staff recommends that the additional documentation listed below be submitted within 30 days of receipt of this report. This documentation should include:

a. documentation for all media buys made at the five (5) stations noted in 1. and 2. above which will show the dates the programs were broadcast; and

b. revised refund schedules using CCR data as noted in 3. above.

d. National Press

The Committee stated in its response that each expenditure preliminarily allocated to New Hampshire or Iowa was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. They further stated that the Committee's method of billing the press (225% of first class air fare) was reviewed and approved by the Commission during an enforcement proceeding. The Committee believes that many of the expenditures allocated to New Hampshire and Iowa were for services provided to the National Press. Since the costs of these services were included in the basis for the 225% charge and subsequently reimbursed to the Committee, they therefore should not be allocated to the states' limits.

The Audit staff does not disagree with the concept that expenditures for services provided to members of the press which are subsequently reimbursed by the press need not be charged to any limitation. However, the Committee has not provided any information to show a relationship between any particular expenditure or group of expenditures which they have charged to exempt National Press and the activities of the National Press. In addition, the Committee has not provided a list of the total amount billed to the national press nor the total amount received from the national press based on these billings.



Furthermore, in its response to Commission inquiries during the enforcement proceeding, Committee officials indicated that the charge to the press for traveling with the candidate was always initially based on 225% of first class airfare but was often adjusted downward once the total cost of the trip was determined. Of the four (4) examples of campaign flights provided to the Commission by the Committee during the proceeding the highest billing rate reported by the Committee was approximately 150% of the first class airfare.

The Committee has also stated that the salaries of various staff persons who devoted all or a part of their time to the national press likewise should not be allocated to an individual state but should be treated as a national non-allocable expenditure. The Committee has therefore allocated approximately 33% of each advance staff person's salary to exempt national press.

The Committee has not provided the Audit staff any information as to how this percentage was derived. Further, no definition of these activities has been offered by the Committee nor have any worksheets or other documents supporting this allocation been presented to the Audit staff.

11 C.F.R. 106.2 states that expenditures for administrative, staff, and overhead costs directly relating to national campaign headquarters need not be allocated to states while expenditures for staff, media, printing, and other goods and services used in a campaign in a specific state shall be attributed to that State. Since these salaries were for staff services used in the states of Iowa and New Hampshire and do not relate directly to national headquarters, the Audit staff can find no basis for exempting advance staff salaries from the state expenditure limits.

In a meeting on September 15, 1981, the Commission determined that the Committee may not exclude from the individual state limit a portion of the salaries of advance staff personnel on the basis that all or a part of their time was spent ministering to the National Press. Therefore, the Audit staff will not make adjustments to the amount allocable to New Hampshire and Iowa in this area.

The Audit staff has not adjusted any of the amounts allocable to New Hampshire and Iowa in the area of national press based on the Committee's response.

### Recommendation

Based upon the documentation thus far submitted by the Committee to the Commission, no adjustments to the amounts allocable to New Hampshire or Iowa have been made. The Audit staff recommends that additional documentation verifying the accuracy and reasonableness of the Committee's allocation of reimbursable press expenditures be submitted within 30 days of receipt of this report. This documentation should include but is not limited to:

- a. the total amount billed to the national press by state and the total amount received from the press based on these billings; and
- b. the types of expenditures charged to exempt national press and their relationship to the national press. At a minimum this documentation should indicate that for the expenses charged to the national press, that the national press were in the area at the time the services were rendered.

#### D. Contributions From Other Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code requires a committee to disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 432(c)(4) of Title 2 of the United States Code states, in part, that the treasurer of a political committee shall keep an account of the identification of any political committee which makes a contribution, together with the date and amount of any such contribution.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. In addition, Section 431(11) defines, in part, the term "person" to include a partnership, committee, association, corporation, or any other organization or group of persons.

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

1. Itemization of Contributions  
from Political Committees

A review of reports on file at the Commission revealed that 28 political committees reported making 31 contributions to the Committee totaling \$30,322.00 which were not itemized on the Committee's disclosure reports. The Committee maintained copies of the transfer checks for seven (7) of these contributions.

The Audit staff recommended that the Committee file amended reports itemizing these contributions. On May 19, 1981, the Committee filed comprehensive amendments itemizing these contributions.

Recommendation

The Audit staff recommends no further action on this matter.

2. Excessive Contributions from Registered Committees

A review of the Committee's receipt records revealed that the Committee received contributions from one multicandidate committee which exceeded the limitation by \$4,875.00. In addition, the Audit staff identified contributions in excess of \$1,000 from two (2) political committees that apparently were not qualified as multicandidate committees as defined by Section 441a(a)(4). The excessive portion of the contributions from the two (2) non-qualified committees totaled \$3,702.60.

The Audit staff recommended that the Committee refund the excessive portions of these contributions. On June 15, 1981, the Committee provided a copy of the check used to refund the \$4,875 to the multicandidate committee. For the excessive contribution from one (1) of the apparent non-qualified committees, the Committee provided a copy of the check to document that the excessive portion was contributed to a charitable organization since the committee is no longer in existence. For both refunds, a Committee official agreed to provide copies of the cancelled checks upon receipt from the bank.

For the remaining apparent non-qualified committee, the Committee treasurer stated that the contributing committee had informed him that they had achieved multicandidate status prior to making the contribution. A review of records on file at the Commission indicates that the committee met the requirements for obtaining multicandidate status on April 8, 1980 which was four (4) days after the contribution was made.

### Recommendation

Since the excessive contributions received from two (2) of the committees have been disposed of properly, the Audit staff recommends that no further action be taken.

Further, the Audit staff is of the opinion that the multi-candidate committee's qualifying four (4) days after contributions exceeding \$1,000 were made is immaterial and recommends that no further action be taken on this matter.

#### E. Undisclosed Debt

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

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts at November 30, 1980, the Audit staff identified a total of \$177,149.32 in debts which were not disclosed by the Committee. In addition, it was determined that the Committee's disclosed debts at November 30, 1980 were overstated by \$34,749.27.

Of the \$177,149.32 in undisclosed debts, \$136,592.65 were supported by unpaid bills, invoices, etc.

In the interim audit report the Audit staff recommended that the Committee amend their December Monthly report and subsequent reports to the extent affected, to accurately reflect the outstanding debts as of November 30, 1980. On May 19, 1981,

amended reports were filed substantially correcting the understatement.

### Recommendation

The Audit staff recommends that no further action be taken on this matter.

#### F. Processing of Questionable Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation, to make a contribution or expenditure in connection with any election to any political office. It further states that it is unlawful for any political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or any officer of any corporation or national bank to consent to any contribution or expenditures by the corporation or the national bank.

Section 103.3(b) of Title 11 of the Code of Federal Regulations states, in part, that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. A statement noting that the legality of the contribution is in question shall be included in the report, and best efforts made to determine legality. When the legality of the contribution cannot be determined, refunds shall be made within a reasonable time and the current report shall be amended to reflect the Committee's response.

The Committee maintained a separate checking account, known as the escrow account, for depositing contributions which needed further documentation to confirm their legality. Funds in the escrow account were not expended for campaign purposes until their legality was determined, at which time they were transferred to the operating account.

During the threshold audit, it was determined that the Committee's written procedures for processing questionable contributions deposited into the escrow account were not followed by Committee personnel. The threshold report of the Audit Division included a recommendation that the Committee follow its written procedures as well as revise those procedures to include a written record noting the basis for the appearance of illegality of the contributions.

During the post-primary audit, there appeared to be no change in the Committee's method of processing contributions deposited into the escrow account.

According to the Committee's bank records, the balance in the escrow account at January 1, 1980 was \$120,542.06. During the period January 1 through August 31, 1980, receipts totaling \$172,796.50 were deposited into the escrow account and \$243,960.51 was disbursed, leaving a balance at August 31, 1980 of \$49,378.05. The Audit staff was able to verify that \$236,608.65 was transferred from the escrow account to the Committee's operating account. Also, cancelled checks for contribution refunds totaling \$3,815.00 were reviewed by the Audit staff.

The "escrow check log", the Committee's record of deposits into the escrow account, showed a balance at August 31, 1980 of \$59,260.48. The records maintained by the Committee do not contain sufficient detail to explain either the discrepancy between the bank balance and escrow check log balance or the source of the contributions making up the \$49,378.05 bank balance. As best could be determined by the records provided, contributions making up this balance could have been in the account, in some cases, for as long as eight (8) months.

In its interim audit report, the Audit staff recommended that the Committee determine the source and legality of the \$49,378.05 remaining in the escrow account at August 31, 1980 and refund to the original contributors any contributions confirmed to be from impermissible sources. It further recommended that if the source of any contributions could not be identified, the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign or candidate. The Audit staff also recommended that the Committee provide copies of cancelled checks for all contribution refunds made during the period January 1, 1980 to August 31, 1980.

On May 19, 1981 and July 27, 1981, the Committee presented to the Audit staff documentation verifying transfers totaling \$20,640 in permissible contributions to the operating account. Documentation was also provided verifying that \$3,272.00 was comprised of funds from impermissible sources which the Committee intended to contribute to charity. In addition, cancelled checks for all contribution refunds (except 12 outstanding checks totaling \$1,140) were made available for review by the Audit staff. The Committee adjusted the account by \$1,348.00 for NSF check charges which were erroneously charged to the account and bank charges of \$29.57. The Committee did not provide documentation adequately identifying the source of the remaining \$25,644.48 in the escrow account. For a detailed analysis of the deficiencies in the Committee's response see Attachment 2.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report, the Committee provide documentation that the \$25,644.48 balance of undocumented contributions contained on Attachment 2 are permissible under the Act. For any contributions comprising any portion of that amount which are not permissible the Committee should provide evidence (cancelled checks) that those contributions have been disposed of in a lawful manner unrelated to any Federal election, campaign, or candidate.

G. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel on February 9, 1981 and June 25, 1981.

III. Findings Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) and (b) of Title 11, Code of Federal Regulations, requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, an estimate of necessary winding down costs, and the total of the fair market value of capital assets on hand, within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

On August 13, 1980, Senator Edward M. Kennedy's candidacy terminated for the purpose of incurring qualified campaign expenses. 8/

At the conclusion of the audit fieldwork, the Committee had filed NOCO statements covering the period from August 13, 1980 through December 26, 1980. To facilitate the verification of the

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8/ Commission regulations at 11 C.F.R. Section 9032.6 provide that the date on which a party nominates its candidate for President is the end of the matching payment period for a candidate seeking the Presidential nomination of that party. 11 C.F.R. Section 9033.5(c) provides that the last day of the matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. Section 9033.5(a) or (b). Since the Democratic Party nominated its Candidate for President on August 13, 1980, that date is the date of Senator Kennedy's ineligibility.

Committee's net outstanding campaign obligations, the NOCO statement as of November 28, 1980 was audited. The Audit staff made necessary adjustments to this statement to properly reflect the candidate's cash position as of November 28, 1980, and to correct misstatements of accounts payable and the Committee's estimate of winding down costs (see Attachment 3).

Various artists produced original works of art which could be reproduced and used by the Committee as inducements in the solicitation of contributions. It was further determined that the Committee had negotiated bank loans secured by a number of these prints. The Committee has not recognized art prints as a capital asset(s) in any NOCO statement filed to date. Due to the effect on matching fund entitlement that the consideration of art prints as a capital asset(s) could have, the Audit staff requested that the Committee furnish an inventory of art prints on hand at November 28, 1980, as well as an accounting of all prints disposed of between the ineligibility date and November 28, 1980. This information was to be used to determine the inventory on hand at the candidate's date of ineligibility. On January 28, 1981, the Committee presented a memorandum to the Audit staff which stated that, as of November 28, 1980, there were 6,525 art prints on hand. However, the information contained in this memorandum was not sufficient to calculate the inventory at the candidate's ineligibility date.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit a written independent appraisal of the fair market value of the art prints and provide an inventory of prints on hand at August 13, 1980. In the Committee's response to the interim audit report, received on May 19, 1981, the Committee treasurer stated that there were 6,904 prints on hand at August 15, 1980. The Committee, however, did not provide the fair market value appraisal of the artworks because (the Committee) "believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least \$10,000." Further the response states: "The request is inappropriate because there is no basis on which to determine the 'fair market value' of the artwork for purposes of 11 C.F.R. Section 9034.5(c), 26 U.S.C. Section 9034."

The Committee treasurer also cited Advisory Opinion Request 1980-136 in which the Commission was unable to decide whether the Committee could lawfully use the artwork to settle debts and stated: "...without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible."



Finally, the Committee treasurer asserted that the artwork should not be treated as a "capital asset" since it cannot be readily converted to cash or used in debt settlement due to restrictions placed on its sale or disposition. He concluded that "the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair."

As of November 28, 1980, the Committee's reported net outstanding campaign obligations as adjusted totaled \$1,134,566.51. Based on that amount, the Committee received a matching fund payment of \$29,004.47.

In a meeting on September 16, 1981, the Commission made the following determinations;

1. that all individual pieces of artwork valued in excess of \$500 are a capital asset and reduce the Committee's net outstanding campaign obligations,
2. that for purposes of the NOCO the value of the individual pieces of art will be the appraised value shown on the Committee's brochure and inventory submitted to the Commission, and
3. that the applicable date for determining the inventory of artwork on hand will be the candidate's date of ineligibility, August 13, 1980.

Based on these determinations, additional fieldwork by the Audit staff will be required to determine the effect the inclusion of the artwork as an asset has on the Committee's financial position.

#### Recommendation

If the application of the Commission's determinations noted above, result in a repayment to the United States Treasury, notification of such repayment will be made by the Audit staff in an addendum to the final audit report.

#### B. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2) of Title 26 of the United States Code provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than: to defray the qualified campaign expenses with respect to which such payment was made; or to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9032(9) (A) and (B) of Title 26 of the United States Code and Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value incurred by a candidate, or by its authorized committee, in connection with his campaign for nomination or election; and neither the incurring nor payment of which constitutes a violation of any law of the United States or the state in which the expense is incurred or paid.

1. Expenditures in Excess of State Limitations

As previously discussed in Finding II.C., the Audit staff identified expenditures in excess of the state limitations in New Hampshire and Iowa.

On April 9, 1981, the Commission approved the Audit staff's recommendation that the Committee be requested to demonstrate, within 30 days of receipt of the interim audit report, that these state expenditure limitations had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee's response to the interim audit report, and the documentation which accompanied it, and made revisions to the amounts allocable to the New Hampshire and Iowa state limits. The revised summary of Committee expenditures allocable to New Hampshire and Iowa is presented below:

	<u>New Hampshire</u>	<u>Iowa</u>
Committee Allocation Reports	\$ 210,884.64	\$ 380,792.10
March and April Expenditures	34,425.68	8,917.22
Media	52,151.20	80,390.69
Salaries	73,211.98	111,039.94
Per Diem and Expense Reimbursements	1,913.60	2,852.09
Outstanding Debts	3,242.18	10,970.84
Other Vendor Payments	<u>10,021.79</u>	<u>41,493.44</u>
Total	\$ 385,851.07	\$ 636,456.32
State Limitations	<u>(294,400.00)</u>	<u>(489,881.00)</u>
Amount in Excess of Limitation	<u>\$ 91,451.07</u>	<u>\$ 146,575.32</u>

Recommendation

The Audit staff recommends that these expenditures totaling \$238,026.39 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

2. Payment of Parking Violations

During the conduct of various audit procedures, the staff identified Committee payments totaling \$141.50 for parking tickets received during the campaign. The entire \$141.50 was expended prior to the date of ineligibility.

Recommendation

The Audit staff recommends that these expenditures totaling \$141.50 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

Repayment Summary

Finding III.B.1.	Expenditures in Excess of State Limitations	\$238,026.39
Finding III.B.2.	Payment of Parking Violations (pre-ineligi- bility)	<u>\$ 141.50</u>
Total		<u>\$238,167.89</u>

Pursuant to Section 9038.2 of the Code of Federal Regulations, the amounts noted above in the Repayment Summary, totaling \$238,167.89 <sup>9/</sup>, are repayable to the United States Treasury within 90 days of receipt of this report. If the candidate disputes the Commission's determination that a repayment is required, he may submit in writing within 30 days of receipt of this report, legal or factual materials to demonstrate that a repayment is not required.

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<sup>9/</sup> This amount may be adjusted based on the effect the inclusion of the value of the artwork as a capital asset has on the Committee's net outstanding campaign obligations, as noted in Finding III.A.

## Comparison of Allocation Totals

## New Hampshire

	<u>Audit Verified</u>	<u>Committee Reallocation</u>	<u>Difference</u>
Committee Allocation Reports	\$210,884.64	\$158,176.01	\$ 52,708.63
March & April Expenditures	34,425.68	19,678.47	14,747.21
Media	52,151.20	46,021.85	6,129.35
Salaries	73,211.98	46,138.74	27,073.24
Per Diem & Expense Reimbursement	1,913.60	1,086.13	827.47
Outstanding Debts	3,242.18	2,740.08	502.10
Other Vendor Payments	<u>10,021.79</u>	<u>5,670.94</u>	<u>4,350.85</u>
Total	<u>\$385,851.07</u>	<u>\$279,512.22</u>	<u>\$106,338.85</u>

## Iowa

	<u>Audit Verified</u>	<u>Committee Reallocation</u>	<u>Difference</u>
Committee Allocation Reports	\$380,792.10	\$258,320.27	\$122,471.83
March & April Expenditures	8,917.22	5,889.15	3,028.07
Media	80,390.69	85,180.86	(4,790.17)
Salaries	111,039.94	74,981.10	36,058.84
Per Diem & Expense Reimbursement	2,852.09	1,775.03	1,077.06
Outstanding Debts	10,970.84	8,942.24	2,028.60
Other Vendor Payments	<u>41,493.44</u>	<u>38,198.22</u>	<u>3,295</u>
Total	<u>\$636,456.32</u>	<u>\$473,286.87</u>	<u>\$163,169.45</u>

## ANALYSIS OF COMMITTEE RECONCILIATION OF ESCROW ACCOUNT

	<u>Committee Response</u>	<u>Audit Verified Amount</u>
Bank Balance at August 31, 1980	\$49,378.05	\$49,378.05
Undocumented expenditures during period 9/1/80 - 3/31/81 <u>1/</u>	<u>(12,090.00)</u>	(10,870.00)
Bank Balance at March 31, 1981	37,288.05	
Committee adjustments		
Redeposited check <u>2/</u>	(1,000.00)	
Outstanding checks <u>3/</u>	(1,140.00)	( 1,140.00)
NSF checks erroneously charged to escrow account <u>4/</u>	1,348.00	1,348.00
Escrow transfer <u>5/</u>	(3,000.00)	
Miscellaneous bank charges	<u>(29.57)</u>	( 29.57)
	33,466.48 <u>6/</u>	
Permissible contributions to be transferred to the operating account <u>7/</u>	(13,520.00)	(9,770.00)
Unidentified deposit donated to charity <u>8/</u>	(3,000.00)	
Amount from prohibited sources to be donated to charity <u>9/</u>	<u>(3,522.00)</u>	<u>(3,272.00)</u>
Balance (undocumented contributions remaining in the escrow account) <u>10/</u>	<u>\$13,424.48</u>	<u>\$25,644.48</u>

- 1/ The Committee submitted documentation confirming the legality of \$10,870.00 of this amount which has been transferred to the operating account.
- 2/ No documentation concerning this check has been provided.
- 3/ This amount comprises 12 checks which have been outstanding for over one year.
- 4/ These NSF checks were charged against the escrow account prior to August 31, 1980. The escrow account has been reimbursed by the operating account for these charges.
- 5/ The Committee has not identified this transfer.
- 6/ The Committee submitted a computer print-out of contributors' names and contributions totaling this amount.
- 7/ The Committee submitted documentation confirming the legality of \$9,770.00 of this amount.
- 8/ The Committee has not provided sufficient information to identify this deposit nor have they provided a copy of the check made payable to the charity.
- 9/ Contributions comprising \$250 of this amount had already been refunded in February and April 1980.
- 10/ The Committee has not presented documentation confirming the legality of this amount.

Kennedy For President Committee  
Statement of Net Outstanding Campaign Obligations

November 28, 1980

<u>Assets</u>	<u>As Stated</u>	<u>Adjusted by Audit</u>
Cash	\$ 168,566	\$ 149,781.27 <u>1/</u>
Accounts Receivable (net)	10,000	10,000.00
Capital Assets	<u>-0-</u>	<u>4/</u>
	<u>\$ 178,566</u>	<u>\$ 159,781.27</u>
 <u>Obligations</u>		
Accounts Payable for Qualified Campaign Expenses	\$ 664,800	\$ 646,638.78 <u>2/</u>
Estimated Wind Down Costs 11/28/80 to 5/15/81 (Projected Termination Date)	181,000 <u>3/</u>	149,700.00 <u>3/</u>
Bank Notes Payable	484,897	484,897.00
Accrued Interest	<u>13,112</u> <u>\$1,343,809</u>	<u>13,112.00</u> <u>\$1,294,347.78</u>
Net Outstanding Campaign Obligations - Deficit	<u>\$1,165,243</u>	<u>\$1,134,566.51</u> <u>4/</u>

- 1/ Cash in bank was adjusted to accurately reflect the candidate's cash position at 11/28/80.
- 2/ The Committee's accounts payable balance was adjusted by eliminating undocumented payables totaling \$46,479.70 (11 C.F.R. Section 9033.1(a)(1)(i)), and adding documented payables not included in the Committee's balance totaling \$61,758.08. Included in the documented payables is a \$21,502 contingent liability currently in dispute with the creditor.
- 3/ The Committee inadvertently omitted an estimate of wind down costs on the original 11/28/80 NOCO statement. The Committee corrected this oversight by letter indicating that the subsequent NOCO statement of December 15, 1980 included wind down costs which totaled \$181,000.00. This amount was adjusted by disallowing a \$15,000 postage and handling estimate for mailing gifts to campaign staff and volunteers which does not meet the definition of a wind down cost (11 C.F.R. Section 9034.4(c)), and to correct a \$16,300 addition error in totaling the various components of wind down costs.
- 4/ Exclusive of a valuation of art prints as assets.

DOCUMENTS CIRCULATED TO OR PRESENTED TO THE  
FEDERAL ELECTION COMMISSION FOR THE MEETINGS  
OF AUGUST 25 AND 26 AND SEPTEMBER 15 AND 16, 1981  
CONCERNING THE FINAL AUDIT REPORT OF THE KENNEDY  
FOR PRESIDENT COMMITTEE

- Index to Exemptions -

I. Identification of Documents for Meetings  
of August 25 and 26, 1981 and Index to Exempt Portions

A. Agenda Document No. X81-052:

- Pages 1-9: Memorandum to the Commission from Bob Costa dated August 18, 1981 re: Final Audit Report - Kennedy for President Committee.
- Pages 10-33: Report of the Audit Division on the Kennedy for President Committee.
- Page 34: Attachment 1. Comparison of Allocation Totals.
- Page 35: Attachment 2. Kennedy for President Committee - Statement of Net Outstanding Campaign Obligations.
- Page 36: Exhibit 1.
- Pages 37-39: Exhibit 2.
- Pages 40-43: Exhibit 3. Review of Receipts.
- Page 44: Attachment to Exhibit 3. Analysis of Committee Reconciliation of Escrow Account.
- Pages 45-60: Exhibit 4. Letter from William C. Oldaker to Chairman John W. McGarry dated May 18, 1981 re: Interim Report of the Audit Division on the Kennedy for President Committee.
- Pages 61-71: Memorandum to Robert J. Costa from Charles N. Steele dated August 6, 1981 re: Report of the Audit Division on the Kennedy for President Committee - A-943.

Exemptions to Agenda Document No. X81-052:

The following portions of Agenda Document No. X81-052 are exempt from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(3) on the grounds that these portions are required by law to remain confidential pursuant to 2 U.S.C. § 437g(a)(12):

Page 2: Last three paragraphs and footnote at bottom of page.

Page 3: Second paragraph.

Page 9: First full paragraph.

Pages 36-39: Entire.

Page 42: Second paragraph through bottom of page.

Page 43: Entire.

Page 45: Fifth paragraph.

Page 47: Fourth through sixth paragraphs.

Page 54: Last three paragraphs.

Page 55: First paragraph.

Page 62: First full paragraph.

Page 70: Last four lines.

Page 71: First four lines.

II. Identification of Documents for Meetings of September 15 and 16, 1981 and Index to Exempt Portions

A. Agenda Document No. X81-065

Pages 1-2: Memorandum to the Commission from Bob Costa dated September 10, 1981 re: Final Audit Report Kennedy for President Committee.

Pages 1-27 Report of the Audit Division on the Kennedy for President Committee.

Page 28: Attachment 1. Comparison of Allocation Totals.

Page 29: Attachment 2. Analysis of Committee Reconciliation of Escrow Account.

Page 30: Attachment 3. Kennedy for President Committee Statement of Net Outstanding Campaign Obligations.

Page 31: Exhibit 1.

Pages 32-34: Exhibit 2.



- Pages 35-36: Exhibit 3.
- Pages 37-52: Exhibit 4. Letter from William C. Oldaker to Chairman John W. McGarry dated May 18, 1981 re: Interim Report of the Audit Division on the Kennedy for President Committee.
- Pages 53-54: Exhibit 5. Letter from Hershel D. Sosnoff of Fox & Company to Mr. Jay Clevenson dated June 2, 1981.
- Pages 55-58: Exhibit 5 (continued). Kennedy for President Individual Time Percentages.
- Pages 59-61: Exhibit 5 (continued). Letter from Hershel D. Sosnoff of Fox & Company to Mr. Jay Clevenson dated August 21, 1981.
- Page 62: Exhibit 5 (continued). Letter from Hershel D. Sosnoff of Fox & Company to Mr. Jay Clevenson dated September 1, 1981.

Exemptions from Agenda Document No. X81-065

The following portions of Agenda Document No. X81-065 are exempt from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(3) on the grounds these portions are required by law to remain confidential pursuant to 2 U.S.C. § 437g(a)(12):

- Pages 31-36: Entire.
- Pages 37: Fifth paragraph.
- Page 39: Fourth through sixth paragraphs.
- Page 46: Last three paragraphs.
- Page 47: First three lines of first paragraph.

B. Agenda Document No. X81-065A

- Pages 1-10: Letter to the Commission from Charles N. Steele dated September 14, 1981 re: Final Audit Report of the Kennedy for President Committee.
- Attachment I: 4 pages. Letters from Hershel D. Sosnoff of Fox & Company dated August 21 and September 2, 1981 to Mr. Jay Clevenson.
- Attachment II: 2 pages. FEC Letter to committees receiving matching funds.

Exemptions from Agenda Document No. X81-065A

The following portions of Agenda Document No. X81-065A are exempt from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(7), on the grounds that these portions discuss investigative procedures and litigation strategy:

Page 3: Last seven lines of the first paragraph; and all of footnote 1.

C. Agenda Document No. X81-067

Memorandum to the Commission from Charles N. Steele, dated August 25, 1981 re: Disposition and Evaluation of Artwork Donated to the Kennedy for President Committee.

Exemptions from Agenda Document no. X81-067

No exemptions.

II.B. Missing Records (Audit Report, Page 5, Legal Analysis, Page 1)

Additional language has been added to the report incorporating the Office of General Counsel's comments:

B.2.

Memorandum to the Commission  
Final Audit Report  
The Kennedy for President Committee

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Further, the Counsel's statements fail to take into account comments made by the Committee Treasurer that, "The 'appraised value' of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's 'worth' to an individual recipient, the value of an individual print to the Committee would be much less." (See Committee response, Page 15) The Audit staff believes that if this statement is accurate, the value of a series of prints in the hands of a lending institution would not be substantially greater. Hence a question of the adequacy of the collateral is raised.

C. Allocation of Expenditures to States  
(Legal Analysis Page 3; Audit Report Page 6)

The Counsel's Office has recommended that this section of the report be rewritten since the Committee's response was not organized in the same fashion as the interim report which made it difficult to integrate the response into the interim audit report structure.

A number of alternatives were discussed prior to a decision being reached on the format to be used in presenting the Committee's response and audit comments contained in this report. It has been standard practice in final audit reports to reiterate the findings and recommendations as they occurred in the interim audit report along with the Committee's response and any other facts pertinent to the situation followed by the Audit staff's final recommendations. This practice serves a twofold purpose:

1. It provides a public document containing a complete picture of the chain of events which culminate in the final recommendation;

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2. It guarantees the Committee being audited that the facts and the recommendations made in the interim report and to which they have responded remain intact.

We feel that the format is even more appropriate in a situation such as this where the Committee's response was both lengthy and detailed. In addition, several of the areas addressed in the Committee's response were not contained in the interim report therefore making it difficult to integrate them into the categories noted in the interim report. Additional language has been added to this section of the report which we feel further clarifies the chain of events.

4. Per Diem and Expense Reimbursements (Legal Analysis, Page 4, Audit Report, Page 8)
5. Outstanding Debt (Legal Analysis, Page 4, Audit Report, Page 8)
6. Other Vendor Payments (Legal Analysis, Page 4, Audit Report, Page 8)

Additional language has been added to the three sections of the report noted above incorporating the Office of General Counsel's comments.

1. Overhead Allocation (Legal Analysis, Page 4, Audit Report, Page 10)

In regard to this section of the report, the Counsel's Office believes the report should state that if the documentation supporting the Committee's calculation of the percentages used to allocate overhead costs to an exempt category are supplied to the auditors and the definitions of "fundraising" and "compliance" used by the Committee comport with the Act and the Commission's definitions of these terms, that the Committee's allocations should not be challenged as unreasonable. The Counsel's Office further states that if the percentages at issue were calculated on the basis of the personal knowledge of Committee staff, that the information be accepted without requiring the Committee to further prove the staff assertions and recollections. They support this position by pointing out that it is unclear what type and quantity of evidence would satisfy the standard of proof

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in this regard and that in the case of the Carter-Mondale Committee portions of national salaries were allocated to exempt categories based on staff interviews which were accepted requiring no additional proof to substantiate the staff estimates.

The Audit staff agrees that if the Committee can provide the documentation from the accounting firm and that if the definitions of "fundraising" and "compliance" are consistent with those used in regard to other committees, that the allocations be deemed to be reasonable; however, we do not feel that we are limited only to accepting the Committee staff assertions and recollections and that we are prohibited from asking for additional information if deemed appropriate.

On Page six, paragraph two of the Analysis, Counsel states, "Assertions of other committees as to the amount of time spent by staff in various activities were accepted without requiring additional proof of those assertions." They cite as an example the Carter-Mondale audit whereby staff interviews were used to compute percentages for exempting portions of salaries.

There are a number of facts, however, which distinguish the Carter-Mondale situation from this one. In that instance the auditors had access to a report prepared by a CPA on loan to the Committee from an accounting firm which contained detailed computations and documentation to support the allocations made. The report was prepared early on in the campaign not after the activities had taken place as in the case of the Kennedy Committee. In addition, the auditors had access to payroll records which were also used in arriving at the percentages. The auditors also in some cases spoke directly with and interviewed the individuals whose time was being allocated. Based on this information adjustments were agreed upon between the Committee and the Audit staff and the allocation percentages were adjusted accordingly.

Therefore, it would appear to be consistent with past practice to request additional documentation beyond staff assertions in arriving at a decision as to the reasonableness and accuracy of the Committee's allocations.

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2. Interstate Travel and Communications (Legal Analysis, Page 7, Audit Report, Page 11)

The Office of General Counsel's comments have been incorporated into the audit report.

3. Media Expenditures (Legal Analysis, Page 7, Audit Report, Page 12)

The report has been redrafted to include the media totals based on the County Coverage reports and also notes the additional information needed from the Committee concerning certain media buys which are necessary to verify that the totals are correct.

4. National Press (Legal Analysis, Page 7, Audit Report, Page 14)

In this section of the analysis, the Counsel asks that we note in the report that we agree with the theory that reimbursed national press expenditures may be excluded from the overall and state spending limits. Language to that effect is now contained in the Audit Report. However, Counsel further states that they do not believe that "any additional information - - such as proof that an expenditure designated by the Committee as one for press was in fact so used - - should be required."

Here again as we stated in our comments on Overhead Allocations, we do not believe that we are precluded from requesting additional information from the Committee to support allocations made by the Committee. With regard to any expenditures subject to the limit which were subsequently reimbursed, the Audit staff has always requested and reviewed documentation which supports and verifies the transactions.

The Counsel further states that they agree with the Committee that "an employee's salary need not be allocated to a particular state to the extent that the staff member's time was spent on national press activities." The analysis cites the letter mailed to the Committee stating that "salaries of national campaign staff members who travel to a particular state for a limited purpose not constituting advance or field work ... need not be allocated to that state." Counsel feels that ministering to the national press falls within this category in that it is not advance or field work.

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The Audit staff disagrees with Counsel's Office in this regard. We find no justification in the statute or regulations which exempts an individual's salary from any limitations based on the relationship of their work with the national press. The letter mailed to the Committee states "Expenditures for advance staff salaries should be attributed to each state in proportion to the time that the advance person spends working, either out of national headquarters or in the field, in connection with the campaign in such state (see AO 1979-73). Therefore, the salaries and related expenses of both advance personnel, and field staff (e.g., coordinators working in the state) must be allocated, even though the individuals involved may be assigned to the national headquarters for payroll purposes. In addition, any expenses incurred by the Candidate or by a spokesperson for the Candidate who is not on the national campaign staff (e.g., the Candidate's family) while in a particular state are allocable to the respective state. The Commission has, however, recently determined that the salaries and related expenses of national campaign staff members who travel to a particular state for a limited purpose not constituting advance or field work, but rather associated with the national campaign effort, need not be allocated to that state." Based on these statements, the test as to whether the expenditure is allocable or not is whether the expenditure was for services directed toward the national campaign rather than to the campaign in that particular state. The exemption allowed in the letter was clearly directed toward those individuals who are part of the campaign's national staff who traveled with the candidate, or to a state on national campaign business, and not as in this instance advance staff whose main purpose was to arrange candidate appearances and associated press coverage in a particular state.

5. Compliance and Fundraising (Legal Analysis, Page 9,  
Audit Report, Page 15)

In this section of the legal analysis, the Counsel's Office states that it has difficulty rejecting the Committee's allocation of various percentages of staff salary to the exempt categories of compliance and fundraising in view of the basis provided in the audit report. They further state that "the Committee is in the best position to determine how and to what extent staff time was spent on certain activities, and absent some indication that the Committee's assertions in this regard are not accurate representations of what actually occurred, we find no reason for not accepting what has been presented by Kennedy for President.



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The Audit staff must again disagree with the Counsel's reasoning as it relates to this matter. Although the first step in determining the accuracy and reasonableness of any allocation is to review the Committee's workpapers, we feel requesting further proof beyond just the assertion of Committee personnel is both necessary and justified.

The audit report has been revised to include a statement further explaining our reasons for not accepting the calculations and what additional information must be provided before we will adjust our original totals.

6. Advance Staff Personnel (Legal Analysis, Page 10,  
Audit Report, Page 16)

Counsel states that its comments contained in the analysis of the Compliance and Fundraising section immediately proceeding this section are equally applicable here.

Consistent with its prior comments concerning those allocations for which the Committee has not provided sufficient documentation, the audit report notes that no adjustment will be made to the Committee's allocable totals absent the presentation of adequate documentation supporting the allocations.

Timely Processing of Questionable Contributions  
(Legal Analysis, Page 10, Audit Report, Exhibit 3)

The Counsel's Office suggests that rather than referring this matter for compliance action that we recommend that the amount of funds that can not be verified by the Committee as coming from permissible sources be disposed of in any lawful manner by the Committee within the ninety day repayment period.

The audit report recommendation for referral of this matter to the Counsel's Office was not solely based on the fact that the Committee failed to maintain a written record noting the basis of illegality with respect to the contributions received as stated in the legal analysis. The Audit staff and the Committee still do not agree on the total dollar amount of

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undocumented contributions remaining in the escrow account (see the Attachment to Exhibit 3). Since this is the final audit report we do not feel it appropriate nor consistent with past Commission actions in similar matters to issue a final audit report noting a Committee's non-compliance with a recommendation.

III.A. Determination of Net Outstanding Campaign Obligations  
(Legal Analysis, Page 11, Audit Report, Page 20)

The changes recommended by the Counsel's Office have been incorporated into the audit report.

III.B.2. Payment of Parking Violations (Legal Analysis, Page 11, Audit Report, Page 23)

The noted paragraph has been deleted from the audit report and the appropriate regulation cite added.

**SENSITIVE**

FEDERAL ELECTION COMMISSION  
 WASHINGTON, D C 20463

8: AUG 18 P 3: 12

August 18, 1981

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: B. ALLEN CLUTTER *PAAC*  
 STAFF DIRECTOR

FROM: BOB COSTA *RC*

SUBJECT: FINAL AUDIT REPORT -  
 THE KENNEDY FOR PRESIDENT COMMITTEE

**EXECUTIVE SESSION**

AUG 25 1981

Attached is the final audit report on the Kennedy for President Committee along with the legal analysis provided by the Office of General Counsel. Any findings referred to the Office of General Counsel are attached as exhibits 1-3. To facilitate discussion, the Committee's response to the interim audit report is attached as exhibit 4 and all changes and/or additions to the report based on the Committee's response or General Counsel's recommendations have been underlined. We recommend that this report be placed on the agenda for the scheduled Executive Session on August 25, 1981.

Since the Audit Division is not in agreement with the Counsel's Office concerning a number of matters discussed in the legal analysis each of these matters will be addressed individually below. If you have any questions concerning any of the matters discussed below, please contact Ray Lisi or Joe Stoltz at extension 3-4155.

Attachments as stated



## FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20463

### REPORT OF THE AUDIT DIVISION ON THE KENNEDY FOR PRESIDENT COMMITTEE

#### I. Background

##### A. Overview

This report is based on an audit of the Kennedy for President Committee ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038(a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037".

In addition, Section 9039(b) of Title 26 of the United States Code, and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The Committee registered with the Federal Election Commission on October 29, 1979 as the principal campaign committee of the Honorable Edward M. Kennedy, a Democratic candidate for the nomination to the office of the President of the United States. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from January 1, 1980 through August 31, 1980, the final coverage date of the last report filed at the time of the audit. <sup>1/</sup> The Committee reported a beginning cash balance of \$409,168.91, total receipts of \$11,804,166.54, total expenditures of \$11,953,427.73, and a closing cash balance on August 31, 1980 of \$259,907.72. As of August 31, 1980, the Committee reported expenditures of \$9,782,864.70 subject to the overall expenditure limitation.

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<sup>1/</sup> In accordance with standard Audit Division practice, a review was made of the Committee's expenditures through December 31, 1980, to verify that each was a qualified campaign expense and to determine the accuracy of the Statement of Net Outstanding Campaign Obligations as of November 28, 1980. Although the Threshold Audit Report covered the period October 29, 1979 through December 31, 1979, the unavailability of records at that time necessitated that the majority of the tests conducted in this audit cover the period October 29, 1979, through August 31, 1980.

B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Stephen E. Smith, Chairman, Ms. Carolyn A. Reed, Treasurer from inception to June 13, 1980, and Mr. William C. Oldaker, Treasurer from June 13, 1980 to the present.

C. Scope

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

II. Audit Findings and Recommendations  
Relating to Title 2 of the United States Code

A. Reporting Errors and Omissions

Section 434(b)(1)(2) and (4) of Title 2 of the United States Code states that each report shall disclose the amount of cash on hand at the beginning of the reporting period; and for the reporting period and the calendar year, the total amount of all receipts and disbursements.

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person who makes a contribution(s) to the committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 432(c)(1)(2) and (3) of Title 2 of the United States Code states, in part, that the treasurer of a committee shall keep an account of all contributions received, the name and address of any person who makes any contribution in excess of \$50, together with the date and amount, and the identification of any person making a contribution(s) aggregating more than \$200 during a calendar year, together with the date and amount.

1. Background

During the period audited, the Committee opened 200 bank accounts. Seven (7) of these accounts were maintained at the national campaign offices. The remaining 193 accounts included 63 accounts maintained at the state level, and 130 scheduling accounts. Scheduling accounts were used to fund specific events, and were separate from the funding of state offices.

The Committee's procedures provided for funding the state and scheduling accounts with transfers solely from the national accounts. All contributions received at the state and scheduling level were to be forwarded directly to the national office for deposit into a national account. Expenditure information for the state and scheduling accounts was forwarded to the national office for inclusion in the monthly reports. All expenditures from all accounts were to be itemized on Schedules B-P regardless of amount. Due to the fact that only \$3,103.52 in unitemized expenditures were reported during the period October 29, 1979 through August 31, 1980, and that our tests identified expenditures not itemized that were in an amount in excess of \$3,103.52, any disbursement not found itemized was considered an unreported disbursement.

## 2. Unreported Expenditures

### a. National Accounts

Our review of the Committee's expenditure records for the period October 29, 1979 through August 31, 1980 revealed that 34 expenditures totaling \$73,916.15 were not reported. The expenditures appeared to be for normal Committee operating expenses and the Audit staff found no apparent reason for this failure to report. Further, Committee officials were unable to determine the cause of this problem.

The interim audit report contained a recommendation that the Committee amend its reports to include the 34 expenditures noted above. On May 19, 1981, the Committee submitted an amended report covering calendar year 1980, itemizing 20 of the 34 expenditures, totaling \$71,591.63. A Committee official stated that the remaining five (5) expenditures comprised the unitemized operating expenditure figure contained in the 1979 year end report. Based on the dollar amount, it is possible that four (4) of these expenditures comprised the unitemized operating expenditure figure on the 1979 year end report.

### Recommendation

Since the Committee has materially complied with the recommendation, the Audit staff recommends that no further action be taken on this matter.

b. State and Scheduling Accounts

A review was made of the 193 state and scheduling accounts maintained by the Committee. The results of our tests disclosed a material error rate in the Committee's reporting of expenditures from these accounts.

During the audit fieldwork the Committee was in the process of reviewing their files and preparing amended expenditure schedules to include previously unreported state and scheduling expenditures. A comparison of our test results to the amended schedules indicated that the filing of the amended schedules would materially correct the Committee's reports. The amended schedules contained \$220,526.54 in previously unreported activity.

The interim audit report contained a recommendation that the Committee file the amendment mentioned above. The Committee stated in its written response to the audit report that they had included in the 1980 amendment, filed on May 19, 1981, state and scheduling account expenditures totaling \$207,409.04, which were previously unreported. Our review of the amendment disclosed that it actually included \$210,153.89 in expenditures. The Committee explained that the discrepancy between the dollar amount of the state and scheduling account expenditures included in the comprehensive amendment filed and the proposed amendment originally reviewed by the Audit staff, was a result of the proposed amendment not reflecting all expenditure amount corrections. Upon receipt of the amendment, the test results were again compared and it was determined that the amendment as filed materially complies with the recommendation.

Recommendation

The Audit staff recommends no further action on this matter.

3. Miscellaneous Adjustments

In addition to the matters noted above, our review of the Committee's available bank records and tests of the receipt and expenditure records revealed that the Committee's reported activity was misstated due to the following:

a. \$9,000.00 of reported contributions which were returned by the bank due to insufficient funds improperly adjusted on Committee reports; and

b. a \$9,181.66 overstatement of expenditures due to mathematical errors.

The interim audit report contained a recommendation that the Committee amend its reports to adjust for the reporting errors noted above. The amended reports filed by the Committee on May 19, 1981, included these adjustments.

Recommendation

The Audit staff recommends no further action in this matter.

B. Missing Records

Section 432(c) and (d) of Title 2 of the United States Code states, in part, that a treasurer of a political committee shall keep an account of all contributions received on behalf of such political committee, and any disbursements made, including a receipt, invoice, or cancelled check for each disbursement in excess of \$200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that each person required to file any report or statement under this subchapter shall maintain records, including bank records, with respect to the matters required to be reported from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

In addition, Section 9033.1(a)(3) of Title 11 of the Code of Federal Regulations requires a candidate receiving matching funds to keep and furnish to the Commission any records, including bank records for all accounts.

In addition to numerous verbal requests, the Audit staff made eight (8) written requests, beginning on October 23, 1980, for the production of various missing bank records. These requests were presented to the Committee's staff who were available to the Auditors on a daily basis and were working with the records being requested. Due to the substantial delays the Auditors encountered in the receipt of many requested documents and records, particularly bank records, the Commission sent a letter to the candidate, on December 3, 1980, which requested cooperation from the candidate and Committee personnel concerning the production of these records. At the conclusion of the audit fieldwork, the Committee had still not obtained and provided all requested records pertaining to the bank accounts.

The final list of missing bank account records was given to the Committee and discussed with them on January 9, 1981. The list included twenty one bank accounts which were missing statements, cancelled checks, and/or deposit slips. These missing bank records were needed in order to verify reported figures and could have resulted in additional corrections to the Committee's reports. Committee officials stated that they would attempt to obtain the missing records and provide them for our review.



The interim audit report contained a recommendation that the Committee provide the bank records for our review. Subsequent to the audit fieldwork the Committee provided records for 18 of the 21 bank accounts. For two (2) of the bank accounts the records which were not provided consisted of cancelled checks associated with three (3) bank statements. The remaining one (1) account was lacking one (1) bank statement. It should be noted, however, that the Audit staff was able to include the expenditures connected with these accounts in the overall expenditure review of the state and scheduling accounts. For two (2) of these accounts, the Committee provided letters sent to the banks requesting these records.

#### Recommendation

Since the Committee has provided the majority of the records requested, the Audit staff recommends that no further action be taken on this matter.

#### C. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provides, in part, that no candidate for the office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or \$200,000.00, adjusted by the Consumer Price Index.

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the office of President of the United States with respect to a particular State shall be allocated to that State.

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific State shall be attributed to that State, and that expenditures by a Presidential Candidate for use in two (2) or more States, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures.

A review of the Committee's system for allocating expenditures to states revealed a number of areas where allocations were not performed. An extensive review was made of all expenditures relating to the states of New Hampshire and Iowa since these were the only states where the limitations were approached.

The Committee maintained monthly state allocation reports which contained a listing by state of all expenditures allocated to the states from the national operating accounts and state and scheduling accounts. A comparison of the allocation reports to the FEC Forms 3Pc, "Allocation of Primary Expenditures by State for a Presidential Candidate", filed by the Committee from inception through August 31, 1980 revealed more expenditures reported on the Forms 3Pc than contained on the allocation reports. Committee personnel were unable to provide the Audit staff with workpapers to support the reported 3Pc totals nor could they provide an explanation for the differences. Various expenditure testing performed on the allocation reports verified that, with the exception of specific categories of expenditures noted below, the allocation of expenditures contained on the allocation reports were substantially correct. Therefore, the allocation report totals were used as a base to which additions and/or adjustments to the expenditure totals for New Hampshire and Iowa were made.

In addition to the national accounts, the Committee maintained 14 New Hampshire accounts (all in New Hampshire) and 23 Iowa accounts (22 in Iowa and one (1) in Nebraska) from which expenditures were made but were not allocated. Reconciled totals from these accounts were added to the state allocation report totals to yield a grand total of \$227,736.65 allocable to New Hampshire and \$421,376.94 allocable to Iowa.

The interim audit report also identified the following categories of expenditures as containing errors or omissions requiring adjustments to the above totals for New Hampshire and Iowa.

1. March and April, 1980, Expenditures

A review of the state allocation reports revealed that the Committee did not allocate any expenditures made from the national operating accounts during the months of March and April, 1980. A review of the check copies which contained the Committee's state allocation codes for that time period was performed to identify expenditures relating to the New Hampshire and Iowa campaigns. The results of that review required additional allocations of \$34,786.01 to New Hampshire and \$8,917.22 to Iowa.

2. Media

The Committee did not allocate any expenditures from its national operating accounts to its media firm for the purchase of radio, television, or newspaper advertising even though the media firm had supplied the Committee with detailed information with which to do so. The documentation supporting the allocations maintained by the media firm was reviewed by the Audit staff. The review disclosed allocations of \$48,347.81 to New Hampshire and \$85,668.82 to Iowa.

3. Payroll

The Committee did not allocate to the respective states either the salaries of individuals who, according to payroll registers, were assigned to state offices (field personnel) or individuals who were assigned to specific events in one (1) or more states (advance personnel). In addition, neither unemployment taxes nor the employer's portion of FICA taxes were allocated. The Audit staff identified total payroll related expenses (gross payroll, unemployment taxes, and employer's FICA) of \$83,506.34 allocable to New Hampshire and \$127,327.08 to Iowa.

4. Per Diem and Expense Reimbursements

A review of per diem and expense reimbursement payments and the documentation maintained by the Committee (i.e., reimbursement request forms with attached invoices and receipts, indicating a destination) supporting these expenditures identified an additional \$2,432.38 allocable to New Hampshire and \$2,852.09 to Iowa.

In addition to the above, the Audit staff identified \$20,084.24 in expenditures which were not adequately documented to allow an allocation determination. These expenditures were supported solely by a cancelled check which did not identify the state(s), if any, to which the expenditures were allocable nor were these expenditures allocated to any state by the Committee. Per diem payments accounted for \$18,840.00 and expense reimbursements for the remaining \$1,244.24.

5. Outstanding Debt

A review of the Committee's Statement of Net Outstanding Campaign Obligations as of November 28, 1980, and the Committee's list of accounts payable and billings and invoices supporting these payables, identified outstanding debts totaling \$3,242.18 which were related to the Committee's New Hampshire campaign and \$10,970.84 to Iowa.

6. Other Vendor Payments

An analysis of other vendor payments and the documentation maintained supporting these payments (i.e., including bills, invoices, and check stubs containing the Committee's allocation codes) from the operating accounts and a review of expenditures from September 1, 1980 through November 30, 1980, identified additional amounts of \$28,171.79 allocable to New Hampshire and \$47,287.44 allocable to Iowa.

The interim audit report included a final summary of Committee expenditures allocable to New Hampshire totaling \$428,223.16 and Iowa totaling \$704,400.43.

The Audit staff recommended in the interim audit report, that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect these adjustments within 30 days of receipt of the report. In addition, a recommendation was made that the Committee provide the Audit staff with sufficient documentation to allow an allocation determination for those expenditures noted as not adequately documented in II.C.4. above. With respect to other state allocation errors, a recommendation was made that no action be taken since it would have no effect on the Committee's compliance with those state limitations.

In its response to the interim audit report received on May 19, 1981, the Committee provided documentation verifying that the expenditures noted in II.C.4. were not allocable to either New Hampshire or Iowa. The Committee also stated that its method of analyzing state by state expenditures was to review, with the assistance of two (2) accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purpose of influencing the nomination in that particular state and then if all or any of the expenditure could be allocated to an exempt expenditure category.

The Committee provided the Audit staff with a computer printout which included all expenditures which were noted in the interim audit report as being allocable to New Hampshire and Iowa. Each expenditure on the printout was allocated into one (1) or more exempt (not subject to the expenditure limit) or non-exempt (subject to the expenditure limit) categories as follows:

Non-Exempt Category

1. Primary

Exempt Category

1. Compliance
2. Fundraising
3. Phone/Travel-Interstate
4. National Press
5. Other

new wrong

Due to the methodology employed by the Committee in preparing its response, the expenditure categories presented by the Committee do not correspond to those contained in the interim audit report. Therefore, the remainder of the staff's analysis addresses the categories presented by the Committee.

1. Overhead Allocation

In its response the Committee stated: "During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditures in a manner consistent with salary allocation."

The Committee asked a public accounting firm to develop the methodology and establish the percentage to be used in allocating costs to exempt functions. The firm used a sample of four (4) states <sup>2/</sup> from which it computed a weighted average percentage of fundraising and compliance time. The Committee stated that the selection of the states was on a judgemental basis and the information pertaining to each employee was based on interviews with the official who directed the campaign activity in that state. Using this procedure the firm determined that 17% of payroll costs relates to fundraising and 22% relates to compliance.

Although it appears justifiable that a portion of overhead and payroll related costs can be charged to exempt categories, we have difficulty accepting the reasonableness of the calculation based on the limited information which has been provided concerning the procedures used.

All that has been provided by the Committee is a letter from the accounting firm explaining in general terms the procedure it followed to arrive at the percentages. The letter states that the amount of compliance and fundraising time spent by individuals in the four states was determined through discussions with the state desk people directing the campaign activity in that state. Workpapers prepared by the accounting firm supporting the discussions and calculations noted in the letter were not available for the Audit staff's review at the time the Committee's response was received. In the absence of these workpapers the Audit staff has no information concerning the questions asked of the campaign officials interviewed, how the interviewers defined "compliance" and "fundraising", on what basis the persons interviewed assigned percentages to each staff members' activities, or any other records

*new wording*

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<sup>2/</sup> The four (4) states were New Hampshire, Iowa, New York, and Ohio.

(i.e. time sheets, job descriptions, etc.) which were used as a basis for determining the percentages. In addition, the Committee has not provided the definition of the type of expenditures to which the overhead percentages would be applied. Further, the Committee stated in its response that they recognized the need for establishing these percentages during the campaign; however, the Audit staff was provided no evidence or information to indicate that the information used by the accounting firm was obtained during the campaign. The timing of the interviews is an important factor to take into consideration when determining the reasonableness of the resulting percentages, because the calculations were based on a single individual's recollection of activities.

It should also be noted that although the letter states that the method used by the accounting firm was systematic, rational, easy to compute, and less costly than other slightly more accurate methods, the letter does not address the regulatory test of reasonableness. Therefore, absent the submission of documentation demonstrating the reasonableness and accuracy of the allocations, the Audit staff has made no adjustments to the amounts allocable to New Hampshire or Iowa on the basis of the Committee's response in this area.

## 2. Interstate Travel and Communications

In its response the Committee stated "The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2(c)(2) to the national expenditure limitations."

The Committee provided the Audit staff with workpapers which they stated would support the Committee's allocation of long distance telephone charges to an exempt category. The workpapers indicate that all calculations for determining the amount of long distance telephone charges allocated to an exempt category for New Hampshire <sup>3/</sup> were based on reviewing two (2) telephone bills. The workpapers state that 62% of the total amount of all telephone bills were long distance and that 27% of the long distance calls were out of state. The 27% was then applied to all phone charges for New Hampshire, both those made at campaign headquarters and those contained on hotel bills and expense reimbursement forms, and the resulting amount allocated to an exempt expenditure category. The Audit staff is unable to verify the accuracy of these percentages since the Committee provided only the summary pages for the telephone bills which did not include the itemized listing of phone calls. Further, it would appear that if the percentage calculations are correct, a sample consisting of two (2) selected telephone bills is not statistically valid.

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<sup>3/</sup> No records were provided for the Iowa computations.

The Commission, in a meeting on June 9, 1981, determined that only long distance telephone charges originating in a particular state made within that state or to another state, other than national headquarters, were required to be allocated. Letters were mailed to the affected presidential candidate committees on July 2, 1981, notifying the committees of the new determinations concerning the allocation of the telephone charges. The letter also stated that the committees had 30 days from receipt of the letter, to submit to the Audit Division an amended state allocation schedule, thereby reducing the amount previously allocated for such expenditures. The committees were also instructed to provide computational schedules including copies of bills, expense vouchers, or any other documentation supporting such an amendment. The Committee received the letter by certified mail on July 7, 1981. Since the Committee has not provided the Audit staff the documentation requested in the letter, no change to the total amount allocated in the interim report has been made.

The Audit staff has adjusted the totals allocable to New Hampshire and Iowa for other interstate charges (interstate travel and delivery services) for which adequate documentation was provided.

### 3. Media Expenditures

In its response the Committee stated that it had reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by the vendor (which was found to be acceptable by the Audit staff during the fieldwork) was incorrect. 4/ They further stated: "The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV station to allocate the cost of a broadcast." However, other than a letter from their media firm explaining that they had recalculated the media costs based on "County Coverage Reports (CCR)" rather than on the basis of "Area of Dominant Influence (ADI)" 5/ no other workpaper supporting the reallocation of media expenditures was supplied to

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4/ As noted earlier in this report, although provided with the media allocation totals by their media firm the Committee had not allocated any media costs.

5/ The Area of Dominant Influence (ADI) is a geographic design which defines each television market, exclusive of another, based on measurable viewing patterns. County Coverage Reports detail for every county, net weekly circulation (number of different households viewing the station in a week), for every station, whether the county is within or outside the station's ADI.

*new wording*

the Audit staff with the response. The letter from the media firm does not provide an explanation of the method used for determining the number of eligible voters in the County Coverage Reports.

At the time the Committee's response was received they indicated that the reduction of total media expenditures allocable to New Hampshire and Iowa contained on the computer printout was an estimate and that the media firm had not completed their calculations.

On June 11, 1981, the Committee provided the final figures for the media allocations. The Audit staff does not object to the use of the CCRs for the allocation of media expenditures; however, based on the review of these allocations and the supporting documentation, the Audit staff noted the following:

1. It appeared that the Committee's media vendor simply applied New Hampshire and Iowa CCR percentages to those media buys previously allocated to these states under ADI but did not (re)allocate to these states any buys previously not allocated under ADI which would be required under CCR. There are 10 out-of-state stations which overlap New Hampshire according to CCR data. The Committee made media buys at five (5) of these stations for which no (re)allocations have been made. <sup>6/</sup> The dates of these buys are not known to the Audit staff at this time to verify that the buys were all subsequent to the New Hampshire primary and would, in fact, not require such an allocation.

2. \$1,450 in media buys at one (1) of the Burlington, Vermont TV stations referred to above were reviewed during the audit fieldwork that were denoted "N.H. primary". These expenditures did not require an allocation to New Hampshire under the ADI method but most likely would on the basis of CCR. The Committee's revised figures did not include any allocation to New Hampshire for these purchases.

3. On July 8, 1981, the Committee provided the Audit staff with schedules indicating that refunds from various New Hampshire and Iowa stations had been received and that \$5,327.86 and \$3,502 should be deducted from the New Hampshire and Iowa allocations, respectively. These schedules were dated November 18, 1980 while the media firm's CCR reallocations were dated May 18 and 21, 1981. Therefore, it appears that the refunds are calculated under ADI percentages while the time buys are now (re)allocated under CCR percentages.

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<sup>6/</sup> Two (2) of these were Springfield, Massachusetts stations, two (2) were Burlington, Vermont, and one (1) was New Bedford, Massachusetts.

*new wording*



The above matters have been discussed with the Committee's controller who requested clarification and/or additional information from their media firm representative. With respect to item number 1, he (the media firm representative) stated that the reallocation was done "from scratch" and that all buys at the five (5) stations with a New Hampshire overlap were subsequent to the New Hampshire primary.

With respect to item number 2, he advised that his assistant may have missed the Burlington, Vermont buys. A copy of the invoice in question was provided to the Committee's controller who was to forward it to the media representative. The Committee's controller stated that any necessary corrections would be provided to the Audit staff.

With respect to item number 3, he agreed that the refunds would require an allocation adjustment calculated on the basis of CCR percentages.

Due to (1) the possible omission of the Burlington, Vermont media buys from the Committee's reallocations, (2) the timing of the Massachusetts and Vermont primaries (March 4) in relation to the New Hampshire primary (February 26) and that the media firm asserts that no Massachusetts or Vermont buys were prior to February 26, and (3) the fact that the Committee's revised media allocations are again subject to change (on the basis of eligible Democratic votership), no changes have been made to the Audit staff's original media allocations, except for minor revisions resulting from other updated information.

4. National Press

The Committee stated in its response that each expenditure preliminarily allocated to New Hampshire or Iowa was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. They further stated that the Committee's method of billing the press (225% of first class air fare) was reviewed and approved by the Commission during an enforcement proceeding. The Committee believes that many of the expenditures allocated to New Hampshire and Iowa were for services provided to the national press. Since the costs of these services were included in the basis for the 225% charge and subsequently reimbursed to the Committee, they therefore should not be allocated to the states' limits.

*Reimbursement*

Although the Audit staff does not disagree with the concept that expenditures for services provided to members of the press which are subsequently reimbursed by the press need not be charged to any limitation, the Committee has not provided any information to show a relationship between any particular expenditure or group of expenditures which they have charged to exempt National Press and the activities of the national press. Additionally, the Committee has not produced evidence that any particular expenditures or group of expenditures have been reimbursed through charges to national press. Furthermore, in its response to the Commission's inquiries during the enforcement proceeding, Committee officials indicated that the charge to the press for traveling with the candidate was always initially based on 225% of first class airfare but was often adjusted downward once the total cost of the trip was determined. Of the four (4) examples of campaign flights provided to the Commission by the Committee during the proceeding the highest billing rate reported by the Committee was approximately 150% of the first class airfare.

The Committee has also stated that the salaries of various staff persons who devoted all or a part of their time to the national press likewise should not be allocated to an individual state but should be treated as a national non-allocable expenditure.

The Audit staff finds no statutory or regulatory basis for exempting these expenditures. Further, no definition of these activities has been offered by the Committee nor have any worksheets or other documents supporting this allocation been presented to the Audit staff.

The Audit staff has not adjusted any of the amounts allocable to New Hampshire and Iowa in the area of national press based on the Committee's response.

5. Compliance and Fundraising 7/

The Committee stated in its response that it had identified each individual's time, or a percentage of an individual's time, that was spent on recordkeeping or compliance activity and charged that portion of the person's payroll to an exempt category. In addition, for each person who was identified as working on a particular fundraising event the portion of their time spent on that event was charged to an exempt category. They further stated that overhead expenses were isolated and a percentage formula was applied to all overhead expenses allocating a reasonable amount to legal, accounting and fundraising. A review of the computer printout

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7/ Section 1 of the Committee's response contains an explanation of the derivation of the percentages used in the Committee's calculation of the allocable totals in Subsection 5 Compliance and Fundraising and a portion of Subsection 6 Advance Staff Personnel.

*Erin W. W. W.*

supplied with the Committee's response indicates that a portion of each field staff person's salary was allocated to exempt compliance and fundraising based on the percentage determined by the method discussed in Section 1. above (Overhead Allocations).

Other than the overhead expenditures which could be clearly identified by reviewing the documentation supporting them, the Committee did not provide any documentation supporting their calculations for allocating expenditures to exempt categories based on time spent on recordkeeping, compliance, or fundraising activities. Absent documentation supporting the Committee's derivation of percentages applied to allocations in these areas, no adjustments have been made to the allocable totals.

6. Advance Staff Personnel

The Audit staff included in the interim audit report an allocation for a portion of the payroll of advance staff personnel based on the number of days the individual had spent in New Hampshire or Iowa which was determined from a review of per diem and expense reimbursements. The Committee stated in its response that it had recomputed this amount using a seven day work week as opposed to the five day work week used by the Audit staff in its calculation. Since it does appear reasonable that advance staff would be required in many cases to work a seven day week the Audit staff has reviewed and accepted the Committee's adjustment and adjusted the allocation total accordingly.

The Committee further stated that since the nature of advance work involved a significant expenditure of time on compliance and fundraising activities and supporting the national press corps the maximum amount computed for each advance person was allocated to the various categories based upon the percentage of time spent on exempt activities by each advance person.

A review of the computer printout supplied by the Committee reveals that the Committee has allocated a portion of each advance person's salary to an exempt category based on what appears to be the following percentages:

National Press	33%
Compliance	10-20%
Fundraising	10-17%

The Committee has not provided any information as to how these percentages were derived, in general or for any one (1) individual, nor have they been able to provide any justification for these percentages.

Other than the adjustment allowing for a seven day work week, no change has been made to the amounts originally allocated for advance staff personnel.

*new wording*

The Audit staff's review of the Committee's response and accompanying documentation described above resulted in \$385,851.07 in expenditures allocable to New Hampshire and \$636,456.32 to Iowa.

Recommendation

Since the Audit staff's allocation totals result in a matching fund repayment determination (see Section III.B.1.), pursuant to 11 C.F.R. Section 9038.2(b) the candidate may submit additional legal or factual materials to demonstrate that the allocations are not required within 30 days of receipt of this report. For a comparison of the Committee and Audit staff allocation totals see Attachment 1.

D. Contributions From Other Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code requires a committee to disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 432(c)(4) of Title 2 of the United States Code states, in part, that the treasurer of a political committee shall keep an account of the identification of any political committee which makes a contribution, together with the date and amount of any such contribution.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. In addition, Section 431(11) defines, in part, the term "person" to include a partnership, committee, association, corporation, or any other organization or group of persons.

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

1. Itemization of Contributions from Political Committees

A review of reports on file at the Commission revealed that 28 political committees reported making 31 contributions to the Committee totaling \$30,322.00 which were not itemized on the Committee's disclosure reports. The Committee maintained copies of the transfer checks for seven (7) of these contributions.

*new wrong*

The Audit staff recommended that the Committee file amended reports itemizing these contributions. On May 19, 1981, the Committee filed comprehensive amendments itemizing these contributions

Recommendation

The Audit staff recommends no further action on this matter.

2. Excessive Contributions from Registered Committees

A review of the Committee's receipt records revealed that the Committee received contributions from one multicandidate committee which exceeded the limitation by \$4,875.00. In addition, the Audit staff identified contributions in excess of \$1,000 from two (2) political committees that apparently were not qualified as multicandidate committees as defined by Section 441a(a)(4). The excessive portion of the contributions from the two (2) non-qualified committees totaled \$3,702.60.

The Audit staff recommended that the Committee refund the excessive portions of these contributions. On June 15, 1981, the Committee provided a copy of the check used to refund the \$4,875 to the multicandidate committee. For the excessive contribution from one (1) of the apparent non-qualified committees, the Committee provided a copy of the check to document that the excessive portion was contributed to a charitable organization since the committee is no longer in existence. For both refunds, a Committee official agreed to provide copies of the cancelled checks upon receipt from the bank.

For the remaining apparent non-qualified committee, the Committee treasurer stated that the contributing committee had informed him that they had achieved multicandidate status prior to making the contribution. A review of records on file at the Commission indicates that the committee met the requirements for obtaining multicandidate status on April 8, 1980 which was four (4) days after the contribution was made.

Recommendation

Since the excessive contributions received from two (2) of the committees have been disposed of properly, the Audit staff recommends that no further action be taken.

Further, the Audit staff is of the opinion that the multicandidate committee's qualifying four (4) days after contributions exceeding \$1,000 were made is immaterial and recommends that no further action be taken on this matter.

*new wording*

E. Undisclosed Debt

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

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts at November 30, 1980, the Audit staff identified a total of \$177,149.32 in debts which were not disclosed by the Committee. In addition, it was determined that the Committee's disclosed debts at November 30, 1980 were overstated by \$34,749.27.

Of the \$177,149.32 in undisclosed debts, \$136,592.65 were supported by unpaid bills, invoices, etc.

In the interim audit report the Audit staff recommended that the Committee amend their December Monthly report and subsequent reports to the extent affected, to accurately reflect the outstanding debts as of November 30, 1980. On May 19, 1980, amended reports were filed substantially correcting the under-statement.

Recommendation

The Audit staff recommends that no further action be taken on this matter.

F. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel on February 9, 1981 and June 25, 1981.

III. Findings Related to Title 26 of the United States Code  
Determination of Net Outstanding Campaign Obligations  
and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) and (b) of Title 11, Code of Federal Regulations, requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, an estimate of necessary winding down costs, and the total of the fair market value of capital assets on hand, within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

On August 13, 1980, Senator Edward M. Kennedy's candidacy terminated for the purpose of incurring qualified campaign expenses. 8/

At the conclusion of the audit fieldwork, the Committee had filed NOCO statements covering the period from August 13, 1980 through December 26, 1980. To facilitate the verification of the Committee's net outstanding campaign obligations, the NOCO statement as of November 28, 1980 was audited. The Audit staff made necessary adjustments to this statement to properly reflect the candidate's cash position as of November 28, 1980, and to correct misstatements of accounts payable and the Committee's estimate of winding down costs (see Attachment 2).

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8/ Commission regulations at 11 C.F.R. Section 9032.6 provide that the date on which a party nominates its candidate for President is the end of the matching payment period for a candidate seeking the Presidential nomination of that party. 11 C.F.R. Section 9033.5(c) provides that the last day of the matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. Section 9033.5(a) or (b). Since the Democratic Party nominated its Candidate for President on August 13, 1980, that date is the date of Senator Kennedy's ineligibility.

Various artists produced original works of art which could be reproduced and used by the Committee as inducements in the solicitation of contributions. It was further determined that the Committee had negotiated bank loans secured by a number of these prints. The Committee has not recognized art prints as a capital asset(s) in any NOCO statement filed to date. Due to the effect on matching fund entitlement that the consideration of art prints as a capital asset(s) could have, the Audit staff requested that the Committee furnish an inventory of art prints on hand at November 28, 1980, as well as an accounting of all prints disposed of between the ineligibility date and November 28, 1980. This information was to be used to determine the inventory on hand at the candidate's date of ineligibility. On January 28, 1981, the Committee presented a memorandum to the Audit staff which stated that, as of November 28, 1980, there were 6,525 art prints on hand. However, the information contained in this memorandum was not sufficient to calculate the inventory at the candidate's ineligibility date.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit a written independent appraisal of the fair market value of the art prints and provide an inventory of prints on hand at August 13, 1980. In the Committee's response to the interim audit report, received on May 19, 1981, the Committee treasurer stated that there were 6,904 prints on hand at August 15, 1980. The Committee, however, did not provide the fair market value appraisal of the artworks because (the Committee) "believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least \$10,000." Further the response states: "The request is inappropriate because there is no basis on which to determine the 'fair market value' of the artwork for purposes of 11 C.F.R. Section 9034.5(c), 26 U.S.C. Section 9034."

The Committee treasurer also cited Advisory Opinion Request 1980-136 in which the Commission was unable to decide whether the Committee could lawfully use the artwork to settle debts and stated: "...without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible."

Finally, the Committee treasurer asserted that the artwork should not be treated as a "capital asset" since it cannot be readily converted to cash or used in debt settlement due to restrictions placed on its sale or disposition. He concluded that "the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair."

new wording



As of November 28, 1980, the Committee's reported net outstanding campaign obligations as adjusted totaled \$1,134,566.51. Based on that amount, the Committee received a matching fund payment of \$29,004.47. Therefore, as of that date, the candidate had received no matching fund payments in excess of his entitlement. However, this determination may be subject to change based on the effect that the inclusion of art prints as an asset may have on the Committee's financial position.

*New wording*

Recommendation

The Audit staff recommends that, until such time that the Commission approves or proposes permissible alternatives as to the disposition or liquidation of the artwork, no further action can be taken on this matter.

B. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2) of Title 26 of the United States Code provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than: to defray the qualified campaign expenses with respect to which such payment was made; or to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9032(9)(A) and (B) of Title 26 of the United States Code and Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value incurred by a candidate, or by its authorized committee, in connection with his campaign for nomination or election; and neither the incurring nor payment of which constitutes a violation of any law of the United States or the state in which the expense is incurred or paid.

1. Expenditures in Excess of State Limitations

As previously discussed in Finding II.C., the Audit staff identified expenditures in excess of the state limitations in New Hampshire and Iowa.

On April 9, 1981, the Commission approved the Audit staff's recommendation that the Committee be requested to demonstrate, within 30 days of receipt of the interim audit report, that these state expenditure limitations had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee's response to the interim audit report, and the documentation which accompanied it, and made revisions to the amounts allocable to the New Hampshire and Iowa state limits. The revised summary of Committee expenditures allocable to New Hampshire and Iowa is presented below:

	<u>New Hampshire</u>	<u>Iowa</u>
Committee Allocation Reports	\$ 210,884.64	\$ 380,792.10
March and April Expenditures	34,425.68	8,917.22
Media	52,151.20	80,390.69
Salaries	73,211.98	111,039.94
Per Diem and Expense Reimbursements	1,913.60	2,852.09
Outstanding Debts	3,242.18	10,970.84
Other Vendor Payments	<u>10,021.79</u>	<u>41,493.44</u>
Total	\$ 385,851.07	\$ 636,456.32
State Limitations	<u>(294,400.00)</u>	<u>(489,881.00)</u>
Amount in Excess of Limitation	<u>\$ 91,451.07</u>	<u>\$ 146,575.32</u>

Recommendation

The Audit staff recommends that these expenditures totaling \$238,026.39 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

2. Payment of Parking Violations

During the conduct of various audit procedures, the staff identified Committee payments totaling \$141.50 for parking tickets received during the campaign. The entire \$141.50 was expended prior to the date of ineligibility.

Recommendation

The Audit staff recommends that these expenditures totaling \$141.50 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

Repayment Summary

Finding III.B.1.	Expenditures in Excess of State Limitations	\$238,026.39
Finding III.B.2.	Payment of Parking Violations (pre-ineligi- bility)	<u>\$ 141.50</u>
Total		<u>\$238,167.89</u>

Pursuant to Section 9038.2 of the Code of Federal Regulations, the amounts noted above in the Repayment Summary, totaling \$238,167.89, are repayable to the United States Treasury within 90 days of receipt of this report. If the candidate disputes the Commission's determination that a repayment is required, he may submit in writing within 30 days of receipt of this report, legal or factual materials to demonstrate that a repayment is not required.

## Comparison of Allocation Totals

## New Hampshire

	<u>Audit Verified</u>	<u>Committee Reallocation</u>	<u>Difference</u>
Committee Allocation Reports	\$210,884.64	\$158,176.01	\$ 52,708.63
March & April Expenditures	34,425.68	19,678.47	14,747.21
Media	52,151.20	46,021.85	6,129.35
Salaries	73,211.98	46,138.74	27,073.24
Per Diem & Expense Reimbursement	1,913.60	1,086.13	827.47
Outstanding Debts	3,242.18	2,740.08	502.10
Other Vendor Payments	<u>10,021.79</u>	<u>5,670.94</u>	<u>4,350.85</u>
Total	<u>\$385,851.07</u>	<u>\$279,512.22</u>	<u>\$106,338.85</u>

## Iowa

	<u>Audit Verified</u>	<u>Committee Reallocation</u>	<u>Difference</u>
Committee Allocation Reports	\$380,792.10	\$258,320.27	\$122,471.83
March & April Expenditures	8,917.22	5,889.15	3,028.07
Media	80,390.69	85,180.86	(4,790.17)
Salaries	111,039.94	74,981.10	36,058.84
Per Diem & Expense Reimbursement	2,852.09	1,775.03	1,077.06
Outstanding Debts	10,970.84	8,942.24	2,028.60
Other Vendor Payments	<u>41,493.44</u>	<u>38,198.22</u>	<u>3,295.22</u>
Total	<u>\$636,456.32</u>	<u>\$473,286.87</u>	<u>\$163,169.45</u>

Kennedy For President Committee  
Statement of Net Outstanding Campaign Obligations

November 28, 1980

<u>Assets</u>	<u>As Stated</u>	<u>Adjusted by Audit</u>
Cash	\$ 168,566	\$ 149,781.27 1/
Accounts Receivable (net)	10,000	10,000.00
Capital Assets	-0-	4/
	<u>\$ 178,566</u>	<u>\$ 159,781.27</u>
 <u>Obligations</u>		
Accounts Payable for Qualified Campaign Expenses	\$ 664,800	\$ 646,638.78 2/
Estimated Wind Down Costs 11/28/80 to 5/15/81 (Projected Termination Date)	181,000 3/	149,700.00 3/
Bank Notes Payable	484,897	484,897.00
Accrued Interest	<u>13,112</u> \$1,343,809	<u>13,112.00</u> \$1,294,347.78
Net Outstanding Campaign Obligations - Deficit	<u>\$1,165,243</u>	<u>\$1,134,566.51</u> 4/

- 1/ Cash in bank was adjusted to accurately reflect the candidate's cash position at 11/28/80.
- 2/ The Committee's accounts payable balance was adjusted by eliminating undocumented payables totaling \$46,479.70 (11 C.F.R. Section 9033.1(a)(1)(i)), and adding documented payables not included in the Committee's balance totaling \$61,758.08. Included in the documented payables is a \$21,502 contingent liability currently in dispute with the creditor.
- 3/ The Committee inadvertently omitted an estimate of wind down costs on the original 11/28/80 NOCO statement. The Committee corrected this oversight by letter indicating that the subsequent NOCO statement of December 15, 1980 included wind down costs which totaled \$181,000.00. This amount was adjusted by disallowing a \$15,000 postage and handling estimate for mailing gifts to campaign staff and volunteers which does not meet the definition of a wind down cost (11 C.F.R. Section 9034.4(c)), and to correct a \$16,300 addition error in totaling the various components of wind down costs.
- 4/ Exclusive of a valuation of art prints as assets.

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## Review of Receipts

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

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation, to make a contribution or expenditure in connection with any election to any political office. It further states that it is unlawful for any political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or any officer of any corporation or national bank to consent to any contribution or expenditure by the corporation or the national bank.

Section 103.3(b) of Title 11 of the Code of Federal Regulations states, in part, that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. A statement noting that the legality of the contribution is in question shall be included in the report, and best efforts made to determine legality. When the legality of the contribution cannot be determined, refunds shall be made within a reasonable time and the current report shall be amended to reflect the Committee's response.

### 1. Timely Processing of Questionable Contributions

The Committee maintained a separate checking account, known as the escrow account, for depositing contributions which needed further documentation to confirm their legality. Funds in the escrow account were not expended for campaign purposes until their legality was determined, at which time they were transferred to the operating account.

During the threshold audit, it was determined that the Committee's written procedures for processing questionable contributions deposited into the escrow account were not followed by Committee personnel. The threshold report of the Audit Division included a recommendation that the Committee follow its written procedures as well as revise those procedures to include a written record noting the basis for the appearance of illegality of the contributions.

During the post primary audit, there appeared to be no change in the Committee's method of processing contributions deposited into the escrow account.

According to the Committee's bank records, the balance in the escrow account at January 1, 1980 was \$120,542.06. During the period January 1 through August 31, 1980, receipts totaling \$172,796.50 were deposited into the escrow account and \$243,960.51 was disbursed, leaving a balance at August 31, 1980 of \$49,378.05. The Audit staff was able to verify that \$236,608.65 was transferred from the escrow account to the Committee's operating account. Also, cancelled checks for contribution refunds totaling \$3,815.00 were reviewed by the Audit staff.

The "escrow check log", the Committee's record of deposits into the escrow account, showed a balance at August 31, 1980 of \$59,260.48. The records maintained by the Committee do not contain sufficient detail to explain either the discrepancy between the bank balance and escrow check log balance or the source of the contributions making up the \$49,378.05 bank balance. As best could be determined by the records provided, contributions making up this balance could have been in the account, in some cases, for as long as eight (8) months.

In its interim audit report, the Audit staff recommended that the Committee determine the source and legality of the \$49,378.05 remaining in the escrow account at August 31, 1980 and refund to the original contributors any contributions confirmed to be from impermissible sources. It further recommended that if the source of any contributions could not be identified, the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign or candidate. The Audit staff also recommended that the Committee provide copies of cancelled checks for all contribution refunds made during the period January 1, 1980 to August 31, 1980.

On May 19, 1981 and July 27, 1981, the Committee presented to the Audit staff documentation verifying transfers totaling \$20,640 in permissible contributions to the operating account. Documentation was also provided verifying that \$3,272.00 was comprised of funds from impermissible sources which the Committee intended to contribute to charity. In addition, cancelled checks for all contribution refunds (except 12 outstanding checks totaling \$1,140) were made available for review by the Audit staff. The Committee adjusted the account by \$1,348.00 for NSF check charges which were erroneously charged to the account and bank charges of \$29.57. The Committee did not provide documentation adequately identifying the source of the remaining \$25,644.48 in the escrow account. For a detailed analysis of the deficiencies in the Committee's response see Attachment to Exhibit 3.

Recommendation

It is the opinion of the Audit staff that the Committee has not materially complied with the recommendations outlined in the interim audit report. Therefore, the Audit staff recommends that this matter be referred to the Office of General Counsel.

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## ANALYSIS OF COMMITTEE RECONCILIATION OF ESCROW ACCOUNT

	<u>Committee Response</u>	<u>Audit Verified Amount</u>
Bank Balance at August 31, 1980	\$49,378.05	\$49,378.05
Undocumented expenditures during period 9/1/80 - 3/31/81 <u>1/</u>	<u>(12,090.00)</u>	(10,870.00)
Bank Balance at March 31, 1981	37,288.05	
Committee adjustments		
Redeposited check <u>2/</u>	(1,000.00)	
Outstanding checks <u>3/</u>	(1,140.00)	( 1,140.00)
NSF checks erroneously charged to escrow account <u>4/</u>	1,348.00	1,348.00
Escrow transfer <u>5/</u>	(3,000.00)	
Miscellaneous bank charges	<u>(29.57)</u>	( 29.57)
	33,466.48 <u>6/</u>	
Permissible contributions to be transferred to the operating account <u>7/</u>	(13,520.00)	(9,770.00)
Unidentified deposit donated to charity <u>8/</u>	(3,000.00)	
Amount from prohibited sources to be donated to charity <u>9/</u>	<u>(3,522.00)</u>	<u>(3,272.00)</u>
Balance (undocumented contributions remaining in the escrow account) <u>10/</u>	<u>\$13,424.48</u>	<u>\$25,644.48</u>

- 1/ The Committee submitted documentation confirming the legality of \$10,870.00 of this amount which has been transferred to the operating account.
- 2/ No documentation concerning this check has been provided.
- 3/ This amount comprises 12 checks which have been outstanding for over one year.
- 4/ These NSF checks were charged against the escrow account prior to August 31, 1980. The escrow account has been reimbursed by the operating account for these charges.
- 5/ The Committee has not identified this transfer.
- 6/ The Committee submitted a computer print-out of contributors' names and contributions totaling this amount.
- 7/ The Committee submitted documentation confirming the legality of \$9,770.00 of this amount.
- 8/ The Committee has not provided sufficient information to identify this deposit.
- 9/ Contributions comprising \$250 of this amount had already been refunded in February and April 1980.
- 10/ The Committee has not presented documentation confirming the legality of this amount.

KENNEDY FOR PRESIDENT COMMITTEE

1000 Sixteenth Street, N. W.  
Washington, D. C. 20036

May 18, 1981

Chairman John W. McGarry  
Federal Election Commission  
1325 K Street, N. W.  
Washington, D. C.

RE: Interim Report of the Audit Division  
on the Kennedy for President Committee

Dear Chairman McGarry:

This letter will address the issues raised in the Commission's Interim Audit Report on the Kennedy for President Committee following the format set out in its report.

In response to the report the Committee has taken the following actions in order to comply fully with the letter and the spirit of the Federal Election Campaign Act:

1. The Committee has prepared and filed a Comprehensive Amendment as of November 30, 1980, correcting the technical reporting errors and omissions which were cited in the Commission's report.

2. The Committee has conducted an exhaustive search of its records to determine the nature, extent and identification of all deposits which were made into state and other local accounts, and where required, the Committee has reported all such deposits in the Comprehensive Amendment.

- 3.

4. The Committee devoted substantial resources to studying expenditures in New Hampshire and Iowa which may have exceeded the limitations of 26 U.S.C. Section 9035. For the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining

what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations set forth a "reasonable basis" standard for allocations, and in particular, 11 C.F.R. Section 106.2 sets forth a regulatory scheme for the allocation of expenditures among states by candidates for presidential nomination.

The standards, although somewhat vague, were applied in 1976 without apparent difficulty. It appears, however, that the Commission has changed its position in 1980 shifting the burden to the candidate to prove that any method of allocation was reasonable in contrast to the standard used in 1976 that placed on the Commission the burden of proving that the allocation was in fact unreasonable. The Committee believes that any method of allocation between states which is reasonable should be accepted by the Commission, and if, in the future, the Commission desires to regulate this area in a more specific manner, it should do so through the regulatory framework set up under the statute not retrospectively through the audit process.

The Committee's method in analyzing its state expenditures in Iowa and New Hampshire was to examine each expenditure made on an individual basis to determine whether or not the individual expenditure should be allocated to the particular state in whole or in part. The bulk of the work in this area was performed by independent auditors working for two national accounting firms. A more specific description of the Committee's analysis of expenditures made in Iowa and New Hampshire will be set out later in this letter.

#### COMMITTEE RESPONSE

Following are the Committee's specific responses to the interim report's findings and recommendations, numbered to correspond to your report.

#### II. Audit Findings & Recommendations Relating to Title 2 of the U.S. Code FEC Auditors' Recommendations

"The Audit staff recommends that . . . the Committee:

- 1) amend their reports to include the 34 expenditures totalling \$73,916.15 made from national accounts previously unreported;
- 2) amend their reports to include the \$220,526.54 in expenditures drawn on state and scheduling accounts and not previously reported;
- 3) identify the source of the funds and amend their reports to include the \$52,602.79 in receipts comprising the deposits to the 23 state and scheduling accounts previously not reported;
- 4) amend their reports to increase unitemized receipts by \$9,000.00 to correct the error made in attempting to adjust for contributions returned by the bank for insufficient funds; and
- 5) amend their reports for mathematical errors which caused a \$9,181.66 overstatement in total expenditures."



The Committee, through its Comprehensive Amendment, has corrected all of the aforementioned reporting errors and currently reported any items which were previously omitted. Further, the Committee has refiled the November 30, 1980 Year End 1980, and March 31, 1981 reports correcting past reporting errors described in the Audit Report. Specifically:

- 1) The Committee has included in its 1980 Comprehensive Amendment, 34 expenditures totalling \$73,916.15 made from national accounts which were previously inadvertently unreported (Exhibit A);
- 2) The Committee also included in the 1980 Comprehensive Amendment, state and scheduling account expenditures totalling \$207,409.04 which were not previously reported. The discrepancy between this amount and the \$220,526.54 reflected in the Auditors' recommendation results because the auditors arrived at their total by reviewing a draft of the Comprehensive Amendment. The draft did not properly reflect expenditure amount corrections. The 1980 Comprehensive Amendment, as filed, reflects amount corrections by reporting the actual amount of the expenditure while simultaneously deducting the amount originally reported (Exhibit A).
- 3)

## B. MISSING RECORDS

### 1. Bank Accounts Records

"The Audit staff recommends that the Committee provide for our review . . . the bank records outlined on Attachment 3."

The Committee has provided records from 21 banks as requested by the Audit Staff but the Committee to date has been unable to obtain the records required from the following three banks. Further efforts are being made to obtain these records:

<u>State</u>	<u>Bank</u>
Vermont	Merchants National
Rhode Island	Columbus National Bank
Maine	Bank of Maine

The Audit Staff indicated a failure on the part of the Committee to furnish missing bank records and loan documentation despite repeated requests to Committee Officials for such information. From the facts available to Committee Officials, this statement appears to be incorrect. Although Committee Officials were aware of the Auditors' interest in obtaining the missing bank records, no formal requests were received by the Treasurer or Chairman of the Committee. Upon the first informal request by the Audit Staff, the Committee Staff sent letters to the various banks requesting photocopies of all missing documentation, but as the Commission is well aware, banks may be quite slow in responding to such requests. The Committee made repeated requests of banks that failed to respond and to date, all but the three banks noted above have responded. The Committee has furnished the Audit Staff with all the records in its possession and included in the 1980 Comprehensive Amendment any receipts ascertained to have been previously unreported.

2. Loan Records  
FEC Auditor's Recommendation

"The Audit Staff recommends that the Committee provide for our review . . . . copies of executed notes, loan agreements, collateral agreements, security agreements and any other documents relating to all loans negotiated by the Committee, excluding those documents received as indicated on Attachment 4. In addition, the Audit Staff recommends that the Committee file an amendment to disclose the nature of the obligations, including collateral and/or security for the 12 loans".

The Committee wishes to direct the Commission's attention to the fact that neither the statute nor the Commission regulations require the Committee to keep executed copies of loan agreements or executed notes. The Committee has attempted to obtain copies of all the original loan agreements and executed notes from the various banks. Wherever the Committee has been unable to obtain a copy of the original papers from a bank, the Committee has requested a letter from the president or loan officer of the lending bank specifying the terms of the agreement or note.

It was the Committee's practice during the campaign to prepare various loan documents and have the Committee's Treasurer or Chairman sign the papers. These were then copied at the Committee's headquarters with the originals being forwarded to the bank. Once the bank was in receipt of these documents, it executed and retained the originals. Therefore, in most cases the copies signed only by the Committee's Treasurer of the loan documents were in the Committee's possession.

The Committee has provided the Commission's auditors with copies of all executed notes, loan agreements, collateral agreements, security agreements requested (See Attachment B), except those concerning the following loans which have been documented in a different fashion.

<u>Bank/Lender</u>	<u>Date</u>	<u>Amount</u>
Chemical Bank NY	11/16/79	\$ 200,000
	11/23/79	100,000
	11/27/79	100,000
	11/30/79	200,000
	12/03/79	100,000
	12/04/79	100,000
	02/11/80	100,000
	03/14/80	100,000
District of Columbia	11/05/79	\$160,000
National Bank	11/28/79	90,000
Washington, D. C.	04/07/80	5,000
	04/22/80	10,000

In the Committee's Comprehensive Amendment, the Committee has disclosed all of the securities and collateral for the various loans which were made to the Committee (See Attachment A).

C. ALLOCATION OF EXPENDITURES TO STATES  
FEC Auditor's Recommendation

"The Audit staff recommends that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect their adjustments. . . . In addition, we recommend the Committee provide the Audit staff with sufficient documentation to allow an allocation determination to be made for those expenditures noted in II.C.4. above".

The Committee has adjusted its accounting records to reflect the amounts allocable to Iowa (Exhibit C), and New Hampshire (Exhibit D) and has amended its last three required reports to reflect adjustments. The Committee has ready for inspection all documentation for the allocations in Iowa and New Hampshire.

Again, for the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations 11 C.F.R. Section 104.10 and 106.1 (a) set forth the "reasonable basis" standard for allocations, and 11 C.F.R. Section 106.2 sets forth a regulatory scheme for all allocation of expenditures among states by candidates for presidential nomination.

11 C.F.R. Section 106.2 states in relevant part:

- (a) Expenditures made by . . . an authorized committee which seeks to influence the nomination . . . shall be allocated to that State . . .
- (b) Expenditures for administrative, staff, and overhead cost directly relating to national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.
- (c) An expenditure . . . for use in two or more States, which cannot be attributed in specific amounts to each State, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures (Emphasis added).
  - (1) Expenditures for . . . television . . . distributed in more than one State shall be attributed to each State in proportion to the estimated viewing audience . . . of voter age which can reasonably be expected to be influenced by these advertisements (Emphasis added).
  - (2) Expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

As stated above, the standards, although somewhat vague, were applied in 1976 without apparent difficulty. It is clear under the standard applied for the 1976 elections and the Commission's regulations, that the Committee followed reasonable methods in allocating expenditures between various states, national and exempt accounts.

The Committee's method of analyzing state by state expenditures in the cases of Iowa and New Hampshire was to review, with the assistance of two accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purposes of influencing the nomination in that particular state. For example, if the voucher indicated that it was a per diem payment made to an individual from an Iowa State Account for a per diem in New York, the per diem was allocated to New York.

#### OVERHEAD ALLOCATION

During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditure in a manner consistent with salary allocation.

In order to implement a reliable allocation policy, the Committee asked the independent auditing firm of Fox & Company to develop a methodology and establish percentages to be used in allocating costs to exempt functions.

Fox & Company computed a weighted average percentage of fundraising and compliance time for each state using a sample of four states, thus computing an average to be applied to all states. The computation involved totalling the detail estimates provided by state coordinators for the four sample states to obtain the percentage of exempt costs.

The selection of four states by Fox & Company was judgmentally based on various levels of campaign activity and based on the timing of the state campaigns, in an attempt to insure a representative sample. Percentages were assigned to employees in each state based on interviews with state campaign officials, selected because they directed the campaign activity in each state.

Using the methodology and procedure previously described, Fox & Company determined that 17% of payroll costs relates to fundraising and 22% relates to compliance.

#### INTERSTATE TRAVEL AND COMMUNICATIONS

The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2 (c) (2) to the national expenditure limitations.

## MEDIA EXPENDITURES

The Committee reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by its vendor had been incorrect. The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV Station to allocate the cost of a broadcast (Exhibit F).

## NATIONAL PRESS

Further, each expenditure which the FEC Auditors preliminarily allocated to Iowa or New Hampshire, was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. The Committee's billing of the National Press has already been reviewed by the Commission, through an enforcement proceeding. The Committee's basis for charging National Press 225% of the cost of a first class air fare was approved by the Commission in that investigation. The Commission determined that these charges, which covered, among other things, air travel and various ground services that were provided by the Committee, were permitted under the FECA. These services included transportation to and from the airport, baggage handling, typewriters in press rooms, telephone, coffee and refreshments, station wagons and vans in motorcades. In cases where transportation was needed from town to town, buses were supplied without additional cost to the National Press. In conjunction with these services to the National Press, campaign staff was also assigned to the National Press travelling with the candidate.

An attempt has been made to isolate all of these costs and to identify the various staff persons who devoted all or a portion of their time to the National Press. It is clear that since these expenditures were related to the National Press, they should not be allocated to an individual state, but should be treated as National Expenditures. (Cf. 11 C.F.R. Section 9004.6 and Explanation and Justification).

## COMPLIANCE AND FUNDRAISING

Further, the Committee ascertained each individual or percentage of an individual's time that was devoted to record keeping or compliance activity, and identified these expenditures as being exempt from the state limits. (Cf. 11 C.F.R. Section 100.8 (b)(15)).

In addition, each individual who had specific responsibilities for fund raising at an event was identified and a portion of their time was attributed to the fund raising event. Overhead expenses were isolated and a percentage formula was applied to all overhead expenses allocating out a reasonable amount for legal, accounting and fundraising. (Cf. 11 C.F.R. Section 100.8(b)(21)).

### ADVANCE STAFF PERSONNEL

The Audit Staff provided the Committee with workpapers supporting their determination of the amount of advance staff payroll of \$ 26,613 and \$ 38,188 allocable to Iowa and New Hampshire. The Audit Staff determined their allocations by first computing the daily salary for each advance person, assuming a five day work week. The daily salary was then multiplied by the number of days the advance person spent in the State to arrive at the total allocation per person.

The Committee reviewed the work records of its advance personnel and ascertained that during the campaign period they worked on a seven day work week and therefore determined their daily salary based on a seven day week and not the five day week used by the Committee Auditors in the interim report.

Recognizing that the advance staff worked seven days per week during the campaign and made several trips in and out of a given State during the campaign, the Committee has used the following procedure to allocate advance staff salaries.

The daily salary for each individual was computed based upon a seven day week. This daily salary was multiplied by the number of days each advance person spent in the State, excluding all travel days, to arrive at the maximum amount allocable to the State if the advance person spent most of his time involved in influencing the election in that State.

Since the nature of advance work involved significant expenditure of time supporting national press corps, compliance, and fundraising activity, the maximum amount computed for each advance person was allocated to the various categories based upon the percentage of time spent on exempt activities by each advance person. The Committee determined that \$14,806 of advance salaries was allocable to Iowa and \$20,324 to New Hampshire.

### ALLOCATION SUMMARY

When these adjustments were taken into account as indicated on the attached Exhibits C and D, the total expenditure in Iowa was \$ 451,803 and \$ 267,223 in New Hampshire. It is the Committee's firm belief that the methods used in determining these allocated amounts were reasonable and within the Commission's guidelines and regulations.

These revised allocations are reflected in the 1980 Comprehensive Amendment.

D. REVIEW OF RECEIPTS

1. Timely Processing of Questionable Contributions  
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee attempt to determine the source and legality of the \$49,378.05 . . . . . remaining in the escrow account. Any contributions confirmed to be from impermissible sources should be refunded to the original contributors and copies of the cancelled checks (front and back) provided to the Audit Staff.

If the source of any of the contributions cannot be identified, the Audit Staff recommends that the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign, or candidate.

The Audit Staff also recommends that . . . , the Committee provide copies of cancelled checks not already provided (front and back) for all contribution refunds made during the period January 1, 1980 through August 31, 1980."

The Committee has reconciled the escrow accounts and provided an inventory of its current composition (Exhibit E). One deposit of \$3,000 could not be identified and has been donated to a qualified charity under 26 U.S.C. 501 (c)(3) (Exhibit G).

The Committee is attempting to determine the legality of a number of escrowed items and is in the process of contacting each person who is indicated as the donor. The Committee has refunded to the original contributor or donated to charity, all contributions from possibly impermissible sources (Exhibit I).

2.



**E. CONTRIBUTIONS FROM OTHER POLITICAL COMMITTEES**

**1. Itemization of Contributions from Political Committees**

**2. Excessive Contributions from Registered Committees  
FEC Auditors' Recommendation**

"The Audit Staff recommends that . . . the Committee either provide evidence that the contributions noted in (1) above were not received or file amended reports itemizing the contributions. In addition, the Audit Staff recommends that the Committee refund the excessive portion of the contributions noted in (2) above."

The Committee has, through its Comprehensive Amendment, itemized 27 contributions totalling \$ 30,319 from political committees which may not have been itemized in previous reports. A \$3.00 amount from the Kennedy for President Committee is an internal transfer. As to the excessive contribution in the amount of \$4,875, this was inadvertently transferred from the Carter/Kennedy Unity Dinner Committee and has been returned. The second purported excessive contribution in the amount of \$3,702.60, does not appear to the Committee to be excessive since it was made by a qualified multi-candidate committee.

**F. UNDISCLOSED DEBT**

**FEC Auditors' Recommendation**

"The Audit Staff recommends that . . . the Committee amend their December Monthly Report to accurately reflect the outstanding debts as of November 30, 1980, and amend subsequent reports to the extent that they are affected by those changes."

The Committee has refiled its December Monthly Report to accurately reflect the outstanding debt as of November 30, 1980, and has refiled subsequent reports to the extent necessary (Exhibit A).

III. Findings Related to Title 26 of the United States Code  
Determination of Net Outstanding Campaign Obligations  
and Repayment of the U. S. Treasury

A. Determination of Net Outstanding Campaign Obligations  
FEC Auditors Recommendation

"The Audit Staff recommends that the Committee obtain a written independent appraisal as to the fair market value of the art prints as of August 13, 1980, as well as a correct inventory of items on hand as of that date and submit this information to the Audit Staff . . . "

The Committee provided the requested inventory (Attachment K), but believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least \$10,000. The standard fee for such an appraisal is 1% of the appraisal value. The request is inappropriate because there is no basis on which to determine the "fair market value" of the artwork for purposes of 11 C.F.R. Section 9034.5 (c), 26 U.S.C. Section 9034.

Background

The Federal Election Campaign Act exempts individual volunteer services from the definition of "contribution", 2 U.S.C. Section 431 (8)(B)(i) (Supp. III 1979). Pursuant to this provision the Commission determined that no contribution results where an artist donates his or her services to a political committee by creating works of art that the committee then "sells", or more precisely, uses as inducement for contributions, Advisory Opinion 1979-35. Any amounts paid by a person who receives such artwork, are considered contributions to the Committee, Advisory Opinion 1980-34.

Relying on the Commission's interpretation, a number of noted artists volunteered their services to the Kennedy for President Committee to create limited edition original works of art which the Committee could use to raise funds. The Committee paid for the materials used and other expenses of production while the artists donated their services. The artwork consisted of limited edition lithographs and serigraphs. 7,222 pieces were created, of which 6,904 remained in the Committee's possession on August 15, 1980 (See Exhibit K).

Use of the Artwork

The Committee used the artwork in three ways: 1) The artwork was used as an inducement for contributions. The artwork could not be "sold" in the conventional sense because the Commission's ruling that amounts paid for it would be considered contributions limited its marketability. The Committee did not assign a price to any of the items. Although promotional literature indicated each piece's "appraised" value, contributors were often given works of art with a higher appraised value than their contributions. Also the amounts contributed for any particular piece varied. 2) The artwork was

used as collateral for a number of bank loans. It was appraised in connection with the negotiation of these loans, with the values for individual pieces ranging from \$225 to \$1,200. (See Exhibit K). Only 1/3 of this "appraised value" was acceptable to the banks as an estimate of the work's value as collateral, however. (The Commission determined in MUR 1195 that there was no reason to believe the use of the artwork as collateral for loans violated the Act). 3) After the end of the campaign, much of the artwork was given to campaign workers and other persons who had been especially helpful to the campaign in appreciation of their assistance.

The Committee sought an Advisory Opinion on whether it could use the artwork in settlement of debts. (AOR 1980-136) The Commission was unable to decide whether such use violated the Act.

(a) Lack of Basis to Determine "Fair Market Value"

Commission regulations do not define the term "fair market value". Since "fair market value" is a term of art for tax purposes, it is appropriate to construe the Commission's use of the term in a manner consistent with the Internal Revenue Code. Cf. 2 U.S.C. Section 438 (f) (Supp. III 1979).

Valuation of assets often occurs in connection with Federal gift taxes. Tax on a gift of property is imposed based on its "fair market value" on the date of the gift. See 26 C.F.R. Section 25.2512-1. "Fair market value" is defined as:

(T)he price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.

Similar definitions apply in the context of income tax and estate tax. See 26 C.F.R. Sections 2.2002-1, 2031-1 (1980).

It is well settled that restrictions on the sale or disposition of property must be taken into account in determining its "fair market value". See R. Stephens, G. Maxfield & S. Lind, Federal Estate and Gift Taxation, Section 2512, 10.01 (2)(b) (1978 & Suppl 1980). The question often arises in the case of restrictions on the sale or disposition of stock in closely held corporations. See Spitzer v. Commissioner, 153 F. 2d 967 (3th Cir. 1946); James v. Commissioner, 148 F.2d 236 (2d Cir 1945); Commissioner v. McCann, 146 F.2d 385 (2d Cir. 1944). Where such restrictions, or other characteristics, make stock unmarketable, these factors must be taken into account in determining fair market value. See Koffler v. Commissioner, 37 T.C.M. 697 (1978).

Applying these principles to the question of determining "fair market value" for purposes of calculating net outstanding campaign obligations (NOCO), some difficulties immediately appear. The Commission has imposed a direct restriction of the sale of donated artwork -- any sale must be subject to the contribution limits of the Act, even if potential buyers are not informed that the proceeds of the sale will go to a political committee. See Advisory Opinion 1980-34; Advisory Opinion 1979-35. This restriction depresses value in two ways. First, the purchase price must not exceed \$1,000 (unless a group of individuals engaged in a joint purchase). Second, the universe of potential buyers is decreased by excluding those persons who have already given the maximum amount as well as those persons who may wish to own the artwork but do not want to be a contributor to the committee "selling" it. 1/

Even if a discount might be calculable for the restrictions imposed on the "sale" or disposition of the artwork; calculations of fair market value is made impossible by the fact that the Commission has not stated what other legal uses may be made of the artwork. For example, the Commission was unable to decide whether the artwork may be used in debt settlement. See Response to Advisory Opinion Request 1980-136. Without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible.

1/ Another difficulty is that the artwork is often given as an inducement for contributions much less than the work's "appraised value". Also, the artwork may be given away at no charge as a means of showing appreciation to campaign workers or to other persons who have been especially helpful.

(b) Cost as Value

The Committee bore the complete expense of production of the artwork including paper, printing, services of production personnel, etc. The total cost to the Committee was approximately \$90,000. Another possible basis of valuing the artwork, therefore, would be to use the amount actually invested in it by the Committee. This would comport with the approved method for valuing inventories for tax purposes under the Internal Revenue Code. See 26 C.F.R. Section 1.471-2(c) (1980). Viewing the artwork as inventory rather than a capital asset would be much more realistic in view of the similarity between a commercial dealer holding goods for sale and the Committee's holding the artwork as an inducement for contributions. The artwork was not produced for investment purposes. From the beginning, the Committee intended to distribute in return for contributions. Treating the artwork as inventory would place it properly in the same category as other fundraising items such as books, records, and T-shirts.

(c) The Artwork is Not a "Capital Asset"

Commission regulations define "capital asset" for "Net Outstanding Campaign Obligations" as "any property which has remaining useful life exceeding 1 year from the candidate's ineligibility, provided that the fair market value at the date of ineligibility exceeds \$500, (emphasis added). 11 C.F.R. Section 9034.5 (c) (1980). It is impossible to calculate the artwork's fair market value for NOCO purposes (see above discussion). Since there is no basis on which to determine that the value of any of the prints exceeds \$500, it should not be held to be a "capital asset".

If one attempts to calculate the "fair market value" of the artwork for NOCO purposes based on its "appraised value", the discounting required to take account of the restrictions imposed on the Committee's use of the artwork would certainly bring the "value" of any particular print below \$500. The "appraised value" of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's "worth" to an individual recipient, the value of an individual print to the Committee would be much less.

This is true even in the absence of sales restrictions. The Committee, in order to market the prints commercially, would have to "job-out" the artwork to a number of galleries, with attendant commissions and transaction costs, or would have to "wholesale" it, requiring a significant discount. An indication of the magnitude of the reduction in value involved is that, in those cases in which artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 the artwork's "appraised value". Since the highest "appraised value" for any piece was \$1,200, 1/3 of "appraised value" formula used by the banks demonstrates that no work exceeds \$500 in value, even before discounting for restrictions on sale and disposition.

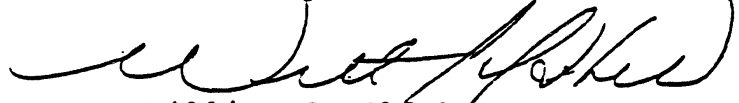
Not treating the artwork as a "capital asset" also agrees with the purposes of including only capital assets in the NOCO calculation. Capital assets are included on the assumption that such assets can be readily converted into cash or used in debt settlement. Because of the restrictions on its sale or disposition, the artwork cannot be considered readily convertible into cash in the same manner as, for example, an automobile owned by the Committee. Furthermore, the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair.

B. Apparent Unqualified Campaign Expenses  
FEC Auditors' Recommendation

"Absent a showing to the contrary. . . the Audit Staff will recommend to the Commission that these expenditures totalling \$348,342.59 be determined as non-qualified campaign expenses, and be repaid in full to the United States Treasury."

As above stated, the Committee has analyzed each item making up the Commission Auditors total expenditures for Iowa and New Hampshire. The Committee allocated \$451,803 to Iowa, and \$267,223 to New Hampshire. (Exhibits L & M). The limit in Iowa was \$489,881 and in New Hampshire \$294,400. Therefore, the Committee believes it did not have expenditures in excess of the limits.

Sincerely,



William C. Oldaker  
Treasurer

Trace of  
8/1/81  
R/S



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 6, 1981

MEMORANDUM

TO: Robert J. Costa  
THROUGH: B. Allen Clutter *BA*  
Staff Director  
FROM: Charles N. Steels *CNS*  
General Counsel  
SUBJECT: Report of the Audit Division on the Kennedy  
for President Committee - A-943

The Office of General Counsel has received the audit division's draft of the final audit report for the Kennedy for President Committee. The General Counsel's Office, having reviewed the final audit report for legal sufficiency, makes the following comments with respect to those sections of the audit report noted. 1/

II. Audit Findings and Recommendations Relating to Title 2 of the United States Code

B. Missing Records

This portion of the report should briefly address (at page 5) the contention of the Kennedy for President Committee ("Committee" or "KFP") that "no formal requests [for missing records] was received by the Treasurer or Chairman of the

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1/ For those sections of the Report not mentioned in this analysis, it can be assumed that the General Counsel's Office does not feel there is a problem with the legal sufficiency of those portions of the report.

Memorandum to Robert J. Costa

Page Two

Report of the Audit Division on the Kennedy for President  
Committee - A-943

Committee." In that such formal requests, culminating in a Commission letter to the candidate himself, were in fact communicated to the Committee, and, in that the Committee response will be available to the public, we suggest that the audit report should, to the extent possible, contain a refutation of those allegations made by the Committee in its response.

B. 2.

The other matter involving a loan which the auditors feel should be referred to this office, concerns the use of art work with an appraised value of \$240,000 as collateral for a loan in that same amount. The auditors question whether collateral which has the same appraised value as the principal of a loan can serve as adequate security for that loan, especially in light of the practice of other banks to require security of this type valued at three times the amount of the



principal as collateral for a loan. However, the only relevant questions for purposes of the Act are whether the loan is adequately secured and whether it was granted in the ordinary course of business for the lending institution in question. It is our position that the practices of other banks, while perhaps supplying evidence in determining what adequate security and "ordinary course" may be, does not set the standards by which the legality of loans from other lending institutions will be measured.

Moreover, other loans secured by collateral with a value of even less than the loan principal have not been deemed by the Commission to be "out of the ordinary course" or under-collateralized. See e.g. MUR 1195 (No reason to believe loan not made in ordinary course or inadequately secured where collateral for loan was future expectancy of matching funds.) Thus, in this instance where the appraised value equaled to the amount of the loan, we do not think this matter should be referred to our office.

#### C. Allocation of Expenditures to States

Before providing specific comments concerning the various subparts of this section of the report, the Office of General Counsel notes that this section is not as clear or understandable to the reader as we would hope a public document such as this would be. This is due to the fact that the Committee's response is not organized in the same fashion as the interim audit report but rather overlaps, and in some cases falls between, the categories set forth in that report, thereby making it difficult for the auditors to integrate the KFP response into the interim audit report structure. The result, however, is a report with two parallel subsections dealing with allocation of expenditures, neither of which seems to address or really relate to the points raised in the other subsection.

In order to remedy this problem, the Office of General Counsel suggests that this section of the report be redrafted into one set of categories (instead of two - the auditors' and KFP's), with each containing the Commission's position (as set forth by the interim audit report), the Committee's contentions, and, finally, the auditors' response to those contentions. To the extent this requires some regrouping or modification of the headings of the interim audit subsections, or the addition of categories not contained in the interim report, the Office of General Counsel feels this would be an acceptable

departure from the normal procedure followed in drafting a final audit report, in that it would serve the more necessary function of creating an integrated whole.

#### 4. Pier Diem and Expense Reimbursements

The first paragraph of this section should contain a footnote or some other indication of the basis of the auditors' determination that the additional per diem and expense reimbursements set forth should have been allocated to New Hampshire and Iowa. Specifically, examples of the types of indicators in the documentation that the auditors relied on -- such as the Committee's own coding system, travel voucher statements as to personnel destinations, receipts from the state in question -- ought to be identified. This will enable the audit report to stand on its own as a "record" of what was before the Commission when it made its repayment determination, should the Committee challenge that determination in the court of appeals.

#### 5. Outstanding Debt

Again, this portion of the report should reflect that the source of the auditors' determination that the expenditures in the amounts noted were allocable to New Hampshire and Iowa was based on the Committee's own computer print-out of expenditures. This print-out designated the state the expense should be allocated to when paid; and, after verifying the accuracy of these Committee designations with supporting documentation, the auditors' adopted these figures in allocating previously unallocated expenditures to Iowa and New Hampshire. As previously stated, the suggested insertion will create a more complete record for any possible appellate action, as well as emphasizing that the auditors are not creating their own figures in this area but rather are merely adopting the Committee's own allocation system which the Committee failed to reflect in its reports.

#### 6. Other Vendor Payments

The comments made with respect to the subsection immediately preceding this one also apply to paragraph one of this subsection.

##### [Audit Reply to Committee Response:] 1. Overhead Allocation

This subsection of the final audit report deals with the allocation system offered as an alternative by the Committee in its response to the allocation figures contained in the interim audit report. The Committee maintains that a certain percentage of state "overhead" costs can reasonably be attributed to the

Memorandum to Robert J. Costa

Page Five

Report of the Audit Division on the Kennedy for President  
Committee - A-943

exempt categories of fundraising and compliance and (therefore need not be allocated to a state), in that an equivalent percentage of staff time spent in the offices located in the states was spent on these exempt activities.

In discussions with the auditors, it seems that the audit division does not dispute the reasonableness of this theory; in fact, some other committees used this same theory to determine a percentage of national costs which would be attributable to exempt categories and thereby permissably excluded from their overall spending limitations. Rather, the problem the auditors have with the Committee procedure is that no work papers of the accounting firm which derived the percentages were provided for audit review. The auditors do not know, for instance, if percentages were derived by actual staff accounts and review of time sheets, or were merely "guesstimates" by certain individuals who were not even present in the field offices during the relevant time periods. Nor is there any indication of the scope of the category the Committee has defined as "overhead" expenditures, nor the definitions applied by the accounting firm in determining whether staff time was directed to "compliance" or "fundraising". Therefore, it is understandable that the auditors do not feel they can state for public review that this proposed alternative allocation system by the Committee has been verified and is reasonable, and thus cannot depart from the recommendations of the interim report. 2/ The Office.

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2/ The Committee contends that the use, in itself, of an outside auditing firm to compute these figures is prima facie evidence of the reasonableness of the allocation derived, especially in light of the presence of a letter from a firm partner stating the method used by the firm was "rationale". That the firm which computed these figures provides a self-serving statement that the methodology used by it was rational can hardly be said to be dispositive of the issue of the reasonableness of the allocations prepared by it. This is not the situation where a company prepared financial statement is reviewed by an outside auditing firm, whereby that firm's "independent" opinion concerning the financial statement, using long established generally accepted accounting principles as a standard, is given great (although not determinative) weight. There is no independent review in this situation -- the firm giving the opinion made the computations in question. Furthermore, there are no standards set forth by the accounting industry with respect to procedures to be followed in determining allocation figures for purposes of chapter 96 of the Internal Revenue Code.

of General Counsel does believe, however, that the audit reply to this portion of the KFP response should make it clear that if the aforementioned documentation is provided, and if the definitions of "fundrasing" and "compliance" used comport with the Act and the Commission's definitions of these terms, the Committee allocation will not be challenged as unreasonable. 3/

The General Counsel's Office also believe that if the percentages at issue were calculated on the basis of the personal knowledge of Committee staff, that that information be accepted without requiring the Committee to further prove the staff assertions and recollections. Assertions of other committees as to the amount of time spent by staff in various activities were accepted without requiring additional proof of those assertions. 4/ Also, it is unclear exactly what type and quantity of evidence would satisfy the standard of proof in this regard. 5/ Accordingly, this office suggests that any references in the report to the insufficiency of Committee documentation, or the necessity of further information or proof in this regard (such as the last sentence of the second paragraph on page fourteen) should be deleted from the report, as well.

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3/ Similarly, the ~~fourth~~ paragraph of page 10 should be modified to indicate that rather than finding the Committee allocation system as less than reasonable, the auditors simply cannot verify the reasonableness of this newly adopted system absent a review of the documentation supporting those figures. The Office of General Counsel also believes that the reference, contained in the last paragraph of this subsection, to the unavailability of an opinion from the Committee's outside accounting firm as to the reasonableness of its calculations, should also be deleted from the report. See n. 2, supra.

4/ For example, in the audit of the Carter-Mondale Committee portions of national salaries, permissably exempted by that committee, were computed based on Carter-Mondale staff interviews. In accepting the committee figures so derived no additional proof was required of the committee to substantiate these staff estimates.

5/ For instance, would an affidavit from the staff member in question or his/her supervisor suffice, or would only formal time cards or sheets meet this requirement?

2. Interstate Travel and Communications

The Office of General Counsel suggests that this section contain some reference to your letter to KFP advising the Committee that long distance calls from state to national offices could be exempted from state allocations. The Committee should be directed to that portion of the letter which set forth a 30 day period from KFP's receipt of the letter in which to amend any affected reports accordingly, and to provide all computational schedules, including copies of relevant bills.

3. Media Expenditures

It is our understanding that since the referral of this report, the auditors have obtained some of the applicable County Coverage Reports ("CCR"). After conducting some preliminary calculations based on the CCR's obtained, the auditors have confirmed that certain CCR figures were used by the Committee in determining allocation of media expenditures for New Hampshire and Iowa, but that the formula used also relied in part on ADI figures. The audit staff has also indicated to Office of General Counsel staff that in the auditors opinion a media allocation formula may appropriately rely upon CCR figures just as it may rely on ADI figures; however, the two systems of determining media coverage may not be mixed in one formula to derive a single allocation figure for media in a particular state.

The auditors have stated that, in light of their newly acquired information, this section of the report will be redrafted. In so doing, the auditors should fully explain how they were able to determine the CCR figures were improperly applied by the Committee in its allocation formula. The redrafted version should also state that if CCR figures are correctly applied, the figures derived will be considered to be a reasonable allocation of media expenditures. Finally, we suggest that the auditors obtain the CCRs to make the necessary verification, as was done with those situations in other campaigns where ADI figures were used. This should not pose a problem in that we have already obtained some of the relevant CCRs.

4. National Press

The Office of General Counsel understands that the auditors do not have a problem with the theory put forth by the Committee, that the excess over airfare costs received by KFP from national press personnel can reasonably be applied as a reimbursement

for other KFP expenditures actually incurred by the Committee for services and items used solely by the press, and that the total amount of this "reimbursement" may be exempted from state (and overall) expenditure limitations. We suggest that the report not the auditors' general agreement with the theory, while stating that the problem lies in the inability to verify the Committee figures absent an accounting of monies received from the press, the surplus of that amount over total airfare costs incurred for the press, and the aggregate amount of expenditures (other than airfare) incurred on the press's behalf in the states in question, as well as the documentation supporting those computations.

In addition, the Office of General Counsel does not believe that any additional information -- such as proof that an expenditure designated by the Committee as one for press was in fact so used 6/ -- should be required. Therefore, we suggest that the report not indicate that such proof is a prerequisite to accepting KFP's allocation in this regard as reasonable.

The Office of General Counsel also agrees with the Committee that an employee's salary need not be allocated to a particular state to the extent that that staff member's time was spent on national press activities. Your recent letter to the Committee states that "salaries . . . of national campaign staff members who travel to a particular state for a limited purpose not constituting advance or field work, . . . need not be allocated to that state." (emphasis added). Ministering to the national press falls within this exception, in that it is not advance or field work. Accordingly, this section of the audit report should be revised. 7/

6/ Again, we note the standard of proof question raises some problems. For instance, would a notation on a bill that it was "for press" suffice or would press affidavits be necessary? As long as we have not ascertained any conflicting evidence, we believe that the Committee's statement as to the purpose of the expenditure is acceptable.

7/ The Office of General Counsel feels that the auditors may require the Committee to define the parameters of its category "national press activities" before accepting the Committee's figures exempting these salary costs as reasonable. However, as previously noted, this office believes it is and inconsistent with prior practice to require the Committee to submit further "proof" of the Committee estimates, based on staff interviews, of employee time spent on national press activities. See the discussion in this analysis contained under the heading titled "Overhead Allocation", supra.

### 5. Compliance and Fundraising

Again, this Office has some difficulty in rejecting the Committee's allocation of various percentages of staff salary to the exempt categories of compliance and fundraising in view of the basis provided in the audit report. As previously noted, proof of the accuracy of such figures has not been requested of other committees, and, the report does not identify what sort of documentation would suffice to meet this requirement. The Committee is in the best position to determine how and to what extent staff time was spent on certain activities, and absent some indication that the Committee's assertions in this regard are not accurate representations of what actually occurred, we find no reason for not accepting what has been presented by KFP. See nn. 6 and 7, supra, and the relevant text accompanying those notes.

Of course, if the auditors are merely requesting to review the Committee's computational schedules and other work papers supporting these figures before verifying the reasonableness thereof, and if this was required in every other instance where a committee presented allocation figures excluding expenditures (or percentages of expenditures) based on the theory that a portion of staff time was spent an exempt or national activities, the auditors have appropriately refused to adjust the figures in the interim audit report in the manner KFP seeks. However, the report should explicitly designate that this is the type of supporting documentation necessary before the auditors will concur in the reasonableness of the Committee allocations. 8/

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8/ We also note that this section appears to repeat or concern issues discussed in the section titled "Overhead Allocation". To the extent these two sections are referring to identical figures and procedures, these two subparts should be combined into one sub-section, or, at minimum, their relation to each other must be clearly set forth. It is understandable that the report was drafted in this manner, in that that is how these subjects are presented by the Committee. However, the auditors need not feel compelled to adhere to the structure of the KFP response, and should not hesitate to abandon it and substitute the division's own organizational structure, for the sake of providing a report that is clear to the reader and can stand on its own without resort to further explanation.

6. Advance Staff Personnel

The comments contained in the section of this legal analysis immediately preceding this one, are equally applicable here. Likewise, some sort of restructuring or redrafting to indicate more clearly how this subsection interrelates with the other subsections contained in this portion of the report is necessary. See n. 8, supra. In addition, if the above suggestions of the Office of General Counsel are accepted, the figures in the recommendation portion of this section of the report may require some readjustment, as well.

D. Review of Receipts

1. Timely Processing of Questionable Contributions

The report recommends that this matter be referred for a compliance action against KFP for violation of 11 C.F.R. § 103.3(b)(1) by failing to retain a written record noting the basis for the appearance of illegality with respect to contributions deposited in the KFP escrow account set up pursuant to that regulation. The Office of General Counsel suggests that rather than referring such a minor technical violation, thereby requiring deletion of this section of the audit report, that the audit report instead recommend that the amount of funds that can't be verified by the committee as coming from permissible sources be disposed of in any lawful manner by the Committee within the ninety day repayment period (along with a copy of the cancelled check(s) verifying the transfer(s)).

The Office of General Counsel also suggests that some of the discrepancies in audit and Committee figures found in Attachment <sup>Exhibits</sup> be clarified to explain the reasons for these differences. Specifically, the \$12,090 KFP figure might contain a footnote noting for the record that, while the Committee has paid this amount out of the escrow account, it has offered no information as to the source or legality of these funds. Similarly, footnote 3, rather than referring generally to the insufficiency of information should specify that no cancelled check verifying that this donation was in fact made has been submitted by KFP.

2.



III. A. Determination of Net Outstanding Campaign Objections

This Office concurs with the auditors that no action can be taken against the Committee, and that no adjustments can be made on the Committee's NOCO statement with respect to the art work inventory KFP had on hand at the date of Senator Kennedy's ineligibility. In order to be of assistance to the Commission in making its determination as to whether the works of art are capital assets, and if so, the fair market value thereof, the Office of General Counsel will prepare and circulate a separate memorandum to the Commission on this subject.

This Office would like to suggest that two minor additions to Attachment 2 (NOCO Statement), however, be included in the report. The first concerns footnote 2, which should cite 11 C.F.R. § 9033.1(a)(1)(i) in referring to those accounts payable insufficiently documented by the Committee. The second addition suggested would be to footnote 3 wherein the auditors reject as winding down costs certain postage expenses of the Committee. This footnote should contain a citation to the regulatory definition of winding down costs and a brief explanation as to why the Committee expenditures in question do not meet that definition.

B. Apparent Non-Qualified Campaign Expenses

1. Expenditures in Excess of State Limitations

If any of the Office of General Counsel positions with respect to Finding II. C. of the report are accepted, the figures listed in this portion of the report will require readjustment.

2. Payment of Parking Violations

The second paragraph of this section of the report should be deleted, as there is no evidence the Committee could present which would show that the \$141.50 paid in parking violations were qualified campaign expenses. See 26 U.S.C. § 9032(9)(A). As written, this paragraph of the report creates an (erroneous) inference that there might exist evidence to that effect, but that the Committee failed to provide it. Also, we suggest that this section cite to the relevant regulatory provision. (11 C.F.R. § 9032.9(a)(3)).

**SENSITIVE**

JD



FEDERAL ELECTION COMMISSION  
 WASHINGTON, DC 20463

Submitted Late

3. SEP 10 P 5: 16

September 10, 1981

MEMORANDUM

TO: THE COMMISSIONERS **EXECUTIVE SESSION**

THROUGH: B. ALLEN CLUTTER  
 STAFF DIRECTOR **SEP 15 1981**

FROM: BOB COSTA *ABC*

SUBJECT: FINAL AUDIT REPORT - KENNEDY FOR PRESIDENT  
 COMMITTEE

Attached is the final audit report on the Kennedy for President Committee.

As directed, in the Commission meeting on August 26, 1981, the Audit staff has met with the Office of General Counsel staff to review and redraft Finding II.C. - Allocation of Expenditures to States. After meeting with the Counsel staff it was decided that the finding would be revised to condense the original six (6) subsections into four (4) subsections and to include a recommendation at the end of each subsection. Each subsection now incorporates all of the Committee's comments as they relate to each specific type of activity which the Committee believes to be exempt from the state expenditure limitation. For example Finding II.C Subsection a. pertains to the Compliance and Fundraising exemptions and the three areas of expenditures affected: overhead expenditures, field staff salaries, and advance staff salaries. The recommendations at the end of each subsection request the documentation and/or information which the Audit staff feels is necessary in order for a determination to be made as to the accuracy and reasonableness of the Committee's calculations, however we have not stated that if such documentation is submitted the Committee's position will be accepted. We feel that such a determination can be made only after a review of any submission.

The Counsel's office has informed this office that it will circulate a separate memorandum to the Commission pointing out areas in the report which they feel should be discussed in further detail.

MEMORANDUM TO THE COMMISSIONERS

FINAL AUDIT REPORT -  
KENNEDY FOR PRESIDENT COMMITTEE

The one area in which the Audit staff and Counsel's office are still not in agreement is the Committee's allocations to an exempt category portions of each Advance staff person's salary for time spent providing services to the national press. This matter is addressed in Finding II.C Subsection 3. During the discussion of this matter in the aforementioned Commission meeting, the Commission voted 3-3 as to whether to accept the Committee's allocation in this area. Since the resolution of this matter remains unclear, the finding has remained in the report for discussion purposes. A second issue does remain open on this subject even if the Committee's allocation theory is accepted. That issue is the derivation of the percentage of time spent by the advance staff on National press matters. The Committee has not provided any information on the source of the percentage.

The only other findings requiring a Commission vote are II.F pertaining to the Committee's escrow account and III.B pertaining to the repayment of non-qualified campaign expenditures related to expenditures in excess of the state expenditure limits. Additional Exhibits to the report are letters received from Fox and Company relating to the methodology used to arrive at the exempt Compliance and Fundraising percentages.

All changes and/or additions to the report based on discussions with the Counsel's office have been underlined. We recommend that this report be placed on the agenda for the scheduled Executive Session on September 15, 1981. If you have any questions concerning any of the matters discussed, please contact Ray Lisi or Joe Stoltz at extension 3-4155.

Attachments as stated



## FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

### REPORT OF THE AUDIT DIVISION ON THE KENNEDY FOR PRESIDENT COMMITTEE

#### I. Background

##### A. Overview

This report is based on an audit of the Kennedy for President Committee ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038(a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037".

In addition, Section 9039(b) of Title 26 of the United States Code, and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The Committee registered with the Federal Election Commission on October 29, 1979 as the principal campaign committee of the Honorable Edward M. Kennedy, a Democratic candidate for the nomination to the office of the President of the United States. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from January 1, 1980 through August 31, 1980, the final coverage date of the last report filed at the time of the audit. <sup>1/</sup> The Committee reported a beginning cash balance of \$409,168.91, total receipts of \$11,804,166.54, total expenditures of \$11,953,427.73, and a closing cash balance on August 31, 1980 of \$259,907.72. As of August 31, 1980, the Committee reported expenditures of \$9,782,864.70 subject to the overall expenditure limitation.

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<sup>1/</sup> In accordance with standard Audit Division practice, a review was made of the Committee's expenditures through December 31, 1980, to verify that each was a qualified campaign expense and to determine the accuracy of the Statement of Net Outstanding Campaign Obligations as of November 28, 1980. Although the Threshold Audit Report covered the period October 29, 1979 through December 31, 1979, the unavailability of records at that time necessitated that the majority of the tests conducted in this audit cover the period October 29, 1979, through August 31, 1980.

B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Stephen E. Smith, Chairman, Ms. Carolyn A. Reed, Treasurer from inception to June 13, 1980, and Mr. William C. Oldaker, Treasurer from June 13, 1980 to the present.

C. Scope

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

II. Audit Findings and Recommendations  
Relating to Title 2 of the United States Code

A. Reporting Errors and Omissions

Section 434(b)(1)(2) and (4) of Title 2 of the United States Code states that each report shall disclose the amount of cash on hand at the beginning of the reporting period; and for the reporting period and the calendar year, the total amount of all receipts and disbursements.

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person who makes a contribution(s) to the committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 432(c)(1)(2) and (3) of Title 2 of the United States Code states, in part, that the treasurer of a committee shall keep an account of all contributions received, the name and address of any person who makes any contribution in excess of \$50, together with the date and amount, and the identification of any person making a contribution(s) aggregating more than \$200 during a calendar year, together with the date and amount.

1. Background

During the period audited, the Committee opened 200 bank accounts. Seven (7) of these accounts were maintained at the national campaign offices. The remaining 193 accounts included 63 accounts maintained at the state level, and 130 scheduling accounts. Scheduling accounts were used to fund specific events, and were separate from the funding of state offices.

The Committee's procedures provided for funding the state and scheduling accounts with transfers solely from the national accounts. All contributions received at the state and scheduling level were to be forwarded directly to the national office for deposit into a national account. Expenditure information for the state and scheduling accounts was forwarded to the national office for inclusion in the monthly reports. All expenditures from all accounts were to be itemized on Schedules B-P regardless of amount. Due to the fact that only \$3,103.52 in unitemized expenditures were reported during the period October 29, 1979 through August 31, 1980, and that our tests identified expenditures not itemized that were in an amount in excess of \$3,103.52, any disbursement not found itemized was considered an unreported disbursement.

2. Unreported Expenditures

a. National Accounts

Our review of the Committee's expenditure records for the period October 29, 1979 through August 31, 1980 revealed that 34 expenditures totaling \$73,916.15 were not reported. The expenditures appeared to be for normal Committee operating expenses and the Audit staff found no apparent reason for this failure to report. Further, Committee officials were unable to determine the cause of this problem.

The interim audit report contained a recommendation that the Committee amend its reports to include the 34 expenditures noted above. On May 19, 1981, the Committee submitted an amended report covering calendar year 1980, itemizing 29 of the 34 expenditures, totaling \$71,591.63. A Committee official stated that the remaining five (5) expenditures comprised the unitemized operating expenditure figure contained in the 1979 year end report. Based on the dollar amount, it is possible that four (4) of these expenditures comprised the unitemized operating expenditure figure on the 1979 year end report.

Recommendation

Since the Committee has materially complied with the recommendation, the Audit staff recommends that no further action be taken on this matter.

b. State and Scheduling Accounts

A review was made of the 193 state and scheduling accounts maintained by the Committee. The results of our tests disclosed a material error rate in the Committee's reporting of expenditures from these accounts.

During the audit fieldwork the Committee was in the process of reviewing their files and preparing amended expenditure schedules to include previously unreported state and scheduling expenditures. A comparison of our test results to the amended schedules indicated that the filing of the amended schedules would materially correct the Committee's reports. The amended schedules contained \$220,526.54 in previously unreported activity.

The interim audit report contained a recommendation that the Committee file the amendment mentioned above. The Committee stated in its written response to the audit report that they had included in the 1980 amendment, filed on May 19, 1981, state and scheduling account expenditures totaling \$207,409.04, which were previously unreported. Our review of the amendment disclosed that it actually included \$210,153.89 in expenditures. The Committee explained that the discrepancy between the dollar amount of the state and scheduling account expenditures included in the comprehensive amendment filed and the proposed amendment originally reviewed by the Audit staff, was a result of the proposed amendment not reflecting all expenditure amount corrections. Upon receipt of the amendment, the test results were again compared and it was determined that the amendment as filed materially complies with the recommendation.

Recommendation

The Audit staff recommends no further action on this matter.

3. Miscellaneous Adjustments

In addition to the matters noted above, our review of the Committee's available bank records and tests of the receipt and expenditure records revealed that the Committee's reported activity was misstated due to the following:

a. \$9,000.00 of reported contributions which were returned by the bank due to insufficient funds improperly adjusted on Committee reports; and

b. a \$9,181.66 overstatement of expenditures due to mathematical errors.

The interim audit report contained a recommendation that the Committee amend its reports to adjust for the reporting errors noted above. The amended reports filed by the Committee on May 19, 1981, included these adjustments.

Recommendation

The Audit staff recommends no further action in this matter.

B. Missing Records

Section 432(c) and (d) of Title 2 of the United States Code states, in part, that a treasurer of a political committee shall keep an account of all contributions received on behalf of such political committee, and any disbursements made, including a receipt, invoice, or cancelled check for each disbursement in excess of \$200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that each person required to file any report or statement under this subchapter shall maintain records, including bank records, with respect to the matters required to be reported from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

In addition, Section 9033.1(a)(3) of Title 11 of the Code of Federal Regulations requires a candidate receiving matching funds to keep and furnish to the Commission any records, including bank records for all accounts.

In addition to numerous verbal requests, the Audit staff made eight (8) written requests, beginning on October 23, 1980, for the production of various missing bank records. These requests were presented to the Committee's staff who were available to the Auditors on a daily basis and were working with the records being requested. Due to the substantial delays the Auditors encountered in the receipt of many requested documents and records, particularly bank records, the Commission sent a letter to the candidate, on December 3, 1980, which requested cooperation from the candidate and Committee personnel concerning the production of these records. At the conclusion of the audit fieldwork, the Committee had still not obtained and provided all requested records pertaining to the bank accounts.

The final list of missing bank account records was given to the Committee and discussed with them on January 9, 1981. The list included twenty-one bank accounts which were missing statements, cancelled checks, and/or deposit slips. These missing bank records were needed in order to verify reported figures and could have resulted in additional corrections to the Committee's reports. Committee officials stated that they would attempt to obtain the missing records and provide them for our review.



The interim audit report contained a recommendation that the Committee provide the bank records for our review. Subsequent to the audit fieldwork the Committee provided records for 18 of the 21 bank accounts. For two (2) of the bank accounts the records which were not provided consisted of cancelled checks associated with three (3) bank statements. The remaining one (1) account was lacking one (1) bank statement. It should be noted, however, that the Audit staff was able to include the expenditures connected with these accounts in the overall expenditure review of the state and scheduling accounts. For two (2) of these accounts, the Committee provided letters sent to the banks requesting these records.

### Recommendation

Since the Committee has provided the majority of the records requested, the Audit staff recommends that no further action be taken on this matter.

#### C. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provides, in part, that no candidate for the office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or \$200,000.00, adjusted by the Consumer Price Index.

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the office of President of the United States with respect to a particular State shall be allocated to that State.

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific State shall be attributed to that State, and that expenditures by a Presidential Candidate for use in two (2) or more States, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures.

A review of the Committee's system for allocating expenditures to states revealed a number of areas where allocations were not performed. An extensive review was made of all expenditures relating to the states of New Hampshire and Iowa since these were the only states where the limitations were approached.

The Committee maintained monthly state allocation reports which contained a listing by state of all expenditures allocated to the states from the national operating accounts and state and scheduling accounts. A comparison of the allocation reports to the FEC Forms 3Pc, "Allocation of Primary Expenditures by State for a Presidential Candidate", filed by the Committee from inception through August 31, 1980 revealed more expenditures reported on the Forms 3Pc than contained on the allocation reports. Committee personnel were unable to provide the Audit staff with workpapers to support the reported 3Pc totals nor could they provide an explanation for the differences. Various expenditure testing performed on the allocation reports verified that, with the exception of specific categories of expenditures noted below, the allocation of expenditures contained on the allocation reports were substantially correct. Therefore, the allocation report totals were used as a base to which additions and/or adjustments to the expenditure totals for New Hampshire and Iowa were made.

In addition to the national accounts, the Committee maintained 14 New Hampshire accounts (all in New Hampshire) and 23 Iowa accounts (22 in Iowa and one (1) in Nebraska) from which expenditures were made but were not allocated. Reconciled totals from these accounts were added to the state allocation report totals to yield a grand total of \$227,736.65 allocable to New Hampshire and \$421,376.94 allocable to Iowa.

The interim audit report also identified the following categories of expenditures as containing errors or omissions requiring adjustments to the above totals for New Hampshire and Iowa.

1. March and April, 1980, Expenditures

A review of the state allocation reports revealed that the Committee did not allocate any expenditures made from the national operating accounts during the months of March and April, 1980. A review of the check copies which contained the Committee's state allocation codes for that time period was performed to identify expenditures relating to the New Hampshire and Iowa campaigns. The results of that review required additional allocations of \$34,786.01 to New Hampshire and \$8,917.22 to Iowa.

2. Media

The Committee did not allocate any expenditures from its national operating accounts to its media firm for the purchase of radio, television, or newspaper advertising even though the media firm had supplied the Committee with detailed information with which to do so. The documentation supporting the allocations maintained by the media firm was reviewed by the Audit staff. The review disclosed allocations of \$48,347.81 to New Hampshire and \$85,668.82 to Iowa.

3. Payroll

The Committee did not allocate to the respective states either the salaries of individuals who, according to payroll registers, were assigned to state offices (field personnel) or individuals who were assigned to specific events in one (1) or more states (advance personnel). In addition, neither unemployment taxes nor the employer's portion of FICA taxes were allocated. The Audit staff identified total payroll related expenses (gross payroll, unemployment taxes, and employer's FICA) of \$83,506.34 allocable to New Hampshire and \$127,327.08 to Iowa.

4. Per Diem and Expense Reimbursements

A review of per diem and expense reimbursement payments and the documentation maintained by the Committee (i.e., reimbursement request forms with attached invoices and receipts, indicating a destination) supporting these expenditures identified an additional \$2,432.38 allocable to New Hampshire and \$2,852.09 to Iowa.

In addition to the above, the Audit staff identified \$20,084.24 in expenditures which were not adequately documented to allow an allocation determination. These expenditures were supported solely by a cancelled check which did not identify the state(s), if any, to which the expenditures were allocable nor were these expenditures allocated to any state by the Committee. Per diem payments accounted for \$18,840.00 and expense reimbursements for the remaining \$1,244.24.

5. Outstanding Debt

A review of the Committee's Statement of Net Outstanding Campaign Obligations as of November 28, 1980, and the Committee's list of accounts payable and billings and invoices supporting these payables, identified outstanding debts totaling \$3,242.18 which were related to the Committee's New Hampshire campaign and \$10,970.84 to Iowa.

6. Other Vendor Payments

An analysis of other vendor payments and the documentation maintained supporting these payments (i.e., including bills, invoices, and check stubs containing the Committee's allocation codes) from the operating accounts and a review of expenditures from September 1, 1980 through November 30, 1980, identified additional amounts of \$28,171.79 allocable to New Hampshire and \$47,287.44 allocable to Iowa.

The interim audit report included a final summary of Committee expenditures allocable to New Hampshire totaling \$428,223.16 and Iowa totaling \$704,400.43.

The Audit staff recommended in the interim audit report, that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect these adjustments within 30 days of receipt of the report. In addition, a recommendation was made that the Committee provide the Audit staff with sufficient documentation to allow an allocation determination for those expenditures noted as not adequately documented in II.C.4. above. With respect to other state allocation errors, a recommendation was made that no action be taken since it would have no effect on the Committee's compliance with those state limitations.

In its response to the interim audit report received on May 19, 1981, the Committee provided documentation verifying that the expenditures noted in II.C.4. were not allocable to either New Hampshire or Iowa. The Committee also stated that its method of analyzing state by state expenditures was to review, with the assistance of two (2) accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purpose of influencing the nomination in that particular state and then if all or any of the expenditure could be allocated to an exempt expenditure category.

The Committee provided the Audit staff with a computer printout which included all expenditures which were noted in the interim audit report as being allocable to New Hampshire and Iowa. Each expenditure on the printout was allocated into one (1) or more exempt (not subject to the expenditure limit) or non-exempt (subject to the expenditure limit) categories as follows:

Non-Exempt Category

1. Primary

Exempt Category

1. Compliance
2. Fundraising
3. Phone/Travel-Interstate
4. National Press
5. Other

Due to the methodology employed by the Committee in preparing its response, the expenditure categories presented by the Committee do not correspond to those contained in the interim audit report. Therefore, the remainder of the staff's analysis does not address the same categories of expenditures contained in the interim report but generally addresses the categories as presented by the Committee. However, certain of these categories have been combined for ease of presentation.

a. Compliance and Fundraising

In its response the Committee stated: "During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditures in a manner consistent with salary allocation."

The Committee asked a public accounting firm to develop the methodology and establish the percentages to be used in allocating costs to exempt functions. The firm stated in a letter that it used a sample of four (4) states <sup>2/</sup> from which it computed a weighted average percentage of fundraising and compliance time. The Committee stated that the selection of the states was on a judgemental basis and the information pertaining to each employee was based on interviews with the official who directed the campaign activity in that state. Using this procedure the firm determined that 17% of payroll costs related to fundraising and 22% related to compliance.

Overhead expenses were isolated and the percentages noted above were applied to all overhead expenses allocating an amount to exempt compliance and fundraising. The Committee also determined the amount of time spent on compliance and fundraising activities for field staff and charged a portion of those individual's salaries to exempt compliance and fundraising. In addition, a review of the computer printout supplied by the Committee reveals that the Committee has allocated what appears to be 10-17% of each advance person's salary to fundraising. Since no information was provided in the Committee's response concerning the compliance and fundraising percentages applied to advance staff salaries, it is not known how those percentages were derived. <sup>3/</sup>

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<sup>2/</sup> The four (4) states were New Hampshire, Iowa, New York, and Ohio.

<sup>3/</sup> The Audit staff has adjusted the totals allocated to advance staff salaries for the difference between a seven day work week and the five day work week which was used by the Audit staff in arriving at the total in the interim report.

New Wording

Although it appears justifiable that a portion of overhead and payroll related costs can be charged to exempt categories, the limited information which has been provided concerning the procedures used does not allow the staff to make a determination concerning the reasonableness of the allocation.

All that has been provided by the Committee is a letter from the accounting firm explaining in general terms the procedure it followed to arrive at the percentages. The letter states that the amount of compliance and fundraising time spent by individuals in the four states was determined through discussions with the state desk people directing the campaign activity in that state. Workpapers prepared by the accounting firm supporting the discussions and calculations noted in the letter were not available for the Audit staff's review at the time the Committee's response was received. In the absence of these workpapers the Audit staff has no information concerning the questions asked of the campaign officials interviewed, how the interviewers defined "compliance" and "fundraising", on what basis the persons interviewed assigned percentages to each staff members' activities, or any other records (i.e. time sheets, job descriptions, etc.) which were used as a basis for determining the percentages. In addition, the Committee has not provided the definition of the types of expenditures to which the overhead percentages would be applied. Further, the Committee stated in its response that they recognized the need for establishing these percentages during the campaign; however, the Audit staff was provided no evidence or information to indicate that the information used by the accounting firm was obtained during the campaign. The timing of the interviews is an important factor to take into consideration when determining the reasonableness of the resulting percentages, because the calculations were based on a single individual's recollection of activities.

Therefore, other than those expenditures which could be clearly identified as relating to compliance and fundraising activities, no adjustments have been made to the expenditures allocable to New Hampshire and Iowa based on the Committee's response.

#### Recommendation

The Audit staff recommends that, pursuant to 11 C.F.R. Section 9038.2(b), absent the presentation of documentation verifying the accuracy and reasonableness of the Committee's compliance and fundraising allocations within 30 days of receipt of this report, that no adjustments be made to the amounts allocable to New Hampshire or Iowa on the basis of the Committee's response in this area except as noted above. This documentation should include but is not limited to:

a. all workpapers generated by the Committee and/or accounting firm used to derive the compliance and fundraising allocations;

b. questions asked of the individuals interviewed;

c. job descriptions and/or time sheets for the individuals for whom salaries were allocated;

d. a description of the duties of the individuals interviewed;

e. the basis for the selection of the four (4) states used.

b. Interstate Travel and Communications

In its response the Committee stated "The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2(c)(2) to the national expenditure limitations."

The Committee provided the Audit staff with workpapers which they stated would support the Committee's allocation of long distance telephone charges to an exempt category. The workpapers indicate that all calculations for determining the amount of long distance telephone charges allocated to an exempt category for New Hampshire <sup>4/</sup> were based on reviewing two (2) telephone bills. The workpapers state that 62% of the total amount of all telephone bills were long distance and that 27% of the long distance calls were out of state. The 27% was then applied to all phone charges for New Hampshire, both those made at campaign headquarters and those contained on hotel bills and expense reimbursement forms, and the resulting amount allocated to an exempt expenditure category. The Audit staff is unable to verify the accuracy of these percentages since the Committee provided only the summary pages for the telephone bills which did not include the itemized listing of phone calls. Further, it would appear that if the percentage calculations are correct, a sample consisting of two (2) selected telephone bills is not statistically valid.

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<sup>4/</sup> No records were provided for the Iowa computations.

The Commission, in a meeting on June 9, 1981, determined that only long distance telephone charges originating in a particular state made within that state or to another state, other than national headquarters, were required to be allocated. Letters were mailed to the affected presidential candidate committees on July 2, 1981, notifying the committees of the new determinations concerning the allocation of the telephone charges. The letter also stated that the committees had 30 days from receipt of the letter, to submit to the Audit Division an amended state allocation schedule, thereby reducing the amount previously allocated for such expenditures. The committees were also instructed to provide computational schedules including copies of bills, expense vouchers, or any other documentation supporting such an amendment. The Committee received the letter by certified mail on July 7, 1981. Since the Committee has not provided the Audit staff the documentation requested in the letter, no change to the total amount allocated in the interim report has been made.

The Audit staff has adjusted the total allocable to New Hampshire by \$7,054.97 and Iowa by \$1,956.66 for other interstate charges (interstate travel and delivery services) for which adequate documentation was provided.

#### Recommendation

The Audit staff recommends that, pursuant to 11 C.F.R. Section 9038.2(b), absent the presentation of documentation verifying the accuracy and reasonableness of the Committee's interstate travel and long distance telephone allocations within 30 days of receipt of this report, that no adjustments be made to the amounts allocable to New Hampshire or Iowa on the basis of the Committee's response in this area except as noted above

This documentation should include but is not limited to:

- a. itemized telephone bills for all telephone numbers for which charges have been allocated to an exempt category;
- b. expense and travel reimbursement forms including receipts and invoices (i.e., airline tickets, gas receipts, etc.) verifying interstate travel for those items not previously documented; and
- c. Committee generated workpapers including adding machine tapes derived from the information above.

#### c. Media Expenditures

In its response the Committee stated that it had reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by the vendor (which was found to be acceptable by the Audit staff



during the fieldwork) was incorrect. 5/ They further stated: "The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV station to allocate the cost of a broadcast." However, other than a letter from their media firm explaining that they had recalculated the media costs based on "County Coverage Reports (CCR)" rather than on the basis of "Area of Dominant Influence (ADI)" 6/ no other workpapers supporting the reallocation of media expenditures was supplied to the Audit staff with the response. The letter from the media firm does not provide an explanation of the method used for determining the number of eligible voters in the County Coverage Reports.

At the time the Committee's response was received they indicated that the reduction of total media expenditures allocable to New Hampshire and Iowa contained on the computer printout was an estimate and that the media firm had not completed their calculations.

On June 11, 1981, the Committee provided the final figures for the media allocations. The Audit staff does not object to the use of the CCRs for the allocation of media expenditures; however, based on the review of these allocations and the supporting documentation, the Audit staff noted the following:

1. It appeared that the Committee's media vendor simply applied New Hampshire and Iowa CCR percentages to those media buys previously allocated to these states under ADI but did not (re)allocate to these states any buys previously not allocated under ADI which would be required under CCR. There are 10 out-of-state stations which overlap New Hampshire according to CCR data. The Committee made media buys at five (5) of these stations for which no (re)allocations have been made. 7/ The dates of these buys are not known to the Audit staff at this time to verify that the buys were all subsequent to the New Hampshire primary and would, in fact, not require such an allocation.

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5/ As noted earlier in this report, although provided with the media allocation totals by their media firm the Committee had not allocated any media costs.

6/ The Area of Dominant Influence (ADI) is a geographic design which defines each television market, exclusive of another, based on measurable viewing patterns. County Coverage Reports detail for every county, net weekly circulation (number of different households viewing the station in a week), for every station, whether the county is within or outside the station's ADI.

7/ Two (2) of these were Springfield, Massachusetts stations, two (2) were Burlington, Vermont, and one (1) was New Bedford, Massachusetts.

2. \$1,450 in media buys at one (1) of the Burlington, Vermont TV stations referred to above were reviewed during the audit fieldwork that were denoted "N.H. primary". These expenditures did not require an allocation to New Hampshire under the ADI method but most likely would on the basis of CCR. The Committee's revised figures did not include any allocation to New Hampshire for these purchases.

3. On July 8, 1981, the Committee provided the Audit staff with schedules indicating that refunds from various New Hampshire and Iowa stations had been received and that \$5,327.86 and \$3,502 should be deducted from the New Hampshire and Iowa allocations, respectively. These schedules were dated November 18, 1980 while the media firm's CCR reallocations were dated May 18 and 21, 1981. Therefore, it appears that the refunds are calculated under ADI percentages while the time buys are now (re)allocated under CCR percentages.

The above matters have been discussed with the Committee's controller who requested clarification and/or additional information from their media firm representative. With respect to item number a., the media firm representative stated that the reallocation was done "from scratch" and that all buys at the five (5) stations with a New Hampshire overlap were subsequent to the New Hampshire primary.

With respect to item number b., the media firm representative advised that his assistant may have missed the Burlington, Vermont buys. A copy of the invoice in question was provided to the Committee's controller who was to forward it to the media representative. The Committee's controller stated that any necessary corrections would be provided to the Audit staff.

With respect to item number c., he agreed that the refunds would require an allocation adjustment calculated on the basis of CCR percentages.

Due to (1) the possible omission of the Burlington, Vermont media buys from the Committee's reallocations, (2) the timing of the Massachusetts and Vermont primaries (March 4) in relation to the New Hampshire primary (February 26) and that the media firm asserts that no Massachusetts or Vermont buys were prior to February 26, and (3) the fact that the Committee's revised media allocations are again subject to change (on the basis of eligible Democratic votership), no changes have been made to the Audit staff's original media allocations, except for minor revisions resulting from other updated information.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report that the Committee provide:

a. documentation for all media buys made at the five (5) stations noted in a. and b. above which will show the dates the programs were broadcast; and

b. revised refund schedules using CCR data as noted in c. above.

Absent the presentation of the documentation noted above within 30 days of receipt of this report, pursuant to 11 C.F.R. Section 9038.2(b), no adjustments to the amount allocable to New Hampshire and Iowa will be made based on the Committee's response in this area.

d. National Press

The Committee stated in its response that each expenditure preliminarily allocated to New Hampshire or Iowa was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. They further stated that the Committee's method of billing the press (225% of first class air fare) was reviewed and approved by the Commission during an enforcement proceeding. The Committee believes that many of the expenditures allocated to New Hampshire and Iowa were for services provided to the National Press. Since the costs of these services were included in the basis for the 225% charge and subsequently reimbursed to the Committee, they therefore should not be allocated to the states' limits.

The Audit staff does not disagree with the concept that expenditures for services provided to members of the press which are subsequently reimbursed by the press need not be charged to any limitation. However, the Committee has not provided any information to show a relationship between any particular expenditure or group of expenditures which they have charged to exempt National Press and the activities of the National Press. In addition, the Committee has not provided a list of the total amount billed to the national press nor the total amount received from the national press based on these billing.

Furthermore, in its response to Commission inquiries during the enforcement proceeding, Committee officials indicated that the charge to the press for traveling with the candidate was always initially based on 225% of first class airfare but was often adjusted downward once the total cost of the trip was determined. Of the four (4) examples of campaign flights provided to the Commission by the Committee during the proceeding the highest billing rate reported by the Committee was approximately 150% of the first class airfare.

The Committee has also stated that the salaries of various staff persons who devoted all or a part of their time to the national press likewise should not be allocated to an individual state but should be treated as a national non-allocable expenditure. The Committee has therefore allocated approximately 33% of each advance staff person's salary to exempt national press.

The Committee has not provided the Audit staff any information as to how this percentage was derived. Further, no definition of these activities has been offered by the Committee nor have any worksheets or other documents supporting this allocation been presented to the Audit staff.

11 C.F.R. 106.2 states that expenditures for administrative, staff, and overhead costs directly relating to national campaign headquarters need not be allocated to states while expenditures for staff, media, printing, and other goods and services used in a campaign in a specific state shall be attributed to that State. Since these salaries were for staff services used in the states of Iowa and New Hampshire and do not relate directly to national headquarters, the Audit staff can find no basis for exempting advance staff salaries from the state expenditure limits.

The Audit staff has not adjusted any of the amounts allocable to New Hampshire and Iowa in the area of national press based on the Committee's response.

Recommendation

The Audit staff recommends that, pursuant to 11 C.F.R. Section 9038.2(b), absent the presentation of documentation verifying the accuracy and reasonableness of the Committee's National Press allocations within 30 days of receipt of this report that no adjustments be made to the amount allocable to New Hampshire or Iowa on the basis of the Committee's response in this area. This documentation should include but is not limited to:

- a. the total amount billed to the national press by trip and the total amount received from the press based on these billings;
- b. the types of expenditures charged to exempt national press and their relationship to the national press. At a minimum this documentation should indicate that for the expenses charged to the national press, that the national press were in the area at the time the services were rendered;
- c. workpapers used to derive the percentages applied to the salaries of advance staff personnel allocated to exempt national press; and

New Wording

d. the activities performed by the advance staff personnel which constitute "national press" activity and the amount of time spent by each of these individuals in those activities as well as the method employed in making these determinations.

The Audit staff's review of the Committee's response and accompanying documentation pertaining to a-d above resulted in \$385,851.07 in expenditures allocable to New Hampshire and \$636,456.32 to Iowa.

D. Contributions From Other Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code requires a committee to disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 432(c)(4) of Title 2 of the United States Code states, in part, that the treasurer of a political committee shall keep an account of the identification of any political committee which makes a contribution, together with the date and amount of any such contribution.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. In addition, Section 431(11) defines, in part, the term "person" to include a partnership, committee, association, corporation, or any other organization or group of persons.

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

1. Itemization of Contributions from Political Committees

A review of reports on file at the Commission revealed that 28 political committees reported making 31 contributions to the Committee totaling \$30,322.00 which were not itemized on the Committee's disclosure reports. The Committee maintained copies of the transfer checks for seven (7) of these contributions.

The Audit staff recommended that the Committee file amended reports itemizing these contributions. On May 19, 1981, the Committee filed comprehensive amendments itemizing these contributions.

Recommendation

The Audit staff recommends no further action on this matter.

2. Excessive Contributions from Registered Committees

A review of the Committee's receipt records revealed that the Committee received contributions from one multicandidate committee which exceeded the limitation by \$4,875.00. In addition, the Audit staff identified contributions in excess of \$1,000 from two (2) political committees that apparently were not qualified as multicandidate committees as defined by Section 441a(a)(4). The excessive portion of the contributions from the two (2) non-qualified committees totaled \$3,702.60.

The Audit staff recommended that the Committee refund the excessive portions of these contributions. On June 15, 1981, the Committee provided a copy of the check used to refund the \$4,875 to the multicandidate committee. For the excessive contribution from one (1) of the apparent non-qualified committees, the Committee provided a copy of the check to document that the excessive portion was contributed to a charitable organization since the committee is no longer in existence. For both refunds, a Committee official agreed to provide copies of the cancelled checks upon receipt from the bank.

For the remaining apparent non-qualified committee, the Committee treasurer stated that the contributing committee had informed him that they had achieved multicandidate status prior to making the contribution. A review of records on file at the Commission indicates that the committee met the requirements for obtaining multicandidate status on April 8, 1980 which was four (4) days after the contribution was made.

Recommendation

Since the excessive contributions received from two (2) of the committees have been disposed of properly, the Audit staff recommends that no further action be taken.

Further, the Audit staff is of the opinion that the multicandidate committee's qualifying four (4) days after contributions exceeding \$1,000 were made is immaterial and recommends that no further action be taken on this matter.

E. Undisclosed Debt

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

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts at November 30, 1980, the Audit staff identified a total of \$177,149.32 in debts which were not disclosed by the Committee. In addition, it was determined that the Committee's disclosed debts at November 30, 1980 were overstated by \$34,749.27.

Of the \$177,149.32 in undisclosed debts, \$136,592.65 were supported by unpaid bills, invoices, etc.

In the interim audit report the Audit staff recommended that the Committee amend their December Monthly report and subsequent reports to the extent affected, to accurately reflect the outstanding debts as of November 30, 1980. On May 19, 1980, amended reports were filed substantially correcting the understatement.

Recommendation

The Audit staff recommends that no further action be taken on this matter.

F. Processing of Questionable Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation, to make a contribution or expenditure in connection with any election to any political office. It further states that it is unlawful for any political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or any officer of any corporation or national bank to consent to any contribution or expenditures by the corporation or the national bank.

New Wording

Section 103.3(b) of Title 11 of the Code of Federal Regulations states, in part, that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. A statement noting that the legality of the contribution is in question shall be included in the report, and best efforts made to determine legality. When the legality of the contribution cannot be determined, refunds shall be made within a reasonable time and the current report shall be amended to reflect the Committee's response.

The Committee maintained a separate checking account, known as the escrow account, for depositing contributions which needed further documentation to confirm their legality. Funds in the escrow account were not expended for campaign purposes until their legality was determined, at which time they were transferred to the operating account.

During the threshold audit, it was determined that the Committee's written procedures for processing questionable contributions deposited into the escrow account were not followed by Committee personnel. The threshold report of the Audit Division included a recommendation that the Committee follow its written procedures as well as revise those procedures to include a written record noting the basis for the appearance of illegality of the contributions.

During the post-primary audit, there appeared to be no change in the Committee's method of processing contributions deposited into the escrow account.

According to the Committee's bank records, the balance in the escrow account at January 1, 1980 was \$120,542.06. During the period January 1 through August 31, 1980, receipts totaling \$172,796.50 were deposited into the escrow account and \$243,960.51 was disbursed, leaving a balance at August 31, 1980 of \$49,378.05. The Audit staff was able to verify that \$236,608.65 was transferred from the escrow account to the Committee's operating account. Also, cancelled checks for contribution refunds totaling \$3,815.00 were reviewed by the Audit staff.

The "escrow check log", the Committee's record of deposits into the escrow account, showed a balance at August 31, 1980 of \$59,260.48. The records maintained by the Committee do not contain sufficient detail to explain either the discrepancy between the bank balance and escrow check log balance or the source of the contributions making up the \$49,378.05 bank balance.



As best could be determined by the records provided, contributions making up this balance could have been in the account, in some cases, for as long as eight (8) months.

In its interim audit report, the Audit staff recommended that the Committee determine the source and legality of the \$49,378.05 remaining in the escrow account at August 31, 1980 and refund to the original contributors any contributions confirmed to be from impermissible sources. It further recommended that if the source of any contributions could not be identified, the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign or candidate. The Audit staff also recommended that the Committee provide copies of cancelled checks for all contribution refunds made during the period January 1, 1980 to August 31, 1980.

On May 19, 1981 and July 27, 1981, the Committee presented to the Audit staff documentation verifying transfers totaling \$20,640 in permissible contributions to the operating account. Documentation was also provided verifying that \$3,272.00 was comprised of funds from impermissible sources which the Committee intended to contribute to charity. In addition, cancelled checks for all contribution refunds (except 12 outstanding checks totaling \$1,140) were made available for review by the Audit staff. The Committee adjusted the account by \$1,348.00 for NSF check charges which were erroneously charged to the account and bank charges of \$29.57. The Committee did not provide documentation adequately identifying the source of the remaining \$25,644.48 in the escrow account. For a detailed analysis of the deficiencies in the Committee's response see Attachment 2.

#### Recommendation

The Audit staff recommends that within 30 days of receipt of this report, the Committee provide documentation that the \$25,644.48 balance of undocumented contributions contained on Attachment 3 are permissible under the Act. For any contributions comprising any portion of that amount which are not permissible the Committee should provide evidence (cancelled checks) that those contributions have been disposed of in a lawful manner unrelated to any Federal election, campaign, or candidate.

#### G. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel on February 9, 1981 and June 25, 1981.

III. Findings Related to Title 26 of the United States Code  
Determination of Net Outstanding Campaign Obligations  
and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) and (b) of Title 11, Code of Federal Regulations, requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, an estimate of necessary winding down costs, and the total of the fair market value of capital assets on hand, within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

On August 13, 1980, Senator Edward M. Kennedy's candidacy terminated for the purpose of incurring qualified campaign expenses. 8/

At the conclusion of the audit fieldwork, the Committee had filed NOCO statements covering the period from August 13, 1980 through December 26, 1980. To facilitate the verification of the Committee's net outstanding campaign obligations, the NOCO statement as of November 28, 1980 was audited. The Audit staff made necessary adjustments to this statement to properly reflect the candidate's cash position as of November 28, 1980, and to correct misstatements of accounts payable and the Committee's estimate of winding down costs (see Attachment 3).

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8/ Commission regulations at 11 C.F.R. Section 9032.6 provide that the date on which a party nominates its candidate for President is the end of the matching payment period for a candidate seeking the Presidential nomination of that party. 11 C.F.R. Section 9033.5(c) provides that the last day of the matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. Section 9033.5(a) or (b). Since the Democratic Party nominated its Candidate for President on August 13, 1980, that date is the date of Senator Kennedy's ineligibility.

Various artists produced original works of art which could be reproduced and used by the Committee as inducements in the solicitation of contributions. It was further determined that the Committee had negotiated bank loans secured by a number of these prints. The Committee has not recognized art prints as a capital asset(s) in any NOCO statement filed to date. Due to the effect on matching fund entitlement that the consideration of art prints as a capital asset(s) could have, the Audit staff requested that the Committee furnish an inventory of art prints on hand at November 28, 1980, as well as an accounting of all prints disposed of between the ineligibility date and November 28, 1980. This information was to be used to determine the inventory on hand at the candidate's date of ineligibility. On January 28, 1981, the Committee presented a memorandum to the Audit staff which stated that, as of November 28, 1980, there were 6,525 art prints on hand. However, the information contained in this memorandum was not sufficient to calculate the inventory at the candidate's ineligibility date.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit a written independent appraisal of the fair market value of the art prints and provide an inventory of prints on hand at August 13, 1980. In the Committee's response to the interim audit report, received on May 19, 1981, the Committee treasurer stated that there were 6,904 prints on hand at August 15, 1980. The Committee, however, did not provide the fair market value appraisal of the artworks because (the Committee) "believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least \$10,000." Further the response states: "The request is inappropriate because there is no basis on which to determine the 'fair market value' of the artwork for purposes of 11 C.F.R. Section 9034.5(c), 26 U.S.C. Section 9034."

The Committee treasurer also cited Advisory Opinion Request 1980-136 in which the Commission was unable to decide whether the Committee could lawfully use the artwork to settle debts and stated: "...without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible."

Finally, the Committee treasurer asserted that the artwork should not be treated as a "capital asset" since it cannot be readily converted to cash or used in debt settlement due to restrictions placed on its sale or disposition.

He concluded that "the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair."

As of November 28, 1980, the Committee's reported net outstanding campaign obligations as adjusted totaled \$1,134,566.51. Based on that amount, the Committee received a matching fund payment of \$29,004.47. Therefore, as of that date, the candidate had received no matching fund payments in excess of his entitlement. However, this determination may be subject to change based on the effect that the inclusion of art prints as an asset may have on the Committee's financial position.

#### Recommendation

The Audit staff recommends that, until such time that the Commission approves or proposes permissible alternatives as to the disposition or liquidation of the artwork, no further action can be taken on this matter.

#### B. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2) of Title 26 of the United States Code provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than: to defray the qualified campaign expenses with respect to which such payment was made; or to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9032(9)(A) and (B) of Title 26 of the United States Code and Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value incurred by a candidate, or by its authorized committee, in connection with his campaign for nomination or election; and neither the incurring nor payment of which constitutes a violation of any law of the United States or the state in which the expense is incurred or paid.

#### 1. Expenditures in Excess of State Limitations

As previously discussed in Finding II.C., the Audit staff identified expenditures in excess of the state limitations in New Hampshire and Iowa.

On April 9, 1981, the Commission approved the Audit staff's recommendation that the Committee be requested to demonstrate, within 30 days of receipt of the interim audit report, that these state expenditure limitations had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee's response to the interim audit report, and the documentation which accompanied it, and made revisions to the amounts allocable to the New Hampshire and Iowa state limits. The revised summary of Committee expenditures allocable to New Hampshire and Iowa is presented below:

	<u>New Hampshire</u>	<u>Iowa</u>
Committee Allocation Reports	\$ 210,884.64	\$ 380,792.10
March and April Expenditures	34,425.68	8,917.22
Media	52,151.20	80,390.69
Salaries	73,211.98	111,039.94
Per Diem and Expense Reimbursements	1,913.60	2,852.09
Outstanding Debts	3,242.18	10,970.84
Other Vendor Payments	<u>10,021.79</u>	<u>41,493.44</u>
Total	\$ 385,851.07	\$ 636,456.32
State Limitations	<u>(294,400.00)</u>	<u>(489,881.00)</u>
Amount in Excess of Limitation	<u>\$ 91,451.07</u>	<u>\$ 146,575.32</u>

Recommendation

The Audit staff recommends that these expenditures totaling \$238,026.39 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

2. Payment of Parking Violations

During the conduct of various audit procedures, the staff identified Committee payments totaling \$141.50 for parking tickets received during the campaign. The entire \$141.50 was expended prior to the date of ineligibility.

Recommendation

The Audit staff recommends that these expenditures totaling \$141.50 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

Repayment Summary

Finding III.B.1.	Expenditures in Excess of State Limitations	\$238,026.39
Finding III.B.2.	Payment of Parking Violations (pre-ineligibility)	<u>\$ 141.50</u>
Total		<u>\$238,167.89</u>

Pursuant to Section 9038.2 of the Code of Federal Regulations, the amounts noted above in the Repayment Summary, totaling \$238,167.89, are repayable to the United States Treasury within 90 days of receipt of this report. If the candidate disputes the Commission's determination that a repayment is required, he may submit in writing within 30 days of receipt of this report, legal or factual materials to demonstrate that a repayment is not required.

Comparison of Allocation Totals

New Hampshire

	<u>Audit Verified</u>	<u>Committee Reallocation</u>	<u>Difference</u>
Committee Allocation Reports	\$210,884.64	\$158,176.01	\$ 52,708.63
March & April Expenditures	34,425.68	19,678.47	14,747.21
Media	52,151.20	46,021.85	6,129.35
Salaries	73,211.98	46,138.74	27,073.24
Per Diem & Expense Reimbursement	1,913.60	1,086.13	827.47
Outstanding Debts	3,242.18	2,740.08	502.10
Other Vendor Payments	<u>10,021.79</u>	<u>5,670.94</u>	<u>4,350.85</u>
Total	<u>\$385,851.07</u>	<u>\$279,512.22</u>	<u>\$106,338.85</u>

Iowa

	<u>Audit Verified</u>	<u>Committee Reallocation</u>	<u>Difference</u>
Committee Allocation Reports	\$380,792.10	\$258,320.27	\$122,471.83
March & April Expenditures	8,917.22	5,889.15	3,028.07
Media	80,390.69	85,180.86	(4,790.17)
Salaries	111,039.94	74,981.10	36,058.84
Per Diem & Expense Reimbursement	2,852.09	1,775.03	1,077.06
Outstanding Debts	10,970.84	8,942.24	2,028.60
Other Vendor Payments	<u>41,493.44</u>	<u>38,198.22</u>	<u>3,295.22</u>
Total	<u>\$636,456.32</u>	<u>\$473,286.87</u>	<u>\$163,169.45</u>

## ANALYSIS OF COMMITTEE RECONCILIATION OF ESCROW ACCOUNT

	<u>Committee Response</u>	<u>Audit Verified Amount</u>
Bank Balance at August 31, 1980	\$49,378.05	\$49,378.05
Undocumented expenditures during period 9/1/80 - 3/31/81 <u>1/</u>	<u>(12,090.00)</u>	(10,870.00)
Bank Balance at March 31, 1981	37,288.03	
Committee adjustments		
Redeposited check <u>2/</u>	(1,000.00)	
Outstanding checks <u>3/</u>	(1,140.00)	( 1,140.00)
NSF checks erroneously charged to escrow account <u>4/</u>	1,348.00	1,348.00
Escrow transfer <u>5/</u>	(3,000.00)	
Miscellaneous bank charges	<u>(29.57)</u>	( 29.57)
	33,466.48 <u>6/</u>	
Permissible contributions to be transferred to the operating account <u>7/</u>	(13,520.00)	(9,770.00)
Unidentified deposit donated to charity <u>8/</u>	(3,000.00)	
Amount from prohibited sources to be donated to charity <u>9/</u>	<u>(3,522.00)</u>	<u>(3,272.00)</u>
Balance (undocumented contributions remaining in the escrow account) <u>10/</u>	<u>\$13,424.48</u>	<u>\$25,644.48</u>

- 1/ The Committee submitted documentation confirming the legality of \$10,870.00 of this amount which has been transferred to the operating account.
- 2/ No documentation concerning this check has been provided.
- 3/ This amount comprises 12 checks which have been outstanding for over one year.
- 4/ These NSF checks were charged against the escrow account prior to August 31, 1980. The escrow account has been reimbursed by the operating account for these charges.
- 5/ The Committee has not identified this transfer.
- 6/ The Committee submitted a computer print-out of contributors' names and contributions totaling this amount.
- 7/ The Committee submitted documentation confirming the legality of \$9,770.00 of this amount.
- 8/ The Committee has not provided sufficient information to identify this deposit nor have they provided a copy of the check made payable to the charity.
- 9/ Contributions comprising \$250 of this amount had already been refunded in February and April 1980.
- 10/ The Committee has not presented documentation confirming the legality of this amount.



Kennedy For President Committee  
Statement of Net Outstanding Campaign Obligations

November 28, 1980

<u>Assets</u>	<u>As Stated</u>	<u>Adjusted by Audit</u>
Cash	\$ 168,566	\$ 149,781.27 1/
Accounts Receivable (net)	10,000	10,000.00
Capital Assets	<u>-0-</u>	<u>4/</u>
	<u>\$ 178,566</u>	<u>\$ 159,781.27</u>
 <u>Obligations</u>		
Accounts Payable for Qualified Campaign Expenses	\$ 664,800	\$ 646,638.78 2/
Estimated Wind Down Costs 11/28/80 to 5/15/81 (Projected Termination Date)	181,000 3/	149,700.00 3/
Bank Notes Payable	484,897	484,897.00
Accrued Interest	<u>13,112</u> <u>\$1,343,809</u>	<u>13,112.00</u> <u>\$1,294,347.78</u>
Net Outstanding Campaign Obligations - Deficit	<u>\$1,165,243</u>	<u>\$1,134,566.51 4/</u>

- 1/ Cash in bank was adjusted to accurately reflect the candidate's cash position at 11/28/80.
- 2/ The Committee's accounts payable balance was adjusted by eliminating undocumented payables totaling \$46,479.70 (11 C.F.R. Section 9033.1(a)(1)(i)), and adding documented payables not included in the Committee's balance totaling \$61,758.08. Included in the documented payables is a \$21,502 contingent liability currently in dispute with the creditor.
- 3/ The Committee inadvertently omitted an estimate of wind down costs on the original 11/28/80 NOCO statement. The Committee corrected this oversight by letter indicating that the subsequent NOCO statement of December 15, 1980 included wind down costs which totaled \$181,000.00. This amount was adjusted by disallowing a \$15,000 postage and handling estimate for mailing gifts to campaign staff and volunteers which does not meet the definition of a wind down cost (11 C.F.R. Section 9034.4(c)), and to correct a \$16,300 addition error in totaling the various components of wind down costs.
- 4/ Exclusive of a valuation of art prints as assets.

Exhibit 1

2107010101











KENNEDY FOR PRESIDENT COMMITTEE

1000 Sixteenth Street, N. W.  
Washington, D. C. 20036

May 18, 1981

Chairman John W. McGarry  
Federal Election Commission  
1325 K Street, N. W.  
Washington, D. C.

RE: Interim Report of the Audit Division  
on the Kennedy for President Committee

Dear Chairman McGarry:

This letter will address the issues raised in the Commission's Interim Audit Report on the Kennedy for President Committee following the format set out in its report.

In response to the report the Committee has taken the following actions in order to comply fully with the letter and the spirit of the Federal Election Campaign Act:

1. The Committee has prepared and filed a Comprehensive Amendment as of November 30, 1980, correcting the technical reporting errors and omissions which were cited in the Commission's report.

2. The Committee has conducted an exhaustive search of its records to determine the nature, extent and identification of all deposits which were made into state and other local accounts, and where required, the Committee has reported all such deposits in the Comprehensive Amendment.

3.

4. The Committee devoted substantial resources to studying expenditures in New Hampshire and Iowa which may have exceeded the limitations of 26 U.S.C. Section 9035. For the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining



what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations set forth a "reasonable basis" standard for allocations, and in particular, 11 C.F.R. Section 106.2 sets forth a regulatory scheme for the allocation of expenditures among states by candidates for presidential nomination.

The standards, although somewhat vague, were applied in 1976 without apparent difficulty. It appears, however, that the Commission has changed its position in 1980 shifting the burden to the candidate to prove that any method of allocation was reasonable in contrast to the standard used in 1976 that placed on the Commission the burden of proving that the allocation was in fact unreasonable. The Committee believes that any method of allocation between states which is reasonable should be accepted by the Commission, and if, in the future, the Commission desires to regulate this area in a more specific manner, it should do so through the regulatory framework set up under the statute not retrospectively through the audit process.

The Committee's method in analyzing its state expenditures in Iowa and New Hampshire was to examine each expenditure made on an individual basis to determine whether or not the individual expenditure should be allocated to the particular state in whole or in part. The bulk of the work in this area was performed by independent auditors working for two national accounting firms. A more specific description of the Committee's analysis of expenditures made in Iowa and New Hampshire will be set out later in this letter.

#### COMMITTEE RESPONSE

Following are the Committee's specific responses to the interim report's findings and recommendations, numbered to correspond to your report.

#### II. Audit Findings & Recommendations Relating to Title 2 of the U.S. Code FEC Auditors' Recommendations

"The Audit staff recommends that . . . the Committee:

- 1) amend their reports to include the 34 expenditures totalling \$73,916.15 made from national accounts previously unreported;
- 2) amend their reports to include the \$220,526.54 in expenditures drawn on state and scheduling accounts and not previously reported;
- 3) identify the source of the funds and amend their reports to include the \$52,602.79 in receipts comprising the deposits to the 23 state and scheduling accounts previously not reported;
- 4) amend their reports to increase unitemized receipts by \$9,000.00 to correct the error made in attempting to adjust for contributions returned by the bank for insufficient funds; and
- 5) amend their reports for mathematical errors which caused a \$9,181.66 overstatement in total expenditures."

The Committee, through its Comprehensive Amendment, has corrected all of the aforementioned reporting errors and currently reported any items which were previously omitted. Further, the Committee has refiled the November 30, 1980 Year End 1980, and March 31, 1981 reports correcting past reporting errors described in the Audit Report. Specifically:

- 1) The Committee has included in its 1980 Comprehensive Amendment, 34 expenditures totalling \$73,916.15 made from national accounts which were previously inadvertently unreported (Exhibit A);
- 2) The Committee also included in the 1980 Comprehensive Amendment, state and scheduling account expenditures totalling \$207,409.04 which were not previously reported. The discrepancy between this amount and the \$220,526.54 reflected in the Auditors' recommendation results because the auditors arrived at their total by reviewing a draft of the Comprehensive Amendment. The draft did not properly reflect expenditure amount corrections. The 1980 Comprehensive Amendment, as filed, reflects amount corrections by reporting the actual amount of the expenditure while simultaneously deducting the amount originally reported (Exhibit A).
- 3)

B. MISSING RECORDS

1. Bank Accounts Records

"The Audit staff recommends that the Committee provide for our review . . . the bank records outlined on Attachment 3."

The Committee has provided records from 21 banks as requested by the Audit Staff but the Committee to date has been unable to obtain the records required from the following three banks. Further efforts are being made to obtain these records:

<u>State</u>	<u>Bank</u>
Vermont	Merchants National
Rhode Island	Columbus National Bank
Maine	Bank of Maine

The Audit Staff indicated a failure on the part of the Committee to furnish missing bank records and loan documentation despite repeated requests to Committee Officials for such information. From the facts available to Committee Officials, this statement appears to be incorrect. Although Committee Officials were aware of the Auditors' interest in obtaining the missing bank records, no formal requests were received by the Treasurer or Chairman of the Committee. Upon the first informal request by the Audit Staff, the Committee Staff sent letters to the various banks requesting photocopies of all missing documentation, but as the Commission is well aware, banks may be quite slow in responding to such requests. The Committee made repeated requests of banks that failed to respond and to date, all but the three banks noted above have responded. The Committee has furnished the Audit Staff with all the records in its possession and included in the 1980 Comprehensive Amendment any receipts ascertained to have been previously unreported.

2. Loan Records  
FEC Auditor's Recommendation

"The Audit Staff recommends that the Committee provide for our review . . . . copies of executed notes, loan agreements, collateral agreements, security agreements and any other documents relating to all loans negotiated by the Committee, excluding those documents received as indicated on Attachment 4. In addition, the Audit Staff recommends that the Committee file an amendment to disclose the nature of the obligations, including collateral and/or security for the 12 loans".

The Committee wishes to direct the Commission's attention to the fact that neither the statute nor the Commission regulations require the Committee to keep executed copies of loan agreements or executed notes. The Committee has attempted to obtain copies of all the original loan agreements and executed notes from the various banks. Wherever the Committee has been unable to obtain a copy of the original papers from a bank, the Committee has requested a letter from the president or loan officer of the lending bank specifying the terms of the agreement or note.

It was the Committee's practice during the campaign to prepare various loan documents and have the Committee's Treasurer or Chairman sign the papers. These were then copied at the Committee's headquarters with the originals being forwarded to the bank. Once the bank was in receipt of these documents, it executed and retained the originals. Therefore, in most cases the copies signed only by the Committee's Treasurer of the loan documents were in the Committee's possession.

The Committee has provided the Commission's auditors with copies of all executed notes, loan agreements, collateral agreements, security agreements requested (See Attachment B), except those concerning the following loans which have been documented in a different fashion.

<u>Bank/Lender</u>	<u>Date</u>	<u>Amount</u>
Chemical Bank NY	11/16/79	\$ 200,000
	11/23/79	100,000
	11/27/79	100,000
	11/30/79	200,000
	12/03/79	100,000
	12/04/79	100,000
	02/11/80	100,000
	03/14/80	100,000
District of Columbia	11/05/79	\$160,000
National Bank	11/28/79	90,000
Washington, D. C.	04/07/80	5,000
	04/22/80	10,000

In the Committee's Comprehensive Amendment, the Committee has disclosed all of the securities and collateral for the various loans which were made to the Committee (See Attachment A).

**C. ALLOCATION OF EXPENDITURES TO STATES**  
FEC Auditor's Recommendation

"The Audit staff recommends that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect their adjustments. . . . In addition, we recommend the Committee provide the Audit staff with sufficient documentation to allow an allocation determination to be made for those expenditures noted in II.C.4. above".

The Committee has adjusted its accounting records to reflect the amounts allocable to Iowa (Exhibit C), and New Hampshire (Exhibit D) and has amended its last three required reports to reflect adjustments. The Committee has ready for inspection all documentation for the allocations in Iowa and New Hampshire.

Again, for the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations 11 C.F.R. Section 104.10 and 106.1 (a) set forth the "reasonable basis" standard for allocations, and 11 C.F.R. Section 106.2 sets forth a regulatory scheme for all allocation of expenditures among states by candidates for presidential nomination.

11 C.F.R. Section 106.2 states in relevant part:

- (a) Expenditures made by . . . an authorized committee which seeks to influence the nomination . . . shall be allocated to that State . . .
- (b) Expenditures for administrative, staff, and overhead cost directly relating to national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.
- (c) An expenditure . . . for use in two or more States, which cannot be attributed in specific amounts to each State, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures (Emphasis added).
  - (1) Expenditures for . . . television . . . distributed in more than one State shall be attributed to each State in proportion to the estimated viewing audience . . . of voter age which can reasonably be expected to be influenced by these advertisements (Emphasis added).
  - (2) Expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

As stated above, the standards, although somewhat vague, were applied in 1976 without apparent difficulty. It is clear under the standard applied for the 1976 elections and the Commission's regulations, that the Committee followed reasonable methods in allocating expenditures between various states, national and exempt accounts.

The Committee's method of analyzing state by state expenditures in the cases of Iowa and New Hampshire was to review, with the assistance of two accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purposes of influencing the nomination in that particular state. For example, if the voucher indicated that it was a per diem payment made to an individual from an Iowa State Account for a per diem in New York, the per diem was allocated to New York.

### OVERHEAD ALLOCATION

During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditure in a manner consistent with salary allocation.

In order to implement a reliable allocation policy, the Committee asked the independent auditing firm of Fox & Company to develop a methodology and establish percentages to be used in allocating costs to exempt functions.

Fox & Company computed a weighted average percentage of fundraising and compliance time for each state using a sample of four states, thus computing an average to be applied to all states. The computation involved totalling the detail estimates provided by state coordinators for the four sample states to obtain the percentage of exempt costs.

The selection of four states by Fox & Company was judgmentally based on various levels of campaign activity and based on the timing of the state campaigns, in an attempt to insure a representative sample. Percentages were assigned to employees in each state based on interviews with state campaign officials, selected because they directed the campaign activity in each state.

Using the methodology and procedure previously described, Fox & Company determined that 17% of payroll costs relates to fundraising and 22% relates to compliance.

### INTERSTATE TRAVEL AND COMMUNICATIONS

The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2 (c) (2) to the national expenditure limitations.

## MEDIA EXPENDITURES

The Committee reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by its vendor had been incorrect. The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV Station to allocate the cost of a broadcast (Exhibit F).

## NATIONAL PRESS

Further, each expenditure which the FEC Auditors preliminarily allocated to Iowa or New Hampshire, was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. The Committee's billing of the National Press has already been reviewed by the Commission, through an enforcement proceeding. The Committee's basis for charging National Press 225% of the cost of a first class air fare was approved by the Commission in that investigation. The Commission determined that these charges, which covered, among other things, air travel and various ground services that were provided by the Committee, were permitted under the FECA. These services included transportation to and from the airport, baggage handling, typewriters in press rooms, telephone, coffee and refreshments, station wagons and vans in motorcades. In cases where transportation was needed from town to town, buses were supplied without additional cost to the National Press. In conjunction with these services to the National Press, campaign staff was also assigned to the National Press travelling with the candidate.

An attempt has been made to isolate all of these costs and to identify the various staff persons who devoted all or a portion of their time to the National Press. It is clear that since these expenditures were related to the National Press, they should not be allocated to an individual state, but should be treated as National Expenditures. (Cf. 11 C.F.R. Section 9004.6 and Explanation and Justification).

## COMPLIANCE AND FUNDRAISING

Further, the Committee ascertained each individual or percentage of an individual's time that was devoted to record keeping or compliance activity, and identified these expenditures as being exempt from the state limits. (Cf. 11 C.F.R. Section 100.8 (b)(15)).

In addition, each individual who had specific responsibilities for fund raising at an event was identified and a portion of their time was attributed to the fund raising event. Overhead expenses were isolated and a percentage formula was applied to all overhead expenses allocating out a reasonable amount for legal, accounting and fundraising. (Cf. 11 C.F.R. Section 100.9(b)(21)).

## ADVANCE STAFF PERSONNEL

The Audit Staff provided the Committee with workpapers supporting their determination of the amount of advance staff payroll of \$ 26,613 and \$ 38,188 allocable to Iowa and New Hampshire. The Audit Staff determined their allocations by first computing the daily salary for each advance person, assuming a five day work week. The daily salary was then multiplied by the number of days the advance person spent in the State to arrive at the total allocation per person.

The Committee reviewed the work records of its advance personnel and ascertained that during the campaign period they worked on a seven day work week and therefore determined their daily salary based on a seven day week and not the five day week used by the Committee Auditors in the interim report.

Recognizing that the advance staff worked seven days per week during the campaign and made several trips in and out of a given State during the campaign, the Committee has used the following procedure to allocate advance staff salaries.

The daily salary for each individual was computed based upon a seven day week. This daily salary was multiplied by the number of days each advance person spent in the State, excluding all travel days, to arrive at the maximum amount allocable to the State if the advance person spent most of his time involved in influencing the election in that State.

Since the nature of advance work involved significant expenditure of time supporting national press corps, compliance, and fundraising activity, the maximum amount computed for each advance person was allocated to the various categories based upon the percentage of time spent on exempt activities by each advance person. The Committee determined that \$14,806 of advance salaries was allocable to Iowa and \$20,324 to New Hampshire.

## ALLOCATION SUMMARY

When these adjustments were taken into account as indicated on the attached Exhibits C and D, the total expenditure in Iowa was \$ 451,803 and \$ 267,223 in New Hampshire. It is the Committee's firm belief that the methods used in determining these allocated amounts were reasonable and within the Commission's guidelines and regulations.

These revised allocations are reflected in the 1980 Comprehensive Amendment.



D. REVIEW OF RECEIPTS

1. Timely Processing of Questionable Contributions  
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee attempt to determine the source and legality of the \$49,378.05 . . . . . remaining in the escrow account. Any contributions confirmed to be from impermissible sources should be refunded to the original contributors and copies of the cancelled checks (front and back) provided to the Audit Staff.

If the source of any of the contributions cannot be identified, the Audit Staff recommends that the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign, or candidate.

The Audit Staff also recommends that . . . , the Committee provide copies of cancelled checks not already provided (front and back) for all contribution refunds made during the period January 1, 1980 through August 31, 1980."

The Committee has reconciled the escrow accounts and provided an inventory of its current composition (Exhibit E). One deposit of \$3,000 could not be identified and has been donated to a qualified charity under 26 U.S.C. 501 (c)(3) (Exhibit G).

The Committee is attempting to determine the legality of a number of escrowed items and is in the process of contacting each person who is indicated as the donor. The Committee has refunded to the original contributor or donated to charity, all contributions from possibly impermissible sources (Exhibit I).

2.

**E. CONTRIBUTIONS FROM OTHER POLITICAL COMMITTEES**

**1. Itemization of Contributions from Political Committees**

**2. Excessive Contributions from Registered Committees  
FEC Auditors' Recommendation**

"The Audit Staff recommends that . . . the Committee either provide evidence that the contributions noted in (1) above were not received or file amended reports itemizing the contributions. In addition, the Audit Staff recommends that the Committee refund the excessive portion of the contributions noted in (2) above."

The Committee has, through its Comprehensive Amendment, itemized 27 contributions totalling \$ 30,319 from political committees which may not have been itemized in previous reports. A \$3.00 amount from the Kennedy for President Committee is an internal transfer. As to the excessive contribution in the amount of \$4,875, this was inadvertently transferred from the Carter/Kennedy Unity Dinner Committee and has been returned. The second purported excessive contribution in the amount of \$3,702.60, does not appear to the Committee to be excessive since it was made by a qualified multi-candidate committee.

**F. UNDISCLOSED DEBT  
FEC Auditors' Recommendation**

"The Audit Staff recommends that . . . the Committee amend their December Monthly Report to accurately reflect the outstanding debts as of November 30, 1980, and amend subsequent reports to the extent that they are affected by those changes."

The Committee has refiled its December Monthly Report to accurately reflect the outstanding debt as of November 30, 1980, and has refiled subsequent reports to the extent necessary (Exhibit A).

**III. Findings Related to Title 26 of the United States Code  
Determination of Net Outstanding Campaign Obligations  
and Repayment of the U. S. Treasury**

**A. Determination of Net Outstanding Campaign Obligations  
FEC Auditors Recommendation**

"The Audit Staff recommends that the Committee obtain a written independent appraisal as to the fair market value of the art prints as of August 13, 1980, as well as a correct inventory of items on hand as of that date and submit this information to the Audit Staff . . ."

The Committee provided the requested inventory (Attachment K), but believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least \$10,000. The standard fee for such an appraisal is 1% of the appraisal value. The request is inappropriate because there is no basis on which to determine the "fair market value" of the artwork for purposes of 11 C.F.R. Section 9034.5 (c), 26 U.S.C. Section 9034.

**Background**

The Federal Election Campaign Act exempts individual volunteer services from the definition of "contribution", 2 U.S.C. Section 431 (8)(B)(i) (Supp. III 1979). Pursuant to this provision the Commission determined that no contribution results where an artist donates his or her services to a political committee by creating works of art that the committee then "sells", or more precisely, uses as inducement for contributions, Advisory Opinion 1979-35. Any amounts paid by a person who receives such artwork, are considered contributions to the Committee, Advisory Opinion 1980-34.

Relying on the Commission's interpretation, a number of noted artists volunteered their services to the Kennedy for President Committee to create limited edition original works of art which the Committee could use to raise funds. The Committee paid for the materials used and other expenses of production while the artists donated their services. The artwork consisted of limited edition lithographs and serigraphs. 7,222 pieces were created, of which 6,904 remained in the Committee's possession on August 15, 1980 (See Exhibit K).

**Use of the Artwork**

The Committee used the artwork in three ways: 1) The artwork was used as an inducement for contributions. The artwork could not be "sold" in the conventional sense because the Commission's ruling that amounts paid for it would be considered contributions limited its marketability. The Committee did not assign a price to any of the items. Although promotional literature indicated each piece's "appraised" value, contributors were often given works of art with a higher appraised value than their contributions. Also the amounts contributed for any particular piece varied. 2) The artwork was

used as collateral for a number of bank loans. It was appraised in connection with the negotiation of these loans, with the values for individual pieces ranging from \$225 to \$1,200. (See Exhibit K). Only 1/3 of this "appraised value" was acceptable to the banks as an estimate of the work's value as collateral, however. (The Commission determined in MUR 1195 that there was no reason to believe the use of the artwork as collateral for loans violated the Act). 3) After the end of the campaign, much of the artwork was given to campaign workers and other persons who had been especially helpful to the campaign in appreciation of their assistance.

The Committee sought an Advisory Opinion on whether it could use the artwork in settlement of debts. (AOR 1980-136) The Commission was unable to decide whether such use violated the Act.

(a) Lack of Basis to Determine "Fair Market Value"

Commission regulations do not define the term "fair market value". Since "fair market value" is a term of art for tax purposes, it is appropriate to construe the Commission's use of the term in a manner consistent with the Internal Revenue Code. Cf. 2 U.S.C. Section 438 (f) (Supp. III 1979).

Valuation of assets often occurs in connection with Federal gift taxes. Tax on a gift of property is imposed based on its "fair market value" on the date of the gift. See 26 C.F.R. Section 25.2512-1. "Fair market value" is defined as:

(T)he price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.

Similar definitions apply in the context of income tax and estate tax. See 26 C.F.R. Sections 2.2002-1, 2031-1 (1980).

It is well settled that restrictions on the sale or disposition of property must be taken into account in determining its "fair market value". See R. Stephens, G. Maxfield & S. Lind, Federal Estate and Gift Taxation, Section 2512, 10.01 (2)(b) (1979 & Suppl 1980). The question often arises in the case of restrictions on the sale or disposition of stock in closely held corporations. See Spitzer v. Commissioner, 153 F. 2d 967 (8th Cir. 1946); James v. Commissioner, 148 F.2d 236 (2d Cir 1945); Commissioner v. McCann, 146 F.2d 385 (2d Cir. 1944). Where such restrictions, or other characteristics, make stock unmarketable, these factors must be taken into account in determining fair market value. See Koffler v. Commissioner, 37 T.C.M. 697 (1978).

Applying these principles to the question of determining "fair market value" for purposes of calculating net outstanding campaign obligations (NOCO), some difficulties immediately appear. The Commission has imposed a direct restriction of the sale of donated artwork -- any sale must be subject to the contribution limits of the Act, even if potential buyers are not informed that the proceeds of the sale will go to a political committee. See Advisory Opinion 1980-34; Advisory Opinion 1979-35. This restriction depresses value in two ways. First, the purchase price must not exceed \$1,000 (unless a group of individuals engaged in a joint purchase). Second, the universe of potential buyers is decreased by excluding those persons who have already given the maximum amount as well as those persons who may wish to own the artwork but do not want to be a contributor to the committee "selling" it. 1/

Even if a discount might be calculable for the restrictions imposed on the "sale" or disposition of the artwork; calculations of fair market value is made impossible by the fact that the Commission has not stated what other legal uses may be made of the artwork. For example, the Commission was unable to decide whether the artwork may be used in debt settlement. See Response to Advisory Opinion Request 1980-136. Without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible.

1/ Another difficulty is that the artwork is often given as an inducement for contributions much less than the work's "appraised value". Also, the artwork may be given away at no charge as a means of showing appreciation to campaign workers or to other persons who have been especially helpful.

(b) Cost as Value

The Committee bore the complete expense of production of the artwork including paper, printing, services of production personnel, etc. The total cost to the Committee was approximately \$90,000. Another possible basis of valuing the artwork, therefore, would be to use the amount actually invested in it by the Committee. This would comport with the approved method for valuing inventories for tax purposes under the Internal Revenue Code. See 26 C.F.R. Section 1.471-2(c) (1980). Viewing the artwork as inventory rather than a capital asset would be much more realistic in view of the similarity between a commercial dealer holding goods for sale and the Committee's holding the artwork as an inducement for contributions. The artwork was not produced for investment purposes. From the beginning, the Committee intended to distribute in return for contributions. Treating the artwork as inventory would place it properly in the same category as other fundraising items such as books, records, and T-shirts.

(c) The Artwork is Not a "Capital Asset"

Commission regulations define "capital asset" for "Net Outstanding Campaign Obligations" as "any property which has remaining useful life exceeding 1 year from the candidate's ineligibility, provided that the fair market value at the date of ineligibility exceeds \$500, (emphasis added). 11 C.F.R. Section 9034.5 (c) (1980). It is impossible to calculate the artwork's fair market value for NOCO purposes (see above discussion). Since there is no basis on which to determine that the value of any of the prints exceeds \$500, it should not be held to be a "capital asset".

If one attempts to calculate the "fair market value" of the artwork for NOCO purposes based on its "appraised value", the discounting required to take account of the restrictions imposed on the Committee's use of the artwork would certainly bring the "value" of any particular print below \$500. The "appraised value" of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's "worth" to an individual recipient, the value of an individual print to the Committee would be much less.

This is true even in the absence of sales restrictions. The Committee, in order to market the prints commercially, would have to "job-out" the artwork to a number of galleries, with attendant commissions and transaction costs, or would have to "wholesale" it, requiring a significant discount. An indication of the magnitude of the reduction in value involved is that, in those cases in which artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 the artwork's "appraised value". Since the highest "appraised value" for any piece was \$1,200, 1/3 of "appraised value" formula used by the banks demonstrates that no work exceeds \$500 in value, even before discounting for restrictions on sale and disposition.

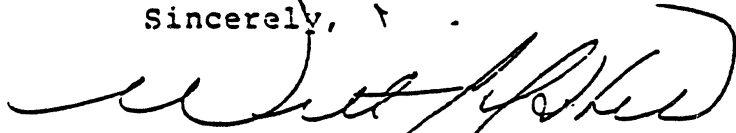
Not treating the artwork as a "capital asset" also agrees with the purposes of including only capital assets in the NOCO calculation. Capital assets are included on the assumption that such assets can be readily converted into cash or used in debt settlement. Because of the restrictions on its sale or disposition, the artwork cannot be considered readily convertible into cash in the same manner as, for example, an automobile owned by the Committee. Furthermore, the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair.

B. Apparent Unqualified Campaign Expenses  
FEC Auditors' Recommendation

"Absent a showing to the contrary. . . the Audit Staff will recommend to the Commission that these expenditures totalling \$348,342.59 be determined as non-qualified campaign expenses, and be repaid in full to the United States Treasury."

As above stated, the Committee has analyzed each item making up the Commission Auditors total expenditures for Iowa and New Hampshire. The Committee allocated \$451,803 to Iowa, and \$267,223 to New Hampshire. (Exhibits L & M). The limit in Iowa was \$489,881 and in New Hampshire \$294,400. Therefore, the Committee believes it did not have expenditures in excess of the limits.

Sincerely, ✓



William C. Oldaker  
Treasurer



Certified Public Accountants

1211 Avenue of the Americas  
New York, New York  
10036  
(212) 730-0600

## Fox &amp; Company

June 2, 1981

Mr. Jay Clevenson  
Controller  
KENNEDY FOR PRESIDENT  
1000 16th Street N.W.  
Washington, D. C. 20007

Dear Jay:

At the request of KENNEDY FOR PRESIDENT COMMITTEE officials, we have developed a methodology which establishes the percentage of overhead costs allocable to compliance and fundraising activities which are specifically exempt from state expenditure limitations. Under generally accepted accounting principles, it is both permissible and preferable to allocate overhead costs to other departments (in the case of a political committee, to components of the committee), based on a systematic and rational method. Using the methodology described in this report, 22% of overhead costs should be allocated to compliance and 17% of overhead costs should be allocated to fundraising.

In our preliminary work, several alternative methods were considered. The method described herein was selected because it utilizes acceptable accounting procedures, provides a systematic and rational allocation and is relatively easy to compute and implement. Other methods under consideration may have provided slightly more accurate estimates but would involve such lengthy accounting computations that insignificant increases in accuracy would be more than offset by the cost of gathering the information and applying the complex methodology.

The first step in determining the overhead allocation requires estimating the percentage of time spent by each state office employee on compliance and fundraising activity. Since it was impractical to make this determination for all states in which there are state field offices, a sample of four states was selected. The selection of states was based on the timing of the state primary or caucus and the level of campaign activity in the states, thus ensuring a representative sample on which to base later computations. The selected states were Ohio, New York, New Hampshire and Iowa. Exhibits I-IV summarize the compliance and fundraising time spent by individuals in these states, based on our discussions with the state desk people directing the campaign activity in the selected states.



June 2, 1981  
Page 2

After estimating the percentage of time spent on exempt activity, the overall employee costs of compliance and fundraising can be easily determined by multiplying each employee's time percentage by the year-to-date salary in the state. Thus, compliance and fundraising costs as a percentage of total costs can be calculated for each of the four sample states, and the combination and averaging of these state figures provide percentages for allocating costs of an overhead nature which were incurred at the state level.

It has been our pleasure to perform this review. If we can be of further assistance, please call me at (212) 730-0600.

Very truly yours,

  
Hershel D. Sosnoff  
Partner

KENNEDY FOR PRESIDENT  
INDIVIDUAL TIME PERCENTAGES

Exhibit 1

IOWA

<u>Employee</u>	<u>Fundraising %</u>	<u>Compliance %</u>
Gluba	10	15
Murphy	10	15
Jochum	5	10
Wanning	25	0
O'Niel, S.	5	10
Sasso	15	15
Schaeffer, Jr.	5	10
Taylor	5	10
Tramontina	5	10
Tully	20	20
Zagnoli, T.	5	10
Van Beck, Jr.	5	10
Miller	0	100
Sands, C.	5	10
Schnapper	10	10
Corrigan	10	15
Hannigan	5	10
Landor	5	10
McDermott	5	10
Hood, V.	5	10
Saunders, H.	5	10
Kadish, S.	5	10
Schoenberg, J.	5	10
Evans, L.	5	10
Ford	10	15
Gelernter	5	40
Corrado, R.	5	10
Johnson, S.	5	10
Moran, K.	5	10
Tenly, P.	5	10
Pazzi, T.	10	15
Leontire, G.	5	10

## KENNEDY FOR PRESIDENT

EXHIBIT II

## INDIVIDUAL TIME PERCENTAGES

## NEW HAMPSHIRE

<u>Employee</u>	<u>Fundraising %</u>	<u>Compliance %</u>
Avellone	10	15
Casey	10	15
Powner	10	15
Dragotta	15	85
Dudley	90	10
Dunfey	10	15
Jenkinson	10	15
Koutsos	10	20
Pappas	10	15
Langan	10	15
Murray	10	15
Levey	10	15
Mulligan	10	15
Petrich	10	15
Murphy	10	15
Apgar	10	15
Okenica	10	15
Peterson	10	15
Rhodes	10	15
Roller	10	15
Symons, J.	25	20
Kanin	20	20
Dilworth	10	15
Bennett	10	15
Kidaloski	10	15
Butler	10	15
Hill	10	15
Kahan, A.	10	15
Callahan, C.	10	15
Cunningham, M.	10	15

KENNEDY FOR PRESIDENT  
INDIVIDUAL TIME PERCENTAGES  
NEW YORK

EXHIBIT III

<u>Employee</u>	<u>Fundraising %</u>	<u>Compliance %</u>
Walsh	0	10
Basser	10	10
Mercado	10	10
Kennedy	10	10
Gregory	10	10
Ruggiero	10	10
Nardone	10	10
Rosenthal	10	10
Soref	10	10
Willis	10	10
Waldt	10	10
O'Donnell	10	10
McFarland	10	10
Ickes	10	15
Daly	25	75

KENNEDY FOR PRESIDENT  
INDIVIDUAL TIME PERCENTAGES  
OHIO

EXHIBIT IV

<u>Employee</u>	<u>Fundraising %</u>	<u>Compliance %</u>
Tully	30	20
Ventresca	30	20
Dragotta	20	80
Landor	20	20
Weeks	20	20



Certified Public Accountants  
1211 Avenue of the Americas  
New York, New York  
10036  
(212) 730-0800

Fox & Company

August 21, 1981

Mr. Jay Clevenson  
Controller  
Kennedy for President  
1050 17th Street, N.W.  
Washington, D.C. 20036

Dear Jay:

The purpose of this letter is to respond to certain questions which you indicated that the FEC audit staff raised in response to our letter of June 2, 1981. Paragraph headings below correspond to the specific questions that you indicated the audit staff wished addressed.

PROCEDURES

The interviews were conducted in May, 1981. It is my understanding that prior to the interviews, a general discussion was held with all participants where exempt costs were defined, and specific examples cited. During the interviews, each participant was asked to review listings of employees in his or her state and indicate if he or she knew the percentage of time spent by such individuals on exempt functions. If the individual interviewed was unable through personal knowledge to estimate the time devoted by specific individuals he was requested to make inquiry to the individuals involved. Specific situations were analyzed as our accountants aided KFP's staff in arriving at appropriate percentage figures. This technique to derive the percentage of time spent on specific activity is in accordance with generally accepted auditing standards.

### CLARIFICATION OF TERMS

Fundraising costs are any expenditures connected or associated with solicitation of contributions. These fundraising costs include, but are not limited to, costs of any mailings to solicit funds including time and material costs of preparing such mailings, costs associated with specific individuals assigned to pass out solicitation material and collect contributions (i.e., pass the hat) at rallies or speeches and costs associated with any events held for the purpose of attracting contributions. Overhead or indirect costs can also be included as fundraising if based on a systematic, rational allocation.

Compliance costs are costs incurred as a result of efforts to comply with the Federal Election Campaign Act, as amended. Examples are the record keeping function required to be maintained in each local field office and the record keeping function for each advance team which had its own checking account. This record keeping function included, among other things, the keeping of the individual check book, the collection of receipts and invoices, the filling out of the FEC expenditure form, and the keeping and reporting of an ongoing expenditure total at the state level for limitation purposes. In addition, a portion of rentals, equipment, and other overhead items should be attributed to compliance.

Overhead costs are defined as those costs not directly adding to or readily identifiable with a department or other cost center, or in the case of a political committee to a component or task of the committee. Since overhead costs cannot, as a practical matter, be traced directly to individual costing units (components) at the time the cost is incurred, an acceptable procedure is to accumulate such costs and subsequently spread them to the various components by allocation.


Overhead items may be viewed as "nonproductive" factors which are necessarily incurred so that the productive aspects of an operation can be performed. Costs of providing a suitable work environment (rent, utilities, furniture, communication) are nonproductive in the sense that they do not directly add to a particular component, but they are necessary so that all components can be performed efficiently and an organization might function. Supervisory costs also do not directly add to a specific component but are deliberately incurred with the expectation of minimizing the direct labor costs through promotion of a tight-knit organization and elimination of waste. Hence, such costs of providing work environment and employee supervision (the common overhead costs) should not be viewed entirely as nonproductive. They are general costs of maintaining a business and must be allocated to components, as appropriate.

#### CONCLUSION

As indicated in our initial report, the method selected for determining percentage allocations of overhead costs to exempt components of the campaign was both "systematic and rational." In accounting terminology, systematic and rational is generally construed to be a higher standard than "reasonable."

I hope this clarifies any problems. If there are any questions please contact me.

Very truly yours,

  
Hershel D. Sosnoff  
Member of the Firm



Fox & Company

Exhibit 5  
Page 10 of  
Acc# 5410  
AID: 11

Certified Public Accountants  
1211 Avenue of the Americas  
New York, New York  
10035  
(212) 730-0600

September 1, 1981

SEP-01 11:47  
AUG  
GENERAL

Mr. Jay Clevenson  
Controller  
Kennedy for President  
1050 17th Street, N.W.  
Washington, D. C. 20036

Dear Jay:

Please note in my letter dated August 21, 1981, that I stated in the first sentence, under the paragraph headed PROCEDURES, that "interviews were conducted in May, 1981." In fact, it should have read "May, 1980."

Please note the correction.

Sincerely,

*Hershel D. Sosnoff*  
Hershel D. Sosnoff

110707013

**SENSITIVE**

*Ermons*  
9-14-81  
12:30



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 14, 1981

Submitted Late

**EXECUTIVE SESSION**

SEP 15 1981

MEMORANDUM

TO: The Commission  
FROM: Charles N. Steele *CS*  
General Counsel  
SUBJECT: Final Audit Report of the Kennedy for President  
Committee

SEP 14 10:54

*5-0 To  
Supplement  
rules*

BACKGROUND

On August 25, 1981, the Commission considered in executive session the proposed [Final] Report of the Audit Division on the Kennedy for President Committee. In reviewing this proposed audit document, a number of questions were raised by the Commission with respect to the "state allocation" section of the Report. In light of these problems, the Commission decided to defer any votes on this section of the Report until September 15, 1981, so that the audit division and Office of General Counsel could attempt to arrive at a mutually satisfactory redraft of the Report and recommend it for the Commission's approval. However, in that the auditors and the General Counsel's Office still have a basic disagreement on some of the underlying issues of the state allocation problem, the auditors determined that a better approach would be for them to redraft the report to try and incorporate the concerns expressed by the Commission at the August 25, 1981 meeting. Such a redraft has been prepared for circulation to the Commission. As this document does not reflect the General Counsel's legal opinion and analysis on the few issues still in dispute, and as no formal legal review would otherwise be submitted with the revised Report, the General Counsel's Office offers the following comments with respect to the state allocations sections of the final audit report. In so doing, this Office has attempted to present what we feel are the remaining issues, as well as the approach taken in the Audit Report, and legal comments with respect to that approach.

LEGAL ANALYSIS

A. General Comments

The revised Report prepared by the Audit Division has rearranged the sections of the Report dealing with the response of the Kennedy for President Committee ("KFP") and has added recommendations in each such section to facilitate Commission analysis and action with respect to the points raised by the KFP response to the Interim Audit Report. The revised Report also contains an introductory paragraph before specifically addressing each of these sections. The Office of General believes it would be helpful if that introductory paragraph explained that the KFP response represents a new allocation method put into effect by the Committee after the post-primary audit field work of KFP was completed. Therefore, the Interim Audit Report did not address these new allocations, but rather concerned the prior KFP allocation method as reflected in the records, reports, and documentation of KFP at the time of the audit field work. Accordingly, the Commission's determinations will respect to allocation of expenditures to states and state expenditure limitations are based on this field work of the prior KFP allocation method, and are the result of the fact that the Commission has not seen all the documentation supporting those new allocations which is necessary in order for the Commission to state for the public record that these allocations are reasonable.

B. Compliance and Fundraising

The issue presented by this section is whether a percentage of KFP overhead costs in a state may be exempted from allocation to that state in proportion to the average percentage of time of staff (working on the campaign in that state) spent on exempt compliance and fundraising activities. A percentage of salary expenditures for staff working in a particular state campaign was also exempted from allocation to states based on this theory. In arriving at these percentages, KFP used the services of an accounting firm, Fox and Co.; however, work papers and supporting documents relied upon by Fox and Co. were not submitted by KFP with its response to the Interim Report. (Letters submitted by Fox and Co. concerning its work for KFP are contained in Attachment I.

The revised Report expresses acceptance of the allocation theory proposed by KFP, but recommends that the repayment figures contained in the Interim Audit Report not be adjusted based on the new allocation system, absent submission of certain necessary documentation, and then gives a non-exhaustive list of what documentation should be submitted. Such an approach seems in line with the Commission comments on this section of the report at the August 25, 1981 meeting.

Memorandum to the Commission

Page Three

Final Audit Report of the Kennedy for President Committee

Underlying this section is also the issue of what will be considered acceptable documentation or "proof" of the KFP staff time percentages derived for it by Fox and Co. 1/ The Fox and Co. letters state that these percentages were derived from interviews with state coordinators in May 1980, and if any of those persons lacked personal knowledge to make the estimates he or she was instructed to speak to the individual staff member in question. The letters also state that prior to the interviews the participants were informed of the KFP definitions of the categories of exempt costs. 2/ The Office of General Counsel believes that work papers used to compute the percentages ought to be submitted for review; however if the computations are found to be accurate, it does not seem that, consistent with what was required of other candidate committees, further "proof" of the accuracy of the percentages based on the aforementioned staff interviews, such as time sheets and job descriptions (see point e of the recommendation of this section of the Report) should now be required of KFP. 3/

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1/

2/ These definitions are provided in the August 21, 1981 Fox and Co. letter. Attachment I.

3/ This of course assumes that the definitions of exempt activities used by KFP are acceptable. This assumption may be incorrect in the auditors' opinions, but as yet, these definitions haven't been addressed by the Audit Division.

C. Interstate Travel and Communications

This section continues the procedure adopted by the auditors in revising the Report, which specifies the documentation necessary for the auditors to review the new KFP allocation system for interstate travel and communications. In addition, the text, recommendation, and materials requested are consistent with the July 2, 1981, letter sent to candidates concerning the allocation of these types of expenditures. See Attachment II.

D. Media Expenditures

This section does not present any of the allocation issues that seemed to trouble the Commission at the August 25, 1981 session, as it accepts (properly so, in the opinion of the Office of General Counsel) the newly adopted KFP procedure of making media allocations based on county-coverage reports. The recommendation, as the other recommendations in this state allocation portion of the Report, rejects the new KFP allocations absent the presentation within thirty days of certain documentation which is also listed in the recommendation. The Office of General Counsel does not have a problem with the materials requested.

E. National Press

This section of the Report presents two issues. The first concerns the procedure used by KFP in its recently adopted allocation system with respect to exemption of national press expenditures. The proposition put forth by KFP is that, in light of the fact the committee purportedly received from the press as airfare reimbursements monies in excess of the actual costs incurred by KFP for that air travel, KFP ought to be able to, and did, consider those surplus funds received as reimbursements for other costs incurred by KFP in a particular state for press services. Therefore, KFP asserts, it should be able to deduct those reimbursements of press costs from the respective state allocations. 4/

The Report reflects the auditors agreement with the basic concept put forth by KFP. However, the auditors would only permit this allocation system to be implemented on a trip-by-trip basis, i.e. they would only permit the reimbursement theory to operate to treat ground costs for press activities for a particular

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4/ KFP has not yet provided any of the figures or computational schedules or other documentation implementing and supporting this system. Therefore, the recommendation requests submission of these materials within thirty days in order to achieve consideration or modification of the repayment determination.

Memorandum to the Commission

Page Five

Final Audit Report of the Kennedy for President Committee

trip as reimbursed expenses if there was a surplus of press monies received for the airfare for that same trip. The Office of General Counsel, on the other hand, believes that so long as KFP can show a net aggregate surplus of press monies received over airfare costs for travel by press for the entire campaign, this surplus can be applied as a reimbursement to any other unreimbursed costs incurred by KFP on behalf of the press. The General Counsel's Office feels there is no justification for rejecting an "aggregate" approach, especially in light of the fact that no requirement of maintaining records for press travel on a trip-by-trip basis was ever communicated to KFP. Accordingly, the Office of General Counsel believes point a in the recommendation of this section ought to delete the reference to figures on a "by trip" basis.

Also presenting a problem which should be resolved at this time is the extent of documentary "proof" KFP will have to submit to show a claimed expenditure for press services was in fact incurred for that purpose. Point c of the recommendation in this section requires "at minimum" that KFP present documentation to show that the press was in the vicinity of the place where the costs for services alleged to be for press were incurred, at the approximate time the services were rendered. The Office of General Counsel is of the opinion that if this information is provided it ought to suffice and that further documentary evidence that an expenditure alleged to have been made for press services was in fact so used should not be required, as it would be difficult to sustain a repayment determination based on the lack of more proof in this regard. If, however, more documentation is going to be required, it ought to be specified in this part of the recommendation.

The second issue raised with respect to national press concerns the procedure used by KFP in the allocation system proffered in the response to the Interim Report, of deducting a percentage of salaries of staff used in a particular state campaign in a ratio equal to the amount of that staff's time spent on activities for the benefit of the national press. The auditors do not believe such a percentage of staff salaries are properly exempted. The Office of General Counsel believes these activities are exempt as they are "for a limited purpose not constituting advance or field work, but rather associated with the national campaign effort" of assuring the press is ministered to no matter where the press is found or sent by their supervisors. (See the letter to committee treasurers sent by the Commission, attached to this memorandum.)

If, and only if, this KFP theory on exempting staff salaries is accepted by the Commission, is a remaining issue reached --

that of the nature and extent of documentation which will be required of the Committee to support the percentages it has derived with respect to those portions of staff salaries to be exempted as related to national press activities. 5/ If it is necessary to reach this issue, the Office of General Counsel notes it has no problems with the informational request contained in parts c and d of the recommendation of this section of the report so long as it is consistent with our comments stated above with the respect to the amount of "proof" necessary to sustain staff estimates of time spent on various activities. Thus, if KFP shows its percentages were based on staff interviews in which the term "national press activities" was appropriately defined, these figures should not be rejected or a repayment required. See Discussion at 3, supra.

#### F. Art Work

At the August 25, 1981 session, the Commission voted to approve the Report's recommendation that the KFP NOCO Statement not be adjusted and a repayment determination made with respect to the failure of KFP to include the art work owned by the committee on the NOCO as capital assets in the amount of their fair market value. If, however, the Commission intends to seek a repayment based on the treatment of this art work as capital assets reducing the KFP debt position, instructions to the Committee as to the valuation of this art ought to be made at this juncture. Accordingly, the Office of General Counsel recommends that the Commission approve the recommendations of the Office of General Counsel in its August 25, 1981 Memorandum Concerning Art work Donated to KFP, and instruct KFP, in the context of the Audit Report, to provide the market values for each work of art on hand at the date of Kennedy's ineligibility that had a market value in excess of \$500 (and to reflect these capital assets in an amended NOCO Statement), within 30 days. In so doing KFP should be informed that sale of the art work will result in a contribution and that that restriction on sale is appropriately considered as affecting market value, and the extent of that effect. The recommendation in this section of the Report should also be carefully worded so as to make it clear that the KFP debt position at ineligibility may be affected by the valuation of the art work, possibly resulting in a further repayment due to excessive matching funds received by the committee.

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5/ Therefore, points c and d of the recommendation of this section of the Report should be deleted if the Commission approves the auditors' position (as reflected in the text of this section of the Report) on this issue of exempted staff salaries for press activities.

#### Attachments

- I. - Fox and Co. Letters
- II. - REC letter to committees receiving matching funds

Fox & Company

31



GC# 5357

P12:02

Certified Public Accountants

1211 Avenue of the Americas  
New York, New York  
10036  
(212) 730-0600

August 21, 1981

Mr. Jay Clevenson  
Controller  
Kennedy for President  
1050 17th Street, N.W.  
Washington, D.C. 20036

11 AUG 26 P 2: 08

OFFICE OF THE  
GENERAL COUNSEL

Dear Jay:

The purpose of this letter is to respond to certain questions which you indicated that the FEC audit staff raised in response to our letter of June 2, 1981. Paragraph headings below correspond to the specific questions that you indicated the audit staff wished addressed.

PROCEDURES

The interviews were conducted in May, 1981. It is my understanding that prior to the interviews, a general discussion was held with all participants where exempt costs were defined, and specific examples cited. During the interviews, each participant was asked to review listings of employees in his or her state and indicate if he or she knew the percentage of time spent by such individuals on exempt functions. If the individual interviewed was unable through personal knowledge to estimate the time devoted by specific individuals he was requested to make inquiry to the individuals involved. Specific situations were analyzed as our accountants aided KFP's staff in arriving at appropriate percentage figures. This technique to derive the percentage of time spent on specific activity is in accordance with generally accepted auditing standards.

Attachment I  
(4 pages)



CLARIFICATION OF TERMS

Fundraising costs are any expenditures connected or associated with solicitation of contributions. These fundraising costs include, but are not limited to, costs of any mailings to solicit funds including time and material costs of preparing such mailings, costs associated with specific individuals assigned to pass out solicitation material and collect contributions (i.e., pass the hat) at rallies or speeches and costs associated with any events held for the purpose of attracting contributions. Overhead or indirect costs can also be included as fundraising if based on a systematic, rational allocation.

Compliance costs are costs incurred as a result of efforts to comply with the Federal Election Campaign Act, as amended. Examples are the record keeping function required to be maintained in each local field office and the record keeping function for each advance team which had its own checking account. This record keeping function included, among other things, the keeping of the individual check book, the collection of receipts and invoices, the filling out of the FEC expenditure form, and the keeping and reporting of an ongoing expenditure total at the state level for limitation purposes. In addition, a portion of rentals, equipment, and other overhead items should be attributed to compliance.

Overhead costs are defined as those costs not directly adding to or readily identifiable with a department or other cost center, or in the case of a political committee to a component or task of the committee. Since overhead costs cannot, as a practical matter, be traced directly to individual costing units (components) at the time the cost is incurred, an acceptable procedure is to accumulate such costs and subsequently spread them to the various components by allocation.


Overhead items may be viewed as "nonproductive" factors which are necessarily incurred so that the productive aspects of an operation can be performed. Costs of providing a suitable work environment (rent, utilities, furniture, communication) are nonproductive in the sense that they do not directly add to a particular component, but they are necessary so that all components can be performed efficiently and an organization might function. Supervisory costs also do not directly add to a specific component but are deliberately incurred with the expectation of minimizing the direct labor costs through promotion of a tight-knit organization and elimination of waste. Hence, such costs of providing work environment and employee supervision (the common overhead costs) should not be viewed entirely as nonproductive. They are general costs of maintaining a business and must be allocated to components, as appropriate.

#### CONCLUSION

As indicated in our initial report, the method selected for determining percentage allocations of overhead costs to exempt components of the campaign was both "systematic and rational." In accounting terminology, systematic and rational is generally construed to be a higher standard than "reasonable."

I hope this clarifies any problems. If there are any questions please contact me.

Very truly yours,

  
Hershel D. Sosnoff  
Member of the Firm

Fox & Company

Get # 5410  
A10: 11  
Certified Public Accountants  
1211 Avenue of the Americas  
New York, New York  
10036  
(212) 730-0600

September 1, 1981

SEP 8 AM 11:47  
GENERAL COUNSEL

Mr. Jay Clevenson  
Controller  
Kennedy for President  
1050 17th Street, N.W.  
Washington, D. C. 20036

Dear Jay:

Please note in my letter dated August 21, 1981, that I stated in the first sentence, under the paragraph headed PROCEDURES, that "interviews were conducted in May, 1981." In fact, it should have read "May, 1980."

Please note the correction.

Sincerely,

*Hershel D. Sosnoff*  
Hershel D. Sosnoff



FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20463

Dear Treasurer:

The Commission has reconsidered its previous determination that expenditures for salaries paid to certain national campaign staff while temporarily working in states and certain long distance telephone charges require allocation to states in accordance with 11 C.F.R. 106.2.

Expenditures for advance staff salaries should be attributed to each state in proportion to the time that the advance person spends working, either out of national headquarters or in the field, in connection with the campaign in such state (see AO 1979-73). Therefore, the salaries and related expenses of both advance personnel (e.g., coordinators working in the state) must be allocated, even though the individuals involved may be assigned to the national headquarters for payroll purposes. In addition, any expenses incurred by the Candidate or by a spokesperson for the Candidate who is not on the national campaign staff (e.g., the Candidate's family) while in a particular state are allocable to the respective state. The Commission has, however, recently determined that the salaries and related expenses of national campaign staff members who travel to a particular state for a limited purpose not constituting advance or field work, but rather associated with the national campaign effort, need not be allocated to that state.

With respect to charges for long distance telephone calls the Commission has determined that expenditures for calls emanating from the state office to the national headquarters do not require allocation to states. However, all other charges for long distance calls plus regular service are required to be allocated to the respective states.

Attachment II

(2 pages)

If your committee is affected by this determination you may, within 30 days of receipt of this letter, submit to the Audit Division an amended state allocation schedule (FEC Form 3Pc) thereby reducing the amount previously allocated for such expenditures. In addition, all computational schedules including copies of bills, expense vouchers, or any other documentation supporting such amendment should also be submitted at the same time. All documentation submitted will be considered prior to the Commission making its final repayment determination in accordance with 11 C.F.R. 9038.2(d).

If you have any questions concerning this matter, please do not hesitate to call Joe Stoltz or Rick Halter at (202) 523-4155 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa  
Assistant Staff Director  
for the Audit Division

**SENSITIVE**



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

August 25, 1981

01 AUG 25 P 3: 42

MEMORANDUM

TO: The Commission  
FROM: Charles N. Steels *CNS*  
General Counsel  
SUBJECT: Disposition and Evaluation of Artwork Donated  
to the Kennedy for President Committee

During the 1980 Campaign for the Democratic Nomination, various artists volunteered their services and produced original works of art (lithographs) for the Kennedy for President Committee. These works of art were reproduced in limited editions, and used during the campaign as inducements for contributions. The Committee still has a large number of prints on hand. The question which the Commission must determine is whether and how the artwork should be valued for purposes of the audit process.

11 C.F.R. § 9034.1(b) provides that after his date of ineligibility, a candidate is entitled to matching fund payments only if, at the time of the submission for such payments, the amount of the candidate's net outstanding campaign obligations is greater than the sum of contributions and prior matching funds received since the date of ineligibility. 11 C.F.R. § 9034.5(a) further defines net outstanding campaign obligations as the total of outstanding debts as of the date of ineligibility (plus estimated winding down costs) less the total of cash on hand on the date of ineligibility, amounts owed to the campaign, and the fair market value of capital assets on hand.

The term cash on hand is not defined under the Chapter 96 Regulations. 11 C.F.R. § 9034.5(a)(2)(i). However, the term cash on hand is defined at 11 C.F.R. § 104.3(a)(1) as:

Memorandum to the Commission

Page Two

Disposition and Evaluation of Artwork Donated to the Kennedy  
for President Committee

"currency; balance on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks owned by the Committee; certificates of deposit, treasury bills and any other committee investments valued at cost."

The artwork donated to the Committee does not appear to be included in this definition. The artwork also does not fall within the category of an amount owed to the campaign in that the artwork is not a credit, return, receivable, or rebate of a qualified campaign expense. 11 C.F.R. § 9034.5(a)(2)(iii).

The last category for assets in the Regulations is the fair market value of capital assets on hand. 11 C.F.R. § 9034.5(a)(2)(ii). For purposes of this section, a capital asset means any property which has a remaining useful life exceeding 1 year from the date of the candidate's ineligibility, provided that the fair market value at the date of ineligibility exceeds \$500. 11 C.F.R. § 9034.5(c). Of the three categories for assets contained in the Regulations, the remaining question is whether the artwork falls within the definition of capital asset.<sup>1/</sup>

Background

Several artists created artwork and donated the artwork to the Committee. The Committee reimbursed the artists for the cost of producing the art. Under these circumstances, the time

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<sup>1/</sup> It has been suggested that the \$500 threshold amount for a capital asset should be applied to each group of prints owned by the Committee rather than each individual work of art. It is the opinion of this Office that the Commission should look to each individual piece as a separate asset. Such a position is consistent with the Regulation that requires the value of the asset to be determined at the date of ineligibility, 11 C.F.R. § 9034.5(c), and is consistent with the recommendation contained in this memorandum that the disposition of each print is subject to the limitations and prohibitions of the Act.

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Page Three  
Disposition and Evaluation of Artwork Donated to the  
Kennedy for President Committee

and effort supplied by the artist in creating the artwork does not constitute a contribution from the artist to the Committee. 2 U.S.C. § 431(8)(B)(i) (donation of services). Advisory Opinions 1980-34, 1979-35 and 1975-97; MUR 1195.

On the other hand, the Commission has taken the position that the subsequent sale of the artwork does result in contributions by the purchasers and accordingly, the payment for the art is subject to all the relevant limitations and prohibitions of the Act including 2 U.S.C. §§ 441a, 441b, 441c and 441e. A.O. 1980-34. The Committee cognizant of the Commission's position that the disposition of the art may result in a contribution, requested an advisory opinion asking whether the exchange of artwork for a reduction of the debt owed to a particular vendor/creditor would be permissible. AOR 1980-136. On December 18, 1980 and January 8, 1981, the Commission considered the Committee's advisory opinion request, but the required four (4) vote majority was not obtained. See 2 U.S.C. § 437c(c). Consequently, no advisory opinion was issued and the Committee was so notified. See 11 C.F.R. § 112.4(a).

In response to the audit staff recommendation that the Committee obtain a written independent appraisal as to the fair market value of the artwork owned by the Committee, counsel for the Committee notes that such an appraisal will be affected by any restrictions on its sale and disposition. Response by the Committee at 13. As is discussed below, it is the recommendation of the Office of General Counsel that the Commission determine that the exchange of the artwork for reduction of the Committee debt is subject to the Act's limitations on contributions and that such conditions on the disposition of the artwork affects its fair market value.

### Analysis

In Advisory Opinion 1980-34, the Commission considered the situation where artwork was used to raise funds to pay off debts owed by a political committee and concluded that the sale of the artwork constituted a fundraising activity and the funds so raised were contributions in the full amount of the purchase price. Such a conclusion is consistent with other Commission determinations that any person who transmits money to a political committee or candidate - any portion of which is available to be spent for the purpose for influencing a election - has made a contribution in the full amount of the funds so transmitted. AO 1975-15 and AO 1975-49. The Committee's proposal of exchanging its artwork



Memorandum to the Commission

Page Four

Disposition and Evaluation of Artwork Donated to the  
Kennedy for President Committee

for a reduction of its debt is not distinguishable from the situation in AO 1980-34. Accordingly, the Commission should conclude that the Committee may exchange its artwork as described above, provided that the full amount of the reduction in outstanding debt given by a creditor to the Committee in exchange for the artwork is treated as a contribution from such creditor to the Committee. As such, the contribution is subject to the limitations and prohibitions of the Act.

The Committee notes in its advisory opinion request that its creditors could institute civil action for attachment of the artwork. It is the opinion of this office that the receipt by the creditors of the artwork through court order would not constitute an "exchange" as would a voluntary disposition of the artwork. Consequently, under those circumstances, the prohibitions and limitations of the Act would not attach to the artwork. Such a position is consistent with the Commission's treatment in MUR 1195 wherein the Commission found no reason to believe that the use of the artwork as collateral for a \$900,000 bank loan to the Committee was in violation of the Act, even though default by the Committee would result in acquisition of the artwork by the bank.

Recommendations 9-15-81

1. Determine that the sale or exchange of each individual piece of artwork by the Committee results in a contribution by the purchaser and is subject to all the prohibitions and limitations of the Act.

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2. Determine that the value of the artwork may be affected by any restrictions on its disposition.

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3. Determine that ~~the~~ individual pieces of artwork valued in excess of \$500 is a capital asset and reduces the Committee's net outstanding campaign obligations.

**FEDERAL ELECTION COMMISSION**  
**EXECUTIVE SESSION TRANSCRIPTS**  
**KENNEDY FOR PRESIDENT COMMITTEE, FINAL AUDIT REPORT**  
**AUGUST 25 & 26 and SEPTEMBER 15 & 16, 1981**  
**- INDEX TO EXEMPTIONS -**

Page	Applicable Government in the Sunshine Act Exemption	Explanation
16 (lines 9 through 12)	§ 552b(c) (10)	Litigation strategy
17 (lines 9 through first two words of line 16)	Id.	Id.
24 (lines 23 through 28)	Id.	Id.
25 (lines 1 through 8)	Id.	Id.
27 (lines 2 through 21)	Id.	Id.
48 (lines 6 through 10)	Id.	Id.
81 (lines 1 through 7, 13 through 16, 17 through 20)	Id.	Id.
91 (lines 26 through 29)	Id.	Id.
96 (lines 11 through 17)	Id.	Id.
103 (lines 25 through 28)	Id.	Id.
104 (lines 1, through 5, 6 through 13, 24 through 25)	Id.	Id.

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<u>Page</u>	<u>Applicable Government in the Sunshine Act Exemption</u>	<u>Explanation</u>
107 (lines 11 through 25)	§ 552b(c) (10)	Litigation strategy
119 (lines 20 through 28)	§ 552b(c) (3)	Matters required to be kept confidential by 2 U.S.C. § 437g(a) (12)
120 (lines 1 through 29)	Id.	Id.
121 (line 8) through 145 (line 6)	Id.	Id.
148 (line 1) through 199 (line 18)	Id.	Id.
308 (line 24) through 309 (line 17)	§ 552b(c) (12)	Internal personnel rules and practices
314 (line 24) through 316 (line 27)	Id.	Id.
321 (line 16) through 322 (line 10)	§ 551b(c) (3)	Matters required to be kept confidential by 2 U.S.C. § 437g(a) (12)
323 (lines 23 through 26)	Id.	Id.
340 (lines 14) through 28)	Id.	Id.
341 (lines 1 through 10)	Id.	Id.
352 (line 1) through 355 (line 21)	§ 552b(c) (10)	Litigation Strategy
363 (line 12) through 367 (line 25)	§ 552b(c) (3)	Matters required to be kept confidential by 2 U.S.C. § 437g(a) (12)

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3 MCGARRY: Thank you. If there is nothing further on that, we go  
4 now to audit matters and we have the final Audit Report of the  
5 Kennedy for President Committee, Memorandum to the Commission  
6 dated August 18, 1981 and this is Agenda Document X81-052. Mr.  
7 Clutter.

8 CLUTTER: Yes, Mr. Chairman and members of the Commission, the  
9 Audit staff and the Counsel's staff are outside. You have before  
10 you the final Audit Report of the Kennedy for President  
11 Committee. Therein is the Audit staff's recommendation in terms  
12 of the text in which the final audit will appear. There are a  
13 number of issues and differences of opinion between the Audit  
14 staff and the General Counsel in terms of issues in the audit  
15 report. My recommendation would be that you proceed to the audit  
16 report and examine the language as recommended and then the staff  
17 will point out to you the differences. In the report you will  
18 find sections either underlined or bracketed. Those sections are  
19 different than the initial report that was sent out to the  
20 Kennedy Committee for comment prior to preparation of the final  
21 document.

22 Mr. Stoltz, Mr. Lisi and Sue Paschen are here to  
23 discuss it with you and Mr. Costa is here as well.

24 MCGARRY: Good morning Ray and Sue and Marsha Gentner is also  
25 here from the General Counsel's Office.

26 CLUTTER: I think we are ready to start. I think Ray will take  
27 the lead on this.

28 LISI: Yes, I will. What I would like to do, as the Staff  
29 Director said, is to go through the audit report as it stands and  
30



1 LISI (continuing): discuss each finding and then after the  
2 discussion of each finding if the Counsel has any comments, they  
3 can be made. What I would like to point out also is that there  
4 are four documents here. We have a cover memo which covers pages  
5 #1 through #10, oh, #1 through #9. When we are referring to page  
6 numbers here to facilitate the discussion and make it a little  
7 easier, we will be referring to the page numbers as they are  
8 written on the bottom of the documents. It is consecutively  
9 numbered from #1 all the way through the end and I think it would  
10 be easier to refer to the page numbers that way. As I say, the  
11 first document is the cover memo to the Commission which  
12 outlines, contains a great deal of the discussion as far as the  
13 audit Findings and the comments made by Office of General  
14 Counsel.

15 The Audit Report is next with the attachments which are  
16 the exhibits on the back of the Audit Report which contain the  
17 findings which were referred to the Office of General Counsel.

18 The next document is the Committee's response and the  
19 final document is the Legal Analysis which was provided by the  
20 Office of General Counsel.

21 To begin the report on page 11, this is findings and  
22 recommendations as they relate to Title Two, United States Code,  
23 the first finding about the middle of page 11 refers to reporting  
24 errors and omissions. The background section of the finding  
25 appears at the bottom of the page and explains basically the  
26 accounts that the Committee had set up. The information is the  
27 same information that was contained in the Interim Audit Report  
28 and was presented to the Commission previously. The Committee  
29 maintained 200 bank accounts. Seven of these accounts were at  
30

1 LISI (continuing): the national level and 193 were maintained at  
2 the state level.

3 The first finding refers to the unreported expenditures  
4 which begins on page 12, Expenditures from the National Accounts.  
5 Our review disclosed that there were 34 expenditures totalling  
6 \$73,916.15 which were not reported by the Committee. In the  
7 Interim Report, we recommended that the Committee amend their  
8 reports to include those 34 expenditures. The Committee did file  
9 an amended report on May 19, 1981 in which they itemized 29 of  
10 the 34 expenditures totalling \$71,591.63. The remaining five (5)  
11 expenditures which were not itemized on the reports, the  
12 Committee official explained that they were included in an  
13 unitemized figure in the 1979 reports. It is difficult to verify  
14 if that information is correct at this point because of the  
15 records maintained by the Committee. We can assume that possibly  
16 four (4) of those expenditures could have been included in that  
17 report; however, one of the expenditures was for \$1,200 and  
18 actually should have been itemized on the report. However, based  
19 on the fact that this is a small dollar amount and we feel that  
20 the Committee has materially complied with the recommendations,  
21 we are recommending no further action.

22 REICHE: Incidentally, I would ask as we go through the  
23 recommendations, please Marsha, after Ray or Sue have indicated  
24 Audit's position where you wish to add anything, please feel free  
25 because we naturally want to have your comments. Do you have any  
26 comments on this particular recommendation?

27 GENTNER: No.

28 REICHE: Are there any comments or questions by members of the  
29 Commission? If not, I think it was the Chairman's intention,  
30

1 REICHE (continuing): someone may wish to correct me on this,  
2 that we vote on them individually as we go through. My  
3 suggestion would be to wait on this one until he returns simply  
4 because I am sure he will want to be recorded on it and I think  
5 we could just move on to the next unless someone has any  
6 objection. If that be the case, then let's move on to the next  
7 one, Ray.

8 LISI: The next section's finding begins on the top of page #13  
9 and involves the state scheduling accounts. In doing our field  
10 work, we determined that there was a material error in the  
11 Committee's reporting of expenditures from these accounts. At  
12 the time of our field work, the Committee was in the process of  
13 preparing an amendment which was being used to disclose the  
14 undisclosed expenditures. The amendment at that time contained  
15 \$220,526.54 in unreported activity. We compared our sample  
16 errors to that amendment and determined that the error rate would  
17 have fallen below the material amount percentage if this  
18 amendment were filed. The Committee filed an amendment on May  
19 19, 1981. In the narrative that accompanied the amendment, it  
20 was stated that it contained \$207,409.04 which was previously  
21 undisclosed. We reviewed the amendment and it actually included  
22 \$210,153.89. The Committee explained that the discrepancies here  
23 had to do with additional changes that they had made based on  
24 their review of the document prior to our receipt of the  
25 amendment. We again tested, or traced our sample errors to that  
26 amendment and we found it did still fall below the material error  
27 rate; therefore, our recommendation here is that we take no  
28 further action because the Committee has materially complied with  
29 the recommendation.  
30

1 REICHE: Are there any comments by staff members or Commission  
2 members? Commissioner Aikens.

3 AIKENS: Thank you, Mr. Chairman. Ray, is this, or maybe Joe or  
4 Bob could answer that, is this the same position that we have  
5 taken in other audits?

6 STOLTZ: I can't think of too many cases where we have had  
7 similar findings in this cycle. We did have a problem with  
8 Carter in general where some items had gotten deleted and that  
9 was the position we took there.

10 REICHE: Any further comments? If not, let's move on to the next  
11 item.

12 LISI: The next section begins on page #13 and is entitled  
13 "Miscellaneous Adjustments." These were basically just  
14 miscellaneous adjustments which were needed to be made to the  
15 Committee's reports to adequately correct their disclosure.

16 The first one was just a \$9,000 adjustment which was due  
17 to an incorrect adjustment which was made by the Committee based  
18 on some checks that were returned for insufficient funds.

19 Section B was adjusted to \$9,181.66 which was an  
20 overstatement of expenditures due to mathematical errors made by  
21 the Committee. Our Interim Report recommended that the Committee  
22 file amended reports to correct these errors. The Committee did  
23 file amended reports on May 19, 1981 and again, our  
24 recommendation here is that we take no further action in this  
25 matter.

26 MCGARRY: Thank you, Ray. Yes, Mr. Reiche?

27 REICHE: Mr. Chairman, we went through the first two items and we  
28 specifically held off on voting on the theory that you would want  
29 to be recorded one way or another so that is why we are now on  
30 Item #3.

1 MCGARRY: Thank you. We can call them up for a vote now. I  
2 think it would be appropriate. We are talking about the  
3 recommendations on page--?

4 REICHE: Well, the first recommendation was the first  
5 recommendation at the bottom of page 12. The second one was on  
6 page 13, and the third one which Ray is now discussing appears at  
7 the top of page 14.

8 MCGARRY: So the Chair would entertain a motion with reference to  
9 the recommendation at the bottom of page 12.

10 TIERNAN: Mr. Chairman. I move approval of the Audit staff  
11 recommendation appearing at the bottom of page 12.

12 MCGARRY: Commissioner Tiernan moves approval of the Audit staff  
13 recommendation contained at the bottom of page 12. If there is  
14 no further discussion, the vote will occur on that motion. All  
15 in favor say aye. (A voice vote was heard.) All opposed? It  
16 appears to the Chair that the vote is 6 to 0.

17 The next recommendation appears on--

18 TIERNAN: Page 13. Mr. Chairman, I would move approval of the  
19 Audit staff recommendation for no further action on the matter of  
20 B, State and Scheduling Accounts.

21 MCGARRY: Commissioner Tiernan moves approval of the Audit staff  
22 recommendation contained in the middle of page 13, relating to  
23 "B, for entitled State and Scheduling Accounts." If there is no  
24 further discussion, the vote will occur on the motion. All those  
25 in favor say aye. (A voice vote was heard.) All opposed? It  
26 appears to the Chair that the vote is 6 to 0.

27 TIERNAN: Mr. Chairman. I would move approval of the Audit staff  
28 recommendation, no further action, with regards to the  
29 "Miscellaneous Adjustments." That recommendation appears at the  
30

1 TIERNAN (continuing): top of page 14, carried over from page 13.

2 MCGARRY: Commissioner Tiernan moves approval of the Audit staff  
3 recommendation contained at the top of page 14 and if there is  
4 no--this relates to Section 3, entitled "Miscellaneous  
5 Adjustments." If there is no further discussion, the vote will  
6 occur on that motion. All in favor say aye. (A voice vote was  
7 heard.) All opposed? It appears to the Chair that the vote is 6  
8 to 0. Thank you very much.

9 Ray Lisi, does that bring us up-to-date?

10 LISI: It does, yes. The next finding is on page 14, Section  
11 2.B, "Missing Records." This finding involves 21 bank accounts  
12 which at the conclusion of the field work various records were  
13 missing from the records basically were, in some cases missing  
14 bank statements, cancelled checks, and/or deposit slips. In our  
15 Interim Audit Report, we recommended that the Committee obtain  
16 and provide these records for our review. Subsequent to the  
17 audit field work, the Committee did provide records for 18 of the  
18 21 accounts. For two of those accounts for which the records  
19 were not provided, the only information that was missing was  
20 cancelled checks. And the remaining one account was lacking one  
21 bank statement. It should be noted that we were able to complete  
22 our expenditure review and our testing with the information that  
23 we had on hand. This information did not hinder us in any way,  
24 or the lack of that information did not hinder us in any way in  
25 completing our tests.

26 The Committee did provide letters for at least two of the  
27 accounts which they had sent to the bank requesting the  
28 documents. And our recommendation here is that since the  
29 Committee has provided the majority of the records, we are  
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1 LISI (continuing): recommending no further action.

2 MCGARRY: Thank you Ray. Commissioner Tiernan.

3 TIERNAN: Mr. Chairman. I move approval of the Audit staff  
4 recommendations appearing on the top of page 15 with regards to  
5 "B", "Missing Records."

6 MCGARRY: Commissioner Tiernan moves approval of the Audit staff  
7 recommendations contained at the top of page 15, section "B",  
8 "Missing Records."

9 THOMSON: Mr. Chairman.

10 MCGARRY: Commissioner Aikens was seeking, and then Governor--

11 AIKENS: That's all right, go ahead.

12 MCGARRY: Go ahead, she defers to you.

13 THOMSON: Well, I just wondered if the General Counsel has some  
14 comment on that. I noticed that was one of the items he  
15 mentioned.

16 MCGARRY: Yes. Mr. Steele.

17 STEELE: I, will have Marsha Gentner set it forth. We don't at  
18 this juncture have, and we have just made effectively a language  
19 recommendation. And Marsha would you like to comment?

20 MCGARRY: Marsha Gentner.

21 GENTNER: We just had one comment and that the Committee response  
22 indicated that they had not received any formal request for  
23 records and we wanted to make it clear that they, in fact, had;  
24 so the auditors redrafted that portion of the report to reflect  
25 that.

26 STEELE: I think that is shown by the underscoring in the area  
27 that was related to. It is shown by the underscoring on page 14.  
28 Is that correct?

29 GENTNER: Yes, that's right.

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1 **MCGARRY**: Commissioner Aikens.

2 **AIKENS**: Thank you, Mr. Chairman. Ray, was this--these bank  
3 statements that were not provided until the last minute, were  
4 they related to the \$210,000 in expenditures in Section B on the  
5 previous page?

6 **LISI**: They were expenditures that were made from the state  
7 scheduling account--the majority of the ones that were missing  
8 were from the state scheduling accounts which involves that  
9 \$210,000. What we did for the--the \$210,000 relates to the  
10 sample that was taken. If we did not have enough documents from  
11 any particular bank to include that bank in the expenditure  
12 sample, we did it 100%; so the majority of these accounts, these  
13 21 accounts were done 100%, the review was done on a 100%; so  
14 they are not involved in the \$210,000. We did not find a  
15 material error rate insofar as disclosure went with these  
16 accounts; it was basically that the records were not there at the  
17 time we did the audit.

18 **AIKENS**: Thank you, Ray.

19 **MCGARRY**: Thank you, Ray. If there is no further discussion, the  
20 vote will occur on the Tiernan motion. All in favor say aye. (A  
21 voice vote was heard.) All opposed? It appears to the Chair  
22 that the vote is 6 to 0. Ray Lisi.

23 **LISI**: The next finding begins on page 15, and it relates to the  
24 allocation of expenditures to states. The first portion of this  
25 finding is exactly as it appears in the Interim Audit Report. In  
26 that Report, we explained exactly how we arrived at the figures  
27 that we allocated to the states of New Hampshire and Iowa which  
28 were the only states where the Committee appeared to approach the  
29 expenditure limits. We were able to reconcile totals from the  
30



1 LISI (continuing): Committee's state allocation reports which  
2 contained all the expenditures which were allocable based on the  
3 Committee's records to both New Hampshire and Iowa and our  
4 reconciled totals from those records indicated that there was  
5 \$227,736.65 allocable to New Hampshire and \$421,376.94 allocable  
6 to Iowa. Now we also identified other areas within the  
7 Committee's expenditures which either were incorrectly allocated  
8 or were not allocated at all, and those are broken down beginning  
9 on page 16.

10 The first sections are March and April, 1980  
11 expenditures. For some reason, we believe the fact that the  
12 Committee's Comptroller had left the Committee around March 1980,  
13 all expenditures for March and April were not allocated to any  
14 states. And our review there disclosed \$34,786.01 to New  
15 Hampshire and \$8,917.22 to Iowa.

16 The second category of expenditure was media expenditure.  
17 Here again, the information was made available to the Committee  
18 by their media firm for allocated expenditures to both New  
19 Hampshire and Iowa; however, no allocations were reported.

20 The allocations to New Hampshire totaled \$48,347.81 and  
21 to Iowa \$85,668.82.

22 The third category of expenditure was "Payroll." Again,  
23 the Committee did not allocate to New Hampshire or Iowa any of  
24 the salaries of individuals who either were assigned to the state  
25 offices or were advanced personnel assigned--or working in the  
26 states. They did not allocate any of the Unemployment taxes nor  
27 any portion of the FICA taxes. The total amount that we  
28 determined allocable to New Hampshire was payroll \$83,506.34 to  
29  
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1 LISI (continuing): New Hampshire and \$127,327.08 to Iowa.

2 The fourth category was Per Diem and Expense  
3 Reimbursements and this again, we reviewed the Committee's  
4 records on per diem and expense reimbursements and the invoices  
5 and check request forms and other documentation that was attached  
6 and determined that \$2,432.38 was allocable to New Hampshire and  
7 \$2,852.09 to Iowa. Now in addition to those amounts, there were  
8 additional expenditures totalling \$20,084.28. All we had in  
9 those cases were copies of check request forms. They didn't  
10 indicate a state that the expenditures should be allocated. The  
11 per diem payments accounted for \$18,040.00 and expense  
12 reimbursements were \$1,244.24.

13 The fifth category was Outstanding Debts. We reviewed  
14 the Committee's list of outstanding debts for accounts payable,  
15 as of November 28th, for NOCO purposes. And we identified  
16 outstanding debts which related to New Hampshire totalling  
17 \$3,242.18 and \$10,970.84 to Iowa.

18 The last category was "Other Vendor Payments." And this  
19 was basically our review of the expenditures from September 1st  
20 1980 through November 30th, 1980. Our expenditure review and all  
21 of our tests for sampling purposes ran through August 31st and  
22 this was just to pick up the expenditures from September 1st  
23 through November 30th. We identified additional amounts of  
24 \$28,171.79 allocable to New Hampshire and \$47,287.44 allocable to  
25 Iowa.

26 The final amounts allocable to New Hampshire and Iowa  
27 based on our review were \$428,223.16 to New Hampshire and  
28 \$704,400.43 to Iowa. These were the figures that were contained  
29 in the Interim Audit Report which was presented to the Committee.  
30

1 LISI (continuing): Now in the Interim Audit Report, we  
2 recommended that the Committee adjust their accounting records to  
3 reflect these amounts allocable to the states and we also made a  
4 recommendation that the Committee provide us with sufficient  
5 documentation to make an allocation determination for those  
6 expenditures totalling approximately \$20,000 in finding 2.C.4.

7 Now in their response to the Interim Audit Report which  
8 was received on May 19, 1981, the Committee did provide us  
9 documentation for those expenditures in finding 2.C.4 which  
10 related--which did not relate to either New Hampshire or Iowa.  
11 Apparently there was a seminar which was held in Reston,  
12 Virginia, for all of the people who would be working out in the  
13 states. And this--these per diem and expense reimbursements were  
14 people traveling to that seminar and did not relate specifically  
15 to Iowa or New Hampshire; so therefore, those amounts are not  
16 allocable to Iowa or New Hampshire.

17 Now the Committee gave a very detailed response on their  
18 allocation method, or their method to determine those  
19 expenditures which were allocable to New Hampshire and Iowa.  
20 What they provided us with was a computer print-out which  
21 included all of the expenditures that we had included in our  
22 categories of expenditures. We were able to tie in the dollar  
23 amounts on the computer print-out to the figures that we had  
24 provided to the Committee; so we are confident that they  
25 identified or at least mentioned every single expenditure that we  
26 had determined should be allocated to those states.

27 On the print-out, the Committee took each expenditure and  
28 based on their review of the expenditure, determined whether it  
29 should be charged to an exempt category or a non-exempt category.  
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1 LISI (continuing): The non-exempt category, of which there was  
2 only one, was called "Primary." Any expenditures which were  
3 charged on a print-out, or any portion of an expenditure which  
4 was charged on a print-out to the Primary would have been subject  
5 to the expenditure limit in that state. The Committee then  
6 included 5 exempt categories of expenditure. Those are listed at  
7 the bottom of page 18. They were "compliance," "fundraising,"  
8 "phone and interstate travel", or "phone, travel and interstate"  
9 relating to both of those, "national press," and a final category  
10 for "other" for anything that did not fall into those categories.

11 Now, what we have attempted to do in the Audit Report is  
12 to discuss each one of the Committee's methods for determining  
13 expenditures which were--of portions of expenditures or  
14 procedures that were applied to expenditures, to the exempt  
15 categories. The Committee has come forth with five--we have six  
16 categories that they used.

17 The first category was "Overhead allocations." And in  
18 their response, they indicated to us that they had contacted a  
19 public accounting firm which was to establish percentages to be  
20 used in allocating costs to exempt functions. The firm used a  
21 sample of four (4) states. These 4 states included New Hampshire  
22 and Iowa. And based on interviews and information obtained from  
23 documents in those states, they were able to compute a weighted-  
24 average percentage which they felt should be charged to the  
25 exempt categories of "fundraising" and "compliance". Now, based  
26 on the procedures that they used, they came up with a 17%  
27 exemption applying to fundraising and 22% relating to compliance,  
28 and these percentages were to be applied to all overhead  
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1 LISI (continuing): expenditures made by the Committee. And  
2 these were based on the payroll costs, or the actual time spent  
3 by individuals in the field offices and then charged off to the  
4 exempt categories. And as we explained here in the Audit Report,  
5 we don't have a problem with the Committee attempting to  
6 determine a percentage to apply to exempt categories of  
7 fundraising and compliance, however, the problem that we do have  
8 is the documentation which has been presented to and by the  
9 Committee to support these allocations. The only information  
10 that we have at this time is a letter from the accounting firm.  
11 The letter explains what the accounting firm did to arrive at  
12 their percentages; however, they didn't provide us with any of  
13 the calculations other than a list of individuals' names with two  
14 columns next to those. One for compliance and one for  
15 fundraising with percentages next to them. The information that  
16 we are looking for here is basically what types of questions were  
17 asked of the individuals? Who was interviewed? When the  
18 interviews took place? And also, what the Committee is defining  
19 as "fundraising" and "compliance". Again, as we state, the  
20 Committee did not provide us with any of the work-papers which  
21 the accounting firm used to arrive at their percentages. And we  
22 have not made any adjustments to our amounts allocable to New  
23 Hampshire or Iowa based on the percentage of the 17% and the 22%  
24 to the exempt categories. I think the Counsel may have some  
25 comments pertaining to this section of the report.

26 MCGARRY: Mr. Steele?

27 STEELE: We have a number of comments. I think most prominently  
28 of course, is that this whole area is one of considerable  
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1 STEELE (continuing): difficulty not only in this audit, but  
2 other audits and I would want Marsha to go through on a piece-by-  
3 piece basis on the various things. I think it will probably take  
4 some time to get through this Section; so I don't know whether we  
5 want to launch into this now and continue going.

6 MCGARRY: I think we should break as we are obviously going to  
7 have to go over into the afternoon session. So I think it would  
8 be an appropriate time to pick it up when we come back. We will  
9 now stand in recess until 2:00 p.m. Thank you, Charlie.

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10 MCGARRY: We have a quorum here. The afternoon session will come  
11 to order. Madam Secretary, we are talking about the afternoon  
12 session of the Executive Session for Tuesday, August 25, 1981.  
13 And we broke off for lunch as the General Counsel was just about  
14 to make a comment in response to the Audit Division report. Mr.  
15 Steele.

16 STEELE: I just want to go back to what we are discussing here is  
17 the state-by-state allocation problem which is obviously one that  
18 the Commission is very familiar with and one which I think has  
19 caused everyone a lot of difficulty. What really comes to issue  
20 in this discussion, I think, is the question of how you are going  
21 to approach this problem of reasonable allocation where you have  
22 to decide that the matters come forward in this fashion with the  
23 auditors having looked at the records and in what sense, how are  
24 you going to make a decision that the allocations put forward are  
25 not reasonable. Again, being an overall sensitive area and I am  
26 not sure that this was set in the discussion this morning as we  
27 went through the individual recommendations. That, of course, as  
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1 STEELE (continuing): you have seen from Counsel's response that  
2 this is really what the Counsel here and in other Audits is  
3 really putting into question is the meaning of "reasonable  
4 allocation" regulations and what they have to do to comply with  
5 that. How much they have to do and what they have to provide.  
6 Marsha is, has got the various items that we would like to focus  
7 the Commission's attention on as we go into this because, again,  
8 I think you are really looking in this report and in other  
9 reports at this stage to the question of how you do, [redacted]

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12 ] We have some disagreement and difficulties  
13 with the present posture that you might find yourself in .  
14 Marsha why don't you proceed with our case.

15 MCGARRY: Marsha Gentner.

16 GENTNER: I think that really the difference that underlies all  
17 this Section of this report and responding to the allocation that  
18 the Committee put forth in response to the Interim Audit Report  
19 is a difference of opinion on what the Committee must do in order  
20 for the Commission to accept as "reasonable" their allocations.  
21 The biggest problem is that the theories the Committee relies on  
22 involve computing percentages of staff time spent on certain  
23 exempt categories and taking those percentages and plugging them  
24 into overhead expenditures or salary expenditures and pulling  
25 them out because they are exempt. And the problem that we have  
26 is that when the Committee makes an allocation based on those  
27 computations, the problem we have is the questioning of those  
28 computations beyond looking at the work-papers. That is  
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1 GENTNER (continuing): questioning the basis of their information  
2 for obtaining the staff percentages; telling the Committee that  
3 they must provide proof of the staff percentages or they won't be  
4 accepted as reasonable but without telling the Committee - even  
5 at this stage - what kind of proof we are talking about. They  
6 don't know if we are talking about affidavits from them, or all  
7 we are going to accept are interviews by our auditors and if so,  
8 what those interviews entail, what kind of information is being  
9 asked of these people. ]

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16 ] Also, the problem occurs in requiring proof of  
17 the Committee of their staff estimates in terms of say, time  
18 sheets if that is what is contemplated. These kinds of things  
19 weren't brought to the Committee's attention at a time when it  
20 could have made a difference to the Committee when the Committee  
21 could have kept time sheets. Now, after the fact, we are telling  
22 them, "Well, the only way you are going to satisfy what we want  
23 is by keeping time sheets, by having contemporaneous interviews,"  
24 and yet at the time, the Committee could have done that and  
25 complied with our request we did not give them any indication  
26 that this was wanted. So I think the difficulty is in rejecting  
27 their figures merely on the basis that they haven't proved their  
28 figures are correct without telling them what proof we need now,  
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1 GENTNER (continuing): or even at the time telling them what  
2 proof would be required of them. And I think that that's--there  
3 are differences throughout on some of the theories as well as the  
4 Committee uses, the differences between the Auditors and us, but  
5 I think that is the major difference that, as I said, underlies  
6 all the various sub-sections here.

7 MCGARRY: Does the Audit Division care to just respond briefly  
8 before we go on and recognize?

9 LISI: I think I understand what Counsel is saying so far as  
10 getting the additional information that we need here, but I think  
11 that is where our difference is as opposed to what we feel is the  
12 additional information we need to verify these allocations are  
13 indeed reasonable and even to the point of whether they are  
14 mathematically correct to begin with. The Committee at this  
15 point has not provided us with any information to support the  
16 allocations. I think as a first step we need to ask for the  
17 information that they came up with. We do not want--or used to  
18 come up with these figures. We don't want to limit ourselves in  
19 asking for that information in just requiring certain information  
20 be provided. At this point, we don't know what the Committee  
21 used to come up with these percentages. Whether they used  
22 payroll records, or just strictly interviews with the individuals  
23 involved, and I think that we do not want to limit ourselves in  
24 the Audit Report to just stating that we need certain information  
25 and that is all that we will accept. We have in the Audit Report  
26 under this Section, indicated the questions that we have as far  
27 as the figures--or the computation of those figures. We don't  
28 have the work-papers that were used. We don't know what  
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1 LISI (continuing): questions were asked. We don't know what  
2 definition that the Committee used for "compliance" and  
3 "fundraising" activities. Indeed, there could be some  
4 differences of opinion there as to what the Committee feels is a  
5 compliance related activity or fundraising related activity as  
6 opposed to what the Commission would feel would be a compliance  
7 or fundraising activity. Also, we don't know what types of  
8 expenditures these percentages were applied to. We have a number  
9 of open questions information that we still need in order to  
10 reach a decision on this. And this is all we are stating in the  
11 Audit Report. We are not arguing with the Committee's method  
12 here. We stated right in there that it appears justifiable that  
13 a portion of overhead and payroll costs can be charged to exempt  
14 categories. However, we do not know what the Committee used  
15 to come up with these figures.

16 MCGARRY: Are you suggesting that in some instances, Ray, you are  
17 not even certain that the computations are mathematically  
18 correct?

19 LISI: That is correct. There is no way to determine how the  
20 Committee came up with this 17% and 22% calculation. We cannot  
21 verify this figure--even that it is mathematically correct.

22 MCGARRY: How do you respond to that, Marsha? And then I am  
23 going to recognize Mr. Harris. I don't mean to shut anybody out,  
24 but I think this is awfully important. I was very disturbed by  
25 what you were saying; now Ray comes back and says that in some  
26 instances we are not even certain that the figures are  
27 mathematically accurate. Now, how do you respond to that?

28 GENTNER: Well, certainly we agree that--I think the auditors are  
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1 GENTNER (continuing): correct in saying that we can't say for  
2 public review that we verified these figures as reasonable  
3 because we have not seen any of their work-papers. I think we  
4 have got a right to see the work-papers. We have looked at the  
5 work-papers in all other campaigns. The question becomes once we  
6 see the work-papers and satisfy yourself that they have done the  
7 computations correctly, you satisfy yourself that they have  
8 defined the key terms, "fundraising," "compliance" in a manner  
9 consistent with the way the Commission defines those terms, what  
10 more you are going to ask for at that point - if anything. And  
11 the concern that I have in the report is that it seems to leave  
12 open that once we do reach that point of satisfying ourselves on  
13 the work-papers, we still may require more. Their reference as  
14 to the timing of the interviews as if, for instance, the staff  
15 interviews did not occur by a certain point in time that we would  
16 not accept them on that basis, and that's what concerns me also,  
17 that the Committee has expressed before this concern of "what do  
18 you want?" "What can we provide?" We want to provide the  
19 information for you, and that--so that I want them to know beyond  
20 the work-papers what else we are going to be expected of them so  
21 that they aren't out there trying to fish to find out what we  
22 want in terms of standard of proof.

23 MCGARRY: I am going to call on Commissioner Harris and we will  
24 let you pick up on that a little later on, Ray. Commissioner  
25 Harris.

26 HARRIS: How much money are we talking about say under this item  
27 of "overhead allocations" on pages 19 and 20 using the bottom  
28 numbers?  
29  
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1 LISI: As far as all of the expenditures charged to "overhead  
2 allocations?"

3 MCGARRY: Ray Lisi.

4 HARRIS: No, just under the item "overhead allocations."

5 LISI: O.K. The way the Committee's response came in, we are  
6 unable to come up with a dollar amount based on the overhead  
7 allocation. Because that percentage was applied to a number of  
8 separate categories and it more or less overlaps into some areas.  
9 Those overhead allocation percentages were applied to a number of  
10 different expenditures that we had outlined in the Audit Report.

11 HARRIS: What were they applied to other than overhead?

12 LISI: Well, that's the question we have right now. We don't  
13 know what the Committee defined as overhead. We saw those  
14 percentages applied to such things as car rentals, gasoline,  
15 rent, utilities, there were a large--varied number of  
16 expenditures that these were applied to.

17 HARRIS: Do you have those enumerated anywhere?

18 LISI: No, I don't have those broken down in the Audit Report.

19 HARRIS: What would the total be if the Committee were allowed to  
20 apply these formulas to all of these items that they say come  
21 under overhead?

22 LISI: We would have to work up that figure. I don't have it  
23 available.

24 HARRIS: Do you have any rough idea?

25 LISI: I couldn't give a figure on that right now.

26 HARRIS: Is it just peanuts, or is it real money?

27 LISI: Well, the overhead allocation, it appears to me, was one,  
28 I can say this, was one of the methods used that applied to, I  
29 would say more expenditures, than I would say the other  
30 categories did.

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HARRIS: What is the justification for picking out these four states and building a national average on that basis? The only states with which we are really concerned are Iowa and New Hampshire. The accounting people, Fox and Company, apparently simply interviewed the head of the campaign in each state and pulled some figures out of the hat. Why don't they use whatever figures they had for Iowa and New Hampshire rather than this business of striking an overall percentage and applying it nationally.

MCGARRY: Ray Lisi.

LISI: They didn't give us any justification for using those four states other than the fact that they were used.

HARRIS: See, they apparently simply talked to the state coordinators, and I can't imagine that the work-papers are going to amount to anything. That's probably why they didn't give them to you. But they assigned percentages to employees in each state based on interviews with the state coordinators; then they--these figures of 17% of payroll costs relating to fundraising and 22% to compliance, they seem to have applied nationally. Well, suppose they got much higher figures for Iowa and New Hampshire or much higher estimates for Iowa and New Hampshire. That would be a better indication of expenditures in those particular states than striking some kind of national average and applying it to them, wouldn't it?

LISI: That's correct. If those expenditures were higher. As I say, they didn't give us any justification whatsoever for selecting these four states. And I don't have an answer to that question as to why they picked those particular four states other than Iowa and of course New Hampshire, you would expect them to include those.

1 HARRIS: What have we done in this overhead allocation business  
2 with other committees?

3 LISI: The only other committees that I am aware of right now  
4 where we have figures on would be Carter and Reagan. And in the  
5 Carter instance, there was an allocation which was applied to  
6 overhead expenditures in the states. And the Committee--

7 HARRIS: Where did that come from?

8 LISI: That came from a study that was done by a CPA who was on  
9 loan to the Committee and the figure they used was 6% and the  
10 only allocation--

11 HARRIS: Was what?

12 LISI: Six percent.

13 HARRIS: Six?

14 LISI: Six percent. And that--

15 HARRIS: For which?

16 LISI: Was applied only to compliance. There was no fundraising  
17 exemption applied to the states. And as far as I know, in the  
18 Reagan situation in New Hampshire the expenditures were viewed on  
19 their own. There were no percentages applied and if an  
20 expenditure related to a fundraiser, then it was charged off to  
21 an exempt category and not allocated to the state. And the same  
22 was done for compliance.

23 HARRIS: But what did they do--did they do any overhead  
24 allocations?

25 LISI: No. Reagan did not.

26 HARRIS: Well, this thing is a terrible mess it seems to me. To  
27 begin with, the line between fundraising and expenditures and  
28 campaigning is totally unrealistic. It is in the statute, but  
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1 HARRIS (continuing): there just isn't any difference. It seems  
2 to me that the best argument can be made on behalf of the  
3 Committee is that the thing is so complicated and uncertain that  
4 we should give them the benefit of the doubt. The whole business  
5 is terribly unsatisfactory.

6 MCGARRY: Mr. Reiche.

7 REICHE: Ray. In terms of responding to the questions, or the  
8 comments of Counsel, what in your estimation would be the minimum  
9 you would need? I don't mean in terms of exact papers, but the  
10 minimum in terms of information to enable you to make an informed  
11 judgment as to the validity of the 22 and 17 percent.

12 LISI: A lot of that would depend on what method the accounting  
13 firm used. If they did go to the individuals in the states as  
14 they state they did, the head of the state office, then we would  
15 want to see the questions that they asked this individual. We  
16 would want to have a list of the names of the individuals which  
17 they did provide in their response. I think we would want to see  
18 exactly, again, what it is that they define as a compliance or  
19 fundraising activity; so that we could verify at least that we  
20 were in agreement on that. That the function of the individual  
21 whose time was being allocated was, indeed, working on compliance  
22 and fundraising activity.

23 REICHE:  
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1 REICHE (continuing):

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9 MCGARRY: Governor Thomson.

10 THOMSON: When this matter was here before, there was quite an  
11 extended colloquy concerning the ground costs and the travel  
12 expenses and it was between Commissioner Aikens and Rick Halter  
13 and Ray Lisi and the answer that was given was that in this case,  
14 there was no possibility that they were going over their limit in  
15 New Hampshire and Iowa and so those matters hadn't been gone  
16 into. And it was also quite apparent that there weren't adequate  
17 records or any record at all kept. Now why hasn't that subject  
18 been addressed in this report.

19 MCGARRY: Ray Lisi.

20 LISI: I believe that the discussion at that time pertained to  
21 the overall limit as opposed to the New Hampshire or the Iowa  
22 limits and it involved the--as you say the ground costs, or the  
23 reimbursement of the ground costs by the press. And at that  
24 time, as I say, we were speaking about the New Hampshire, I'm  
25 sorry, the overall expenditure limit as opposed to the New  
26 Hampshire and the Iowa limit. We do have a discussion here under  
27 the "advance staff" section of the report as we get further on in  
28 the report. Oh, I'm sorry, the "National Press" Section of the  
29 report which does deal somewhat with reimbursements from the  
30



1 LISI (continuing): national press as far as a reimbursable  
2 expenditure to that state and therefore not being allocable to  
3 that state.

4 THOMSON: But it has no relationship to--over in a state, it was  
5 total.

6 LISI: That's correct. It was the overall that the Committee did  
7 not approach.

8 MCGARRY: Mr. Harris.

9 HARRIS: What was the legal department? What was their  
10 recommendation? Specifically as to what we should do on this  
11 item?

12 STEELE: Well, again, Marsha is more familiar with the specifics.

13 MCGARRY: Mr. Steele.

14 STEELE: But in my mind what you have to do here is tell them  
15 what information you want and why you want it, which I don't  
16 think you have done. I am sure if we want the--if the Auditors  
17 decide that they need, you know again, the question of the  
18 outside CPA which is also in the Carter case, if you decide--if  
19 what the Commission here decides is that you want in this  
20 instance, you want further backup of that, I think you have a  
21 right to go get that. The difficulty that I see with this is  
22 perhaps the one that you were alluding to. You have said in your  
23 regulations that you need a reasonable allocation. The Auditors  
24 seem to be saying, "Well, we can't decide whether this is a  
25 reasonable allocation on the basis of the record here." I am not  
26 quite clear, but I think it is quite confusing and organized in a  
27 way that I find it very hard to get out of that exactly what more  
28 would substantiate that matter. If what is needed is the audit  
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1 STEELE (continuing): workpapers from the outside CPA, then I  
2 think you can go to it.  
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22 GENTNER: I think the report starts to go down that way. It  
23 starts out by saying the general theory sounds good to us, I just  
24 don't think it goes far enough in saying what we want before we  
25 will say that, "O.K., you have now come and shown us why our  
26 figures should be replaced by your figures." In that vein, I  
27 think we ought to make it clear that once they supply us the  
28 work-papers and once they satisfy us that their definition of  
29 "compliance" and "fundraising" etc. meets ours, what we will do.  
30

1 GENTNER (continuing): Now I mean will we require more, or will  
2 we accept that? And with that is the problem of, if we do  
3 require more it would probably be a good idea to decide now  
4 generally what more we are going to want before we send the  
5 Committee out on the task of pulling together information only to  
6 be told that "gee, that's not enough" or "that's very nice what  
7 you have shown us, but it is not relevant."

8 MCGARRY: Mr. Reiche.

9 REICHE: But Marsha, one thing we've got to be careful about and  
10 you and I have previously discussed this, and that is we can't  
11 put the Commission in a position of saying, "Yes," as I said to  
12 you yesterday, "Give us A, B, C, and you are home free." Because  
13 you never know when A, B, and C is going to disclose a possible D  
14 and, therefore, you have got to leave some flexibility for the  
15 Commission. So that kind of a statement in here or a sentence in  
16 the Report, I think we have got to be very wary of particularly  
17 from a practical viewpoint and that we would like some additional  
18 information. What that information is about, I think can be  
19 stated, and I said earlier, I think probably we can get some  
20 greater detail on that but I don't see this as any insoluble  
21 problem, I really don't. I think you go that route and I think  
22 you will have your answer.

23 MCGARRY: Mr. Tiernan.

24 TIERNAN: Along that line, is it information you need from Fox  
25 and Company as to how they arrived at these figures, or is it  
26 information that you would get from the Committee?

27 LISI: It would most likely be information from Fox and Company.  
28 We have already asked them for this information and haven't  
29 received anything to date.

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1 TIERNAN: Have we ever gone out to a third party like that to  
2 request any information? We haven't, have we? You would have to  
3 request it through the Committee indicating in the Audit Report  
4 that--whether or not this was a reasonable allocation would have  
5 to be something that was determined on the basis of an analysis  
6 of the methodology used by Fox and Company.

7 LISI: In the case of the media expense, we have gone out to  
8 media firms. But that has always been with going through the  
9 Committee.

10 TIERNAN: Through the Committee, yes.

11 LISI: Through the Committee.

12 TIERNAN: And they came in with-

13 LISI: I guess that is the only time I can recall.

14 MCGARRY: Mr. Gross.

15 GROSS: To be more specific in some instances, some of the  
16 problems that we have are almost prejudgments contained in the  
17 Audit Reports. For instance, on page 11, the last sentence of  
18 the first paragraph, it's not a complete statement, oh, I mean  
19 page 20 at the bottom of the page. It says, "The timing of the  
20 interviews is an important factor to take into consideration when  
21 determining the reasonableness of the resulting percentages  
22 because of the--because the calculations were based on a single  
23 individual's recollection of activities." That is on page 20 at  
24 the bottom in the first paragraph of the last sentence. That  
25 type of judgment made at this point in the process is one that we  
26 don't think can be legally sustained. In other words, in other  
27 audits the Auditors may have had contemporaneous interviews  
28 during the Threshold Audits with people who may have been  
29 available, or who may have been at the headquarters while the  
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1 GROSS (continuing): Threshold Audit was taking place and they  
2 were having interviews at that time. In this instance, the  
3 interviews had taken place after the fact. I am not so sure  
4 that--way after the fact, or in different degrees of timing from  
5 the time that the event took place. I am not so sure that if it  
6 is a few months later you can't make a better assessment rather  
7 than maybe five or six, or two weeks later after you do it. And  
8 as far as we are concerned as a legal matter and when something  
9 like this would get to a judicial determination, the timing of  
10 the interview without their being any specific framework, without  
11 there being any specific guidelines or regulations in how this  
12 information is determined through a specified interviewing  
13 process you cannot put any credence on the timing of the  
14 interviews because it may be now as opposed to five months later.  
15 The whole interviewing process is one that is tenuous as is  
16 because you don't have really specific lists of questions that  
17 you are asking; uniformity of questions. A lot of it is  
18 dependent upon whom may be available at the time; so we have some  
19 problem at this point putting in a statement that the timing of  
20 the interview is an important factor to take into consideration.

21 GENTNER: May I just pick up on that?

22 MCGARRY: Marsha Gentner.

23 GENTNER: On page 25 at the bottom at the second to last  
24 paragraph referring to the percentage of the staff time, the  
25 statement, "The Committee has not provided any information as to  
26 how these percentages were derived in general for any one  
27 individual nor have they been able to provide any justification  
28 for these percentages." What is the justification? Is that  
29 documentation? And if so, what kind of documentation? Or are we  
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1 GENTER (continuing): speaking of legal justification? And I  
2 think that kind of thing leaves the Committee in the dark as to  
3 exactly what troubles the Commission and what we want in terms of  
4 saying--so that we can feel comfortable in saying that these  
5 allocations are reasonable.

6 MCGARRY: Commissioner Aikens.

7 AIKENS: I don't know why all of a sudden we are so concerned  
8 about this Committee in providing them with everything when we  
9 have--this document has been delayed in coming before us for  
10 almost five months because the Committee held back materials and  
11 then supplying us with so much material that wasn't properly  
12 submitted nor properly documented; putting the auditors through  
13 all kinds of gyrations in trying to figure out what their  
14 accounting methods were in order to complete a final audit, or in  
15 order to complete this Audit Report. I just don't see why we are  
16 bending over backwards trying to supply reasons why the Committee  
17 doesn't have to supply us with the information. We have told  
18 them that they have to supply it. The problem here is that they  
19 haven't. Is that correct, Ray?

20 LISI: That's correct. Well, the information--they have not  
21 supplied information here to allow us to make a determination as  
22 to the mathematical accuracy nor the reasonableness of the  
23 calculations I might point out, too, that a number of these areas  
24 that the Committee addresses here--or that we address here in the  
25 final Audit Report, that the Committee did not make any  
26 allocations to at the time we were doing the field work; so these  
27 were all new allocations to us at the time the response came in.

28 MCGARRY: Mr. Reiche.  
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1 REICHE: Ken, with all due respect, I have to ask you one quick  
2 question. Have you ever tried to fill out time records sometime  
3 after the fact? I would be a better lawyer if I admitted that I  
4 had never tried to do it, but yes, I have tried to do it on  
5 occasions. Ken, it is just human nature. The farther you get  
6 away from the event, the more hazy your recollection becomes and,  
7 therefore, when they start talking about the timing of  
8 interviews, in terms of making your allocations, being important,  
9 yes, it is important. Sure, it is important.

10 GROSS: But the point of the matter is that if we had  
11 regulations, guidelines, anything that informed the Committee, or  
12 any Committee for that matter, that what we are looking for are  
13 time schedules, or we will be interviewing at a particular time  
14 to ascertain this information, that would be fine. But this is a  
15 process in which the Audit Division goes through in seeking  
16 information from a Committee. Sometimes they can do it  
17 contemporaneously because of circumstances that are beyond  
18 anybody's control. People happen to be around or people aren't  
19 around. Sometimes it is done later on and to accord weight based  
20 on circumstances that are beyond the control of the Committee or  
21 the auditors seems to me, as a legal standard, is something we  
22 have difficulty in justifying it.

23 REICHE: Well, Ken, I would have to disagree because the standard  
24 is one of reasonableness here. And reasonableness involves human  
25 nature. It has to. And the ability to recall dims with the  
26 passage of time and therefore, the burden of proof is on them to  
27 produce some reasonable method. Our Auditors aren't saying that  
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1 REICHE (continuing): what they have used here is unreasonable,  
2 but what they are saying is that based on what we have they can't  
3 tell whether it is reasonable. And therefore, they need  
4 additional information. Now, if you toss timing into that, I  
5 think--I don't see that you need spelled out in regulations that  
6 the timing of the basis of that information is important. I  
7 think that goes with the standard of reasonableness. If you have  
8 someone coming along, three, four years later trying to tell you  
9 precisely how to allocate that time, it wouldn't take a PhD to  
10 say, "No, that doesn't sustain the test of reasonableness." I  
11 just think it is implicit when you talk about reasonableness you  
12 have got to talk about information which is maybe not prepared  
13 the same day, but which has some degree of freshness to it. And  
14 to me, that's involved, that's implied with the standard of  
15 "reasonableness."

16 GROSS: But it is not clear that the Committee could have  
17 provided that information because of the circumstances at the  
18 time it occurred. That's the problem.

19 REICHE: Every other Committee could, why couldn't they?

20 GROSS: Some of the Committees could. Some committees supplied  
21 information others--

22 REICHE: Well, all right. But the burden of providing a  
23 reasonable standard, not standard, a reasonable method, that  
24 burden is on them. And they then say, "All right, this is how we  
25 did it." And the Commission judges whether it was reasonable or  
26 not, but at least the Committee has to come forth initially and  
27 say, "This is how we did it, we think it is reasonable." And we--  
28 they may even say, "We defy you to say it is unreasonable." But  
29 at least tell us how you did it. That's what is missing here.  
30 They haven't told us in sufficient detail how they did it.



1 MCGARRY: Governor Thomson.

2 THOMSON: I would like to inquire if this Committee had kept  
3 records, adequate records, would all of this discussion be  
4 necessary? Or would you have had it all in the records that you  
5 had an opportunity to see?

6 LISI: I think as I said before, many of the areas that we are  
7 addressing now are areas that we did not look into in the actual  
8 field work stage of the audit. In other words, we did not do any  
9 work with overhead allocations during the field work portion of  
10 the audit because the Committee did not allocate anything to  
11 overhead or exempt categories based on overhead. Now they may  
12 well have had the information there and may still have the  
13 information there for us to make a determination as to that fact,  
14 but we would need to know exactly what method they used to arrive  
15 at the percentages; what the assumptions were and what records  
16 they actually used. We know they do have payroll records which,  
17 obviously would be an important factor.

18 THOMSON: So that's all you are asking them to provide the  
19 information necessary for you to make a decision?

20 LISI: That's correct.

21 MCGARRY: Marsha Gentner.

22 TIERNAN: Oh Mr. Chairman. May I ask a question? Did you have  
23 an opportunity when you did the field work to go through the  
24 payroll records?

25 LISI: Yes, we did.

26 TIERNAN: All of the payroll records were available to the Audit  
27 Division?

28 LISI: The payroll records that were available--

29 TIERNAN: Up to that time.  
30

1 LISI: Were the payroll registers which indicated the salaries  
and the different cost centers that these people--

2 TIERNAN: The difficulty is that when you did that field work you  
3 didn't know that they were going to later allocate overhead?

4 LISI: That's correct.

5 TIERNAN: That's your problem.

6 MCGARRY: Marsha Gentner.

7 GENTNER: Well, that is exactly the point that I wanted to  
8 clarify. It is not as if this information has been--we have  
9 asked for this information and the Committee has withheld it and  
10 now is saying "accept what we say," but we did an Interim Report  
11 based on the field work that we did in the Audit and the  
12 Committee came back with some rather different theories as to how  
13 they thought you might allocate those figures and what we have  
14 now is we don't have the work-papers for the new figures that the  
15 Committee has now put forth in its response to the Interim Audit.  
16 So that's why we find ourselves in this position. It's not a  
17 position of the Committee refusing to give us information and the  
18 General Counsel's Office doesn't believe that we don't have a  
19 right to look at those work-papers before we say, "Yes this is  
20 reasonable." What we are concerned about is the extent of that  
21 inquiry and giving the Committee some notice as to what we are  
22 going to require. And perhaps requiring things from the  
23 Committee that they couldn't have known we were going to require.  
24 Time sheets is a perfect example. Lots of campaigns don't use  
25 time sheets or have their workers keep time sheets and at this  
26 time if we are going to say, all that will satisfy is time  
27 sheets, you have a problem of fairness and warning to the  
28 Committee.  
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1 MCGARRY: Yes, Ray.

2 LISI: I don't want the impression to come forth here that we  
3 have not asked for this information previously. This is not the  
4 first time the Committee will see this information requested in  
5 the Audit Report. The response of the Committee was received on  
6 May 19. From that date forth, the only item that we received on  
7 May 19th was a computer print-out and the Committee's response  
8 which is attached to the Audit Report. There was no  
9 documentation provided. They came in with documentation later  
10 on. We have repeatedly asked them to supply additional  
11 information for us. So this is not the first time the Committee  
12 will see this request for this information. The Fox letter was  
13 received--we have a copy of it here--on June 2nd, rather it is  
14 dated June 2nd. We received it a couple of days after that.  
15 From the time we received the letter was within a couple of days,  
16 we asked the Committee people to supply us with the work-papers  
17 to support this information.

18 HARRIS: You asked them for the Fox work-papers? What did they  
19 reply?

20 LISI: The only information we got from them since then is that  
21 they have requested it and someone from Fox Company is working on  
22 gathering the information, but they haven't supplied anything to  
23 us as of this time.

24 HARRIS: How can they be working on it? Either they have the  
25 workpapers or they don't have the work-papers.

26 TIERNAN: They are working on finding them, I guess.

27 AIKENS: They are creating them.

28 TIERNAN: I don't think that is necessarily so.

29 MCGARRY: Joe Stoltz.  
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1 STOLTZ: Just one comment here. It is entirely possible that if  
2 we get a hold of all the papers the accounting firm developed in  
3 the course of this thing that we will be satisfied. Depending on  
4 the content. However, if there is no indication in there what  
5 the duties were of the individuals whose time was allocated to  
6 the various functions or the individual who was interviewed had  
7 any indication of whether that person was even in a position to  
8 know the responsibilities of each individual were, then we are  
9 not going to be a whole lot better off than we are now except  
10 that we can check their arithmetic. And I think that is kind of  
11 the point the whole thing comes down to. Was there some sort of  
12 an informed decision made on these percentages? Was there enough  
13 information available at the time to make that kind of decision,  
14 or were they simply somebody's recollection four months later and  
15 the individual doing the recollecting may or may not have been  
16 even around at the time.

17 MCGARRY: Mr. Tiernan.

18 TIERNAN: Ray, you say requested that. Is that in writing?

19 LISI: No, that was not in writing.

20 TIERNAN: And you made one request?

21 LISI: One of the reasons it was not in writing was because the  
22 Committee's response was due on May 19th and in most cases we  
23 would not include any additional information received after that.  
24 These had been verbal requests to the Committee to provide some  
25 of this information.

26 TIERNAN: But when you got the letter from Fox and Company and  
27 you analyzed that, you knew--I assume that you reached a  
28 conclusion that there was no basis for you to say that it was a  
29 reasonable allocation or that it wasn't a reasonable allocation;  
30 so you contacted the Treasurer or someone on the Committee--

1 LISI: That is correct.

2 TIERNAN: And told them that, what? What did we tell them?

3 LISI: We explained to him that we didn't feel the letter from  
4 Fox was sufficient to support their allocations or their  
5 percentages. All right, and that we needed additional  
6 information. They asked what type of information we would need  
7 and we told them the work-papers that Fox had used, or that Fox  
8 and Company had used to generate this information.

9 TIERNAN: When was that? Sometime about the 15th of June?

10 LISI: This was some time after June 2nd.

11 TIERNAN: After the 2nd?

12 LISI: Right.

13 TIERNAN: And you have not made any further--

14 LISI: No, we have talked to the Committee Comptroller or the  
15 accountant handling the affairs of the Committee periodically. I  
16 would say that we talk to him on the average of once a week and  
17 he has indicated--I spoke to him a few minutes before I came up  
18 to the meeting--and they were asking for--they have indicated  
19 that they are going to supply additional information, but they  
20 have not.

21 TIERNAN: So as I get it, some representative of the Committee is  
22 saying, "We are trying to get a hold of these from the Fox  
23 people," the work-papers, or the basis of the method they used to  
24 arrive at these percentages that we have applied for our, on the  
25 basis for our reasonable allocation?

26 LISI: That is correct.

27 MCGARRY: Thank you, Commissioner. Mr. Reiche.

28 REICHE: Just a quick question, did you keep written memoranda of  
29 the telephone conversation?  
30

1 LISI: There may be some. On ones where we requested specific  
2 information I believe we would probably have them. There was  
3 also a meeting.

4 REICHE: I think you have got to. You know, because if we are  
5 going to arm our lawyers at a later date with sufficient  
6 background evidence Ray, I think that is very important.

7 LISI: I might point out--

8 MCGARRY: Mr. Gross.

9 GROSS: Just to summarize our position, I think the last point  
10 you made is along the line. Just so there is no  
11 misunderstanding. We are trying to develop a record here of what  
12 has been requested. All we are really looking for is greater  
13 specificity in the types of documents that we are looking for and  
14 a telephone conversation probably will almost come down to being  
15 nonexistent by the time you get to sustaining this. There have  
16 not been specific requests. It is difficult enough saying after  
17 the fact, what it is that will satisfy this illusive standard of  
18 reasonableness, but if we are not specific in our requests, then  
19 I think we just hurt our case that much more. What we are trying  
20 to do is build the adequacy of the record if we do have to go to

21 GROSS (continuing): that.

22 MCGARRY: Thank you, Ken. Ray Lisi.

23 LISI: I just wanted to point out one thing--we did have a meeting  
24 with Committee officials--I don't recall exactly the date--on  
25 that to discuss the matters in the report.

26 TIERNAN: And did we memorialize that meeting in a memorandum?

27 LISI: Yes, we do have a memorandum on that meeting. We did  
28 discuss a number of these areas and the Committee's response.

1 REICHE: Was that within the last month or two?

2 LISI: I would say so.

3 STOLTZ: Month or six weeks, I would say.

4 TIERNAN: Where--so let me see--that if we were to approve, let's  
5 assume that we resolve everything today, if we were to approve  
6 the final Audit Report on the Kennedy Committee today, and yet  
7 you have this hanging, how would you -- where do you address then  
8 the problem with regard to the reasonable allocation?

9 STOLTZ: It would be--

10 TIERNAN: I mean other than a discussion of these?

11 LISI: We would address that in the repayment section of the  
12 Report--where we come up with the figures for the expenditures  
13 over the limit in New Hampshire and in Iowa which would give the  
14 Committee 30 days to supply any additional information.

15 TIERNAN: And to arrive at that, Ray, you would have to say that  
16 you don't accept the allocations that have been proposed by them?

17 LISI: That is correct.

18 TIERNAN: And yet, we are not in a position to say that that  
19 allocation was a reasonable allocation or not.

20 LISI: That's correct. We don't know if it was a reasonable  
21 allocation.

22 TIERNAN: So the problem the Commissioners have right now, I  
23 think, is that there is no way that we could reasonably expect  
24 the Commissioners to approve sending out this kind of an audit  
25 report until we get that. Now, I mean that is the difficulty we  
26 are in now. And it is not any fault of the Audit Division, but  
27 it seems to me that you have got to somehow say, "You have got 10  
28 days or 2 weeks to supply this information or we are not going to  
29  
30

1 TIERNAN (continuing): find it to be a reasonable allocation."  
2 You know, if you want to reach it. Because that is the  
3 conclusion you are going to come to if you are going to approve  
4 this Audit Report today. Now, that's the way I feel.

5 MCGARRY: Marsha Gentner.

6 GENTNER: Procedurally, the scenario I had envisioned if we could  
7 work out the language problems would be that the Audit Report  
8 would go out. They would have the 30 days to contest that and  
9 part of that would be to find information and then in reviewing  
10 it, if the auditors felt that it was sufficient, we would modify  
11 the repayment determination.

12 MCGARRY: Yes, Mr. Reiche.

13 REICHE: I was going to say I don't see why we can't consider it.  
14 You know, approving or disapproving the Audit Report on the basis  
15 of the evidence that we have had, or that we have at the present  
16 time, knowing that they will have the 30 days in which to respond  
17 anyway; so if they disagreed with our finding that on the basis  
18 of evidence we have right now, we can't support that standard,  
19 fine. Then let them introduce the additional evidence, if they  
20 have it.

21 MCGARRY: Mr. Steele.

22 STEELE: I think that, to some extent, that is where the problem  
23 lies. You were then making, you are now making your preliminary  
24 determination that you can prove, ineffectively going forward and  
25 saying that they have not done a reasonable allocation. I don't  
26 see where--I mean if that is the way you come out, then that is  
27 the way you come out, but you are then going to be--the basis for  
28 that is then going to be that they have not supplied, in my mind,  
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1     **STEELE** (continuing): relatively unstated materials which you are  
2     not specifying which we feel that we need to make the  
3     determination so that, in effect you are going out and saying,  
4     "Well, we are going to find--we are going to make our  
5     determination--" which is your first public statement that you  
6     have looked at all their records and added everything up and you  
7     are going to make the determination that they went over, but the  
8     basis for that is going to be that you don't have enough from  
9     looking at the records; so I think you are going to have a very  
10    difficult time when it comes forward because in effect that means  
11    that they are going to have to disprove--you are saying to them,  
12    "Now disprove it." So that's the difficulty as I see it with the  
13    position you will be in.

14    **REICHE**: Now Charlie, I can't see that. And the reason I can't  
15    see it is simply because built into this system all along the  
16    line through the Interim Report and so forth, have been a series  
17    of time factors whereby they are given additional time to provide  
18    further information all along the way. And we are not saying now  
19    that on the basis of all the evidence that could be introduced  
20    that is unreasonable, but we are saying, "You had ample time and  
21    we have requested - repeatedly - the information which perhaps  
22    proves your case, we don't know. You haven't availed yourself of  
23    that; and therefore, on the basis of that which we have, we can't  
24    find that it is reasonable." You then give them the 30 days -  
25    that is built into the process - if they don't come forward then-  
26    -all we are saying is that based on the evidence we have, it is  
27    not reasonable--if that is the point you have reached. But you  
28    can't just keep giving extensions and extensions when we have  
29    built due process into this procedure from the very beginning.  
30

1 STEELE: All I am saying is that I think that the basis on which  
2 you are going to say "It is not reasonable is, to me, very  
3 unclear at this time.

4 MCGARRY: Mr. Harris.

5 HARRIS: I don't find the word "reasonable" used in part of the  
6 regulations dealing with Allocation of Expenditures Among States  
7 by Candidates for Presidential Nomination. It is used in some  
8 other places, but I don't find it there. I likewise don't find  
9 anything saying it is the Presidential committee's burden. We  
10 say in the regulations that it is their burden to show that  
11 disbursements are made for qualified campaign expenditures, but I  
12 don't see that the burden is put anywhere on this allocation of  
13 expenditures among the states--or that the reasonableness  
14 standard is set forth.

15 STEELE: Again, I think that the allocation is dealt with in  
16 106.2, and it seems to me that you do have imported there that  
17 idea of the reasonable allocation. I agree, I think if I  
18 understand you, that the question of the burden of proof, of  
19 proving an allocation was reasonable or unreasonable was not so  
20 clearly set forth, but I think one of the very difficulties is  
21 going to be that these regulations don't seem to have given them  
22 a specific statement setting out exactly what--regulations or  
23 anything else--what information they have to keep in order to  
24 establish their allocations. However, given the fact that it is--  
25 -first of all, has proven for everybody a tremendously difficult  
26 area, your regulations are not specific and as I said, in reading  
27 through 106.2 it seems to me that you do have imported that idea  
28  
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1 STEELE (continuing): of reasonableness, but even without that,  
2 you haven't said anything else. In other words, you haven't put  
3 forward that they have to maintain it, so that you will be going  
4 forward proving non-reasonableness because you are dissatisfied  
5 with something that is relatively unspecific. So that is where  
6 the difficulty seems to come.

7 MCGARRY: Do you have any suggestion at this moment, Charlie?

8 STEELE: I think that the Commission in order to--my problem is I  
9 think the formulation has got to be along the lines of whatever  
10 procedural methods you use it for of being quite specific or  
11 relatively specific, not necessarily saying that if you give us  
12 this, then you are off the hook, but that then you have to  
13 specify what it is that they have not provided. Records that  
14 they should have kept that they have not provided. And as I  
15 think Ken indicated, I think we have--although it may well be  
16 true--that in the back and forth with the auditors that the  
17 auditors feel that they have requested some of this material, but  
18 you will not have at this juncture if you go forward with this a  
19 very good case for saying that you are founding this  
20 determination on the failure of the Committee to come forward  
21 with evidence because the requests for it seems to be solely  
22 oral. They are ones that I think you then have to go in and say,  
23 "Yes, but we did request it." So I think that in my mind you  
24 have to make specific some way what information it is you think  
25 that they have to come forward with that they have been requested  
26 to come forward with that they have not come forward with.  
27 Again, if it is the audit work-papers from the Fox Company, which  
28 seems to be the major item that Ray feels they have requested  
29  
30

1 STEELE (continuing): that would enable them to make the judgment  
2 that they feel they are supposed to, that seems to me, as Marsha  
3 says, I think you can certainly request those papers and have a  
4 good case for it if you want to go forward on that. I think you  
5 are in a difficult situation establishing your preliminary  
6 determination on the lack of records, as Ken says (inaudible) in  
7 that sense.

8 MCGARRY: Commissioner Aikens.

9 AIKENS: Joe, what have we required in the allocation formulas  
10 that other Committees have used? Have we required work-papers?  
11 In the Reagan General, we did the interviewing on the allocations  
12 of their staff and overhead.

13 MCGARRY: Joe Stoltz.

14 STOLTZ: Yes. In conjunction with the Treasurer with whatever  
15 staff remained at the time, based on what various people did. Of  
16 course, that's a little easier situation. That was headquarters.  
17 And these are state offices and I think it is a little harder to  
18 later lay your hands on it. The other one that was done that  
19 comes to mind is the Carter case. They did both state and field  
20 office, headquarters and field offices. Headquarters was done  
21 based on interviews conducted by an individual who was  
22 commissioned to do that. They kept very detailed records, and so  
23 forth. We could then go around behind those and in fact, we  
24 challenged and changed a few of them. And a similar procedure  
25 was done with the field people. Now this was all done while the  
26 campaign was active and alive. But it never came down to a  
27 question of adequate records. The materials developed by the  
28  
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1 STOLTZ (continuing): individual who was doing the work were  
2 quite adequate to show what he had done and how he had done it.  
3 On what basis he had done it. We simply don't have that here.  
4 It may be contained in the Fox papers. It may not.

5 AIKENS: Ray, the comment that the calculations were based on a  
6 single individual's recollection. Are you talking about in each  
7 state? In other words was this just more than one person in each  
8 state, such as the state chairman or the state treasurer?

9 LISI: In the Fox letter, I think they spoke to the head of the  
10 state offices and interviewed him as to what activities took  
11 place in that office and the amount of time that was spent by the  
12 individuals who worked in that office.

13 AIKENS: And approximately how many people in each office are we  
14 talking about?

15 LISI: We have 30 in New Hampshire and 32 in Iowa, 15 in New York  
16 and 5 in Ohio.

17 AIKENS: Do you think that anyone can recollect after all this  
18 time the power activity of 30 people without some proof? It is  
19 just unreasonable.

20 TIERNAN: They also provide an individual breakdown here.

21 MCGARRY: Mr. Tiernan.

22 TIERNAN: It also individually breaks down the percentages for  
23 fundraising and compliance for the individuals in each of the  
24 states, doesn't it?

25 LISI: That is correct. The individuals' names are listed and  
26 then there are columns for fundraising and one for compliance  
27 with the percentage next to his name.

28 TIERNAN: Such as Mr. Miller in Iowa is a 100% compliance?

29 MCGARRY: Mr. Reiche  
30

1 REICHE: I am going to try to break the logjam. Is it possible,  
2 and I made this suggestion earlier, but perhaps the auditors  
3 could describe in somewhat more detail the type of information  
4 they would like which might make Counsel's job easier at a later  
5 date, but not try to dot every "i" and cross every "t" because  
6 you just can't do that. And I think we all realize that you  
7 can't do that. But is it possible that that could be done and  
8 help meet some of the objections that are being voiced at the  
9 table because if so, I think that might be a way of doing it;  
10 then moving on to whatever the next item is.

11 LISI: I think we could include information in the Report--which  
12 I think we have done--

13 REICHE: In part we have done.

14 LISI: - stating what we don't have. The problem that I see  
15 anyway is not so much requesting certain information, but  
16 requesting that information that the Committee used at arriving  
17 at these percentages. It is difficult to do that because they  
18 are the only ones that know what they used. We don't know. And  
19 we do not want to limit ourselves to asking for specific  
20 information and we would have to make it a rather general  
21 statement in there, perhaps to the effect that "the following  
22 documentation is not limited to."

23 REICHE: Yes. Ray, I understand your position, and I agree with  
24 your position on that because one thing may lead to another and  
25 you have got to leave yourself open if it does. I appreciate  
26 that. But if that could be done, Mr. Chairman, I think perhaps  
27 that might be of some help on this thorny point, which would  
28 amount to perhaps a slight redraft in certain places, but if that  
29  
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1 REICHE (continuing): were the case, I think it is so important  
2 to get this out that somehow I would like to see if we couldn't  
3 address it Thursday of this week in a special Executive Session  
4 just to get it out and be done with it.

5 MCGARRY: Yes, Mr. Gross, what is your comment?

6 GROSS:

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11 MCGARRY: Then what would you recommend in implementing that,  
12 Ray?

13 LISI: If I defer to Joe, and if he doesn't have any problem with  
14 doing this, you know I think if the Commission did want to meet  
15 on Thursday, we could redraft sections of the report sitting down  
16 with Counsel and, you know, reach an agreement on these. There  
17 are other sections of this finding on which we seem to have the  
18 same problem.

19 MCGARRY: Yes.

20 LISI: And there are some other sections where I believe we are  
21 in agreement. And I think that if we were to do that, we would  
22 want to defer discussion on the rest of the finding until that  
23 point.

24 MCGARRY: I think that whatever we could move this afternoon we  
25 should and leave the other for you to work out with the General  
26 Counsel and come back Thursday morning. Joe Stoltz.

27 STOLTZ: In this section, I would suspect that some additional  
28 language would have to be added to the first full paragraph on  
29 page 20 which is kind of the conclusion section for that.

30

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1 TIERNAN: Page 20?

2 STOLTZ: Page 20. Possibly in, the second sentence which is,  
3 "therefore, absent submission of" we could detail, try to detail  
4 possibly more than content of what could be submitted rather than  
5 a description of what types of documents would be submitted.

6 MCGARRY: Is that agreeable, Ken?

7 GROSS: I think that is a--you know that is a good area to work  
8 on in redrafting right in there.

9 HARRIS: How would you word this?

10 GROSS: Well, I think that we would be looking for is something  
11 that goes toward a standard of something that would be sufficient  
12 documentation. Exactly how you describe that, I don't know. Is  
13 it work-papers, is it affidavits, is it an actual transcript of  
14 an interview? That type of thing.

15 HARRIS: At this point, it seems to me that you would simply ask  
16 for the work-papers and if you could get them, you would be able  
17 to make some determination as to their adequacy.

18 TIERNAN: And I think you ought to put in the timeframe that you  
19 have already requested these. Can you include that in this  
20 report, Joe?

21 STOLTZ: I believe Ray may have some notes on some requests he  
22 made and we could.

23 TIERNAN: Yes. I think that makes the record a little better.  
24 Wouldn't you want that?

25 GROSS: What, the time?

26 TIERNAN: That there as been a request since the Fox letter came  
27 in?

28 GROSS: I don't really have a problem memorializing it. It's a  
29 standard type thing to go in an Audit Report. I think the  
30



1 GROSS (continuing): important thing is that a formal Commission  
2 request be made at this point. That's a critical factor,  
3 ultimately an important factor that ultimately puts forth  
4 sufficient specificity.

5 MCGARRY: With all of that, what could we--can we move anything  
6 this afternoon?

7 LISI: As far as this finding, what relates to this finding, I  
8 think it might be best to take the whole finding up at one point.  
9 Or we could handle certain portions of it. Parts where we don't  
10 have problems--(inaudible)

11 TIERNAN: You are talking about the recommendations appearing on  
12 the top of page 17? Would that cover all the material going  
13 before that?

14 LISI: Referring to the bottom?

15 TIERNAN: No, to the top.

16 LISI: Twenty-six at the bottom?

17 TIERNAN: Page 26 at the bottom, I'm sorry, you are right. That  
18 takes it up to that; so if you just postpone action on that, the  
19 Chairman wants to know if we can proceed with some other--

20 LISI: O.K. Well, there are other portions of that finding that  
21 we could possibly discuss for the Commission's information.

22 MCGARRY: Yes.

23 LISI: On which the Counsel and the Audit staff do agree with the  
24 requests for whatever information that has been included. And if  
25 we go to page 20, the Interstate Travel and Communications, the  
26 middle of page 20, this was another area that the Committee has  
27 addressed. At the time of receiving their response they stated  
28 that they were going to attempt to delete all long distance  
29 telephone charges made in Iowa and New Hampshire and charge them  
30 to an exempt category. Again, here we have a problem with work-

1 LISI (continuing): papers that were supplied to us to support  
2 these calculations. That now appears to be a moot point since in  
3 the Commission's discussion of the Carter response back on June  
4 9th, at that point the Commission approved the sending of a  
5 letter to the affected Presidential candidates concerning the  
6 long distance telephone charges and basically that letter stated  
7 that the Committees could charge to the--to an exempt category  
8 long distance telephone calls made outside the state to the  
9 national headquarters. The letter was mailed to the Kennedy  
10 Committee on July 2nd giving them a 30 day response period. And  
11 we have not received any response from the Committee to that  
12 letter. So, therefore, we haven't made any adjustments to their  
13 telephone allocations at this point. The--another part of that  
14 finding dealt with interstate delivery charges and there were  
15 some that we could--they did provide invoices and supporting  
16 documentation for and we did adjust the figures for that, but at  
17 this point, we have not adjusted their figures for the telephone  
18 charges--long distance telephone charges. Does Counsel have any  
19 comments on that one?

20 MCGARRY: Marsha Gentner.

21 GENTNER: Just one minor point and that is the last paragraph  
22 where it speaks of adjusting totals, we would like to see the  
23 figures in there. The adjustments that were made.

24 GROSS: I would also add that it is this type of recitation of a  
25 letter, certified, showing receipt, requesting/demanding  
26 documents that is the type of thing we are looking for in some of  
27 these requests underlying the documentation problems that we  
28 have. This is a good example of that type of follow-  
29 up/memorialization.  
30

1 LISI: We can add that information on the total.

2 The next section that we dealt with was Media. Here  
3 again, as we noted in the Interim Audit Report, the Committee had  
4 not allocated any media charges to any state. Now in their  
5 response, the Committee stated that they had used a new  
6 allocation formula which was based on the number of eligible  
7 Democratic voters and had recalculated their media costs based on  
8 the County Coverage Reports as opposed to the Area of Dominant  
9 Influence which was used previously by the Committee. We had  
10 accepted the Committee's allocation done on the Area of Dominant  
11 Influence calculations. We have no problem with the use of the  
12 County Coverage Reports by the Committee at this time in changing  
13 their allocations. These Reports have been used by other  
14 Committees also. Now at the time that we received the response  
15 from the Committee, they had just given us estimates on what the  
16 adjustments would be for media costs. Since that date, they did  
17 provide us with documentation which we have reviewed based on the  
18 calculations using the County Coverage Reports and short of a few  
19 minor areas where it appears as though the Committee has just  
20 erred in their calculations, starting on page 22, on number 1  
21 three-quarters of the way down the page, we did have a problem  
22 with the fact that the Committee had reallocated their costs  
23 based on just the TV and radio stations that were covered under  
24 the Area of Dominant Influence. The County Coverage Reports  
25 included approximately 10 stations that were not included under  
26 the ADI figures, under the ADI calculation. Now we know that the  
27 Committee made media buys based on the documentation they  
28 provided to us from 5 of those stations and they have not  
29 reallocated those costs or given us the costs that should be  
30

1 LISI (continuing): reallocated based on those 5 stations. We  
2 also have, from one of those stations, at least we know of \$1,450  
3 in media buys that should be allocated based on the CCR. In  
4 addition to that, on the three the Committee did provide us with  
5 a schedule of refunds; however, these refunds were calculated  
6 based on the ADI percentages and not the County Coverage Report  
7 percentages. So there are some adjustments that would have to be  
8 made there. And all of these matters have been discussed with  
9 the Committee officials and they have agreed with us that the  
10 corrections should be made, or at least that they will provide us  
11 with the documentation to verify that there should be an  
12 allocation to those states--to those radio stations, TV now, we  
13 have not made any changes to the Committee's figures until we get  
14 the final figures from them--the final documentation so we can  
15 compute the final figures and reach agreement on those.

16 MCGARRY: Commissioner Aikens.

17 AIKENS: I want to know where they get this "eligible Democratic  
18 votership voting age population never implied registration."

19 LISI: The Committee brought this up a number of times and did  
20 indicate in their response that they were going to provide  
21 calculation based on that. They have never come forth and, to my  
22 knowledge, at this point, they are not going to attempt to.

23 AIKENS: You are saying then that they are not using them?  
24 Democratic votership?

25 LISI: They did state that they were going to use them, but they  
26 did not to our knowledge. The figures were just based on the  
27 County Coverage Reports.

28 AIKENS: So you were hopeful that in the documentation it will  
29 prove whether they did or did not use them?

1 LISI: Well, we have proved so far that they have not used them.  
2 They would have to go back and recalculate all their figures  
3 again in order to use them.

4 MCGARRY: Commissioner Tiernan.

5 TIERNAN: Ray, with regards to footnote #16, on page 22, are you  
6 saying that they should be allocated some of the time purchased  
7 on a TV station in New Bedford, Mass. or New Hampshire?

8 LISI: That's correct. We are not saying this. The document  
9 they are using is called a County Coverage Report and it does  
10 list a New Bedford station and being from New England, I  
11 understand what you are referring to. I lived in Providence and  
12 couldn't get New Hampshire.

13 TIERNAN: You couldn't get "Six" in Providence?

14 LISI: Right. It is difficult to understand why that station--

15 TIERNAN: You could get it in Massachusetts, but I doubt very  
16 much if you are picking up "Six" in New Hampshire.

17 LISI: Right.

18 TIERNAN: Trying to get additional advertising, of course.

19 REICHE: A little hard to get through Boston.

20 TIERNAN: From New Bedford, it is.

21 REICHE: That's what I mean.

22 LISI: Again, I say we haven't made any changes until we get the  
23 final figures on that and we hoped they would be forthcoming from  
24 the Committee.

25 I think the next section of the report, the National part,  
26 which deals with the national press probably Counsel would have  
27 the same problem with that they had with compliance and  
28 fundraising, unless they are in agreement on this?

29 MCGARRY: Marsha Gentner.  
30

1 GENTNER: I think it deserves some explanation of the Committee  
2 theory that's been put forth which the General Counsel's Office  
3 thinks is a sound theory provided the figures can be given to the  
4 Auditors to back it up. The theory is that the Committee charged  
5 a flat rate for air travel for the press and that that rate,  
6 while it varied was always over actual first-class air fare,  
7 sometimes two hundred and twenty five percent, two hundred, a  
8 hundred and fifty. They said that what they did is they applied  
9 the surplus that they received from the air fare knowing that  
10 they were going to receive a surplus. They applied it to the  
11 other expenditures that they picked up on behalf of the press.  
12 Ground expenditures, typewriters, food and drinks, whatever. And  
13 they took the surplus applied to those costs and then they  
14 maintained because that acted as a refund, these ought to be  
15 backed out of their expenditure limitations. They shouldn't be  
16 deemed Committee expenditures and they should be backed out. The  
17 General Counsel's Office agreed that that theory is reasonable  
18 and sound if they can provide us certain figures. Those figures  
19 would be total amount received from the press, the total cost of  
20 travel, air fare travel for the press and then you get your  
21 surplus from there and the total expenditures on the press and  
22 how they are final. As the report reads now, it seems that that  
23 theory is not accepted but rather what would be required is a  
24 direct tie with a reimbursement from the press to a specific  
25 expenditure and we believe that the theory used here is merely an  
26 administrative mechanism for the Committee's ease and it seems to  
27 make sense and we don't understand why it is not acceptable to  
28 the Auditors.

29 LISI: I will--  
30

1 MCGARRY: Ray Lisi.

2 LISI: We agree also with the theory that a reimbursable  
3 expenditure of the press which has been, or a reimbursable  
4 expenditure from the press which had been allocated to a state  
5 can be exempt from that state's limits if they can show that it  
6 has been reimbursed. The problem we have is in tying in the  
7 particular expenditure to the press. The Committee has come  
8 forth with a number of expenditures. Many of them just expense  
9 reimbursement forms for an advance staff individual and such  
10 things as car rentals and in some cases hotel charges and charge  
11 those off to exempt press, exempt national press. As Marsha  
12 said, we have not received any figures on the total amount they  
13 expended on national press activities nor the reimbursements that  
14 they received. I think the problem that we have here is tying in  
15 a specific expenditure to the press.

16 MCGARRY: Yes, Mr. Reiche.

17 REICHE: One question concerning national press on the middle of  
18 page 24. You have a couple of paragraphs there where the  
19 Committee is maintaining that the salaries of various staff  
20 persons who perform duties associated with handling the national  
21 press should not be allocated to an individual state. That's  
22 followed by your paragraph saying you find no statutory or  
23 regulatory basis for exempting these expenditures, with which I  
24 happen to agree, but how have we handled this in any other  
25 audits, presidential audits?

26 LISI: To my knowledge, we have not had any other Presidential  
27 candidate who has charged off--

28 REICHE Who has charged that?

29 LISI: That I know of.  
30

1 STOLTZ: As far as I know, this is a new theory.

2 REICHE: Yes, you know, I cannot find a basis for it myself, but  
3 I did, I wanted to be sure that perhaps we had the question arise  
4 in some other audit and I--thank you.

5 MCGARRY: Yes. Marsha Gentner.

6 GENTNER: Well, of course, this brings up another point where we  
7 have a disagreement with the Auditors again and that is we don't  
8 think, pursuant to the recent letter that the Commission sent out  
9 to the candidates, we don't think ministering to the national  
10 press constitutes an advance or field work but rather if you have  
11 any--if you're ever going to have anything that fits into the  
12 category of a national expenditure, we feel that ministering to  
13 the national press falls into that category. This is just really  
14 a question of whether you accept that or not.

15 MCGARRY: Yes, Mr. Reiche.

16 REICHE: But this goes back, somewhat, Marsha, to a conversation  
17 you and I had before where you are talking about people on the  
18 national scene, your publishers, your editors more precisely who  
19 are saying, "Yes, we will send a reporter to New Hampshire, we  
20 will send them to Iowa," and the fact that they are interested in  
21 that state--does this place it--the fact that they happen to come  
22 from out of the state does that mean that in determining whether  
23 to allocate an expense to a state campaign you say, "Ah-ha, here  
24 is a reporter from Nashua, New Hampshire, obviously that is an  
25 in-state so I will charge that against the campaign and here is  
26 one from Washington, D.C., no, that's national, I won't." I'm  
27 sorry I don't agree as you know, with making that kind of a  
28 distinction. I think as long as the reporter is in the state, as  
29 long as the reporter is working on the campaign that is going on  
30



1 REICHE (continuing): in that state, then I think it is properly  
2 allocable to that state campaign and the mere fact that he  
3 happens to be coming from outside the state, I don't see that  
4 that changes it, but that's my view.

5 MCGARRY: Mr. Gross.

6 GROSS: My feeling is that on this particular point that it  
7 probably falls more squarely in this policy consideration, or  
8 statement or letter that the Commission issued in the context of  
9 the Carter case than almost any example that we have had. This  
10 is a situation of a national person on national salary who is  
11 monitoring or administering to national

1 GROSS (continuing): press in the state. And we recognize the  
2 difficulties of the problems in allocation in the states, and  
3 this was one relaxation and liberalization in the aid of the  
4 administration of this whole state-by-state allocation problem.  
5 This was one area where we were going to relax the standards and  
6 it seems to me this falls right within that. It would almost--it  
7 completely--I can't imagine where you would fit anything into  
8 this letter or to that adjusted statement that the Commission  
9 made on this issue if this doesn't fall into it.

10 REICHE: You are talking about telephone charges primarily in  
11 that case.

12 GROSS: No, in fact we were talking--there was two aspects of the  
13 policy. One was telephone charges that came from the state to  
14 the national which we were exempting because it seemed like we  
15 were doing a one-way and not the other and also the situation of  
16 national campaign staff members. I am reading now from the  
17 letter, "who travel to a particular state for a limited purpose  
18 not constituting advance or field work" because we were trying  
19 work within the confines of AO-79-73 and I don't think  
20 ministering to national press in a limited context while the  
21 whole focus of the national election is focused in either Iowa or  
22 New Hampshire or wherever the primary may be, falls into a  
23 situation where advance work is being done as contemplated in AO  
24 1979-73. And this was almost a perfect situation of a relaxation  
25 because of the whole general problem we had in the state-by-state  
26 allocation.

27 REICHE: But I would submit, Ken, that there you were talking  
28  
29  
30

1 REICHE (continuing): about a situation of administering to  
2 people on a national level the same as you would -- you a staff  
3 person would have been doing were you still back in Washington as  
4 opposed to a situation where you have national press going to  
5 that state, taking sufficient interest in the campaign in that  
6 state and being there -- not for the purpose of the national  
7 campaign as such -- but for the purpose of the election within  
8 that state. However, that's an obvious difference we have,  
9 so --.

10 GENTNER: Just to follow up a little bit on that point.

11 McGARRY: Marsha Gentner.

12 GENTNER: I think it's not that the Committee--the advance people  
13 who minister to the press wherever they would be found and it is  
14 not the Committee who has decided to go out into New Hampshire  
15 and make an expenditure, it is the publishers who are deciding to  
16 send their press there and because it is the duty and the  
17 responsibility of this advance person to minister to the press  
18 wherever the press may be found, it happens that he is  
19 ministering to the press in New Hampshire, but it's not a  
20 Committee decision to make an expenditure in New Hampshire to  
21 further the Senator's election in New Hampshire.

22 REICHE: But it is the Committee's decision to minister there  
23 when they find an out-of-state correspondent. It is not their  
24 decision to send them there, you are absolutely right, but once  
25 they are there, then the Committee can minister as they see fit.  
26 Up to the hilt or, you know, in moderate fashion. Obviously,  
27 they are not going to ignore them and we wouldn't expect them to.

28 McGarry: Well, if you think any of this--all of this has been  
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1 McGARRY (continuing): difficult and confounding, wait until we  
2 get to the art work. This is nothing but a warm-up. In any  
3 event, I hope the Audit Division and the General Counsel are  
4 going to be able to perform a miracle in 24-hours. I really  
5 doubt that you will turn this thing around and clear the air. I  
6 just see a totally confounding, agonizing--not that it is any  
7 one's fault. We are between a rock and a hard place. Not  
8 because of anyone's making, Ray, don't get me wrong, it is just a  
9 very difficult situation for everyone including the  
10 Commissioners. Very, very difficult to try to arrive at a  
11 decision. I am just wondering through all of this as I sit here,  
12 if it is realistic to try and deal with it Thursday at all in  
13 view of all the work that has to be done and, you know, whether  
14 or not we should be thinking of going over on it until the 15th.  
15 I am perfectly willing to. I just think that we have a real big  
16 problem with an awful lot of work to be done on everyone's part.  
17 In any event--Mr. Harris.

18 HARRIS: What would you hope that they could do by Thursday?

19 McGARRY: I think they are going to be--hopefully--and this is  
20 without even getting to the art work aspect which is going to be,  
21 as I say, really all kidding aside, this will be nothing but a  
22 warm-up when we get to that--that's going to be--with the  
23 confusing posture we are in with the seemingly conflicting AO's  
24 and the difference of opinions with reference to the conclusions  
25 that were arrived at and the way they inter-relate to these  
26 audits. To answer your question, as of now with all of these  
27 problems you are going to work with the General Counsel, the  
28 one's we have discussed here this afternoon--try to find some  
29 common plateau where the General Counsel will feel that at least  
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1 McGARRY: there has been a salutary effort to make a record that  
2 would somewhat stand up and that isn't going to be easy. It is  
3 going to be very difficult to do but that is the main thing it is  
4 hoped will be accomplished by Thursday and that you will resolve  
5 those differences between Audit and the General Counsel. Is that  
6 correct? Is that a fair statement, Ken?

7 GROSS: That's what we will strive for, yes.

8 HARRIS: Do we have a closed meeting Sunshined for Thursday?

9 GROSS: No.

10 McGARRY: Not now, no. No, we do not. Mr. Reiche.

11 REICHE: I was just going to add, if, on some of these points  
12 they cannot reconcile the differences, then I would think their  
13 job is to present those differences and then we vote them--what  
14 ever way the Commission happens to vote.

15 McGARRY: Governor Thomson.

16 THOMSON: Well, Mr. Chairman, if we need some additional  
17 information, why don't we send them a letter and just say,  
18 "Please respond to this within 10 days so that this Audit can be  
19 completed." And by the time we get an answer back, you will be  
20 back here presiding and we will have the information and maybe we  
21 can conclude this thing.

22 McGARRY: I see we have an awful lot of problems facing up to  
23 what has to be faced up to by Thursday. Just in this alone  
24 before we get to the others.

25 THOMSON: Well, I--

26 McGARRY: I think perhaps you--Ken, what are your comments on  
27 this?  
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1 GROSS: Well, I think that would be acceptable as far as  
2 satisfying our concern of making it clear as to what we would  
3 want. I think that a letter like that, -- I am sure would convey  
4 that.

5 THOMSON: Well, if you write the letter with the Auditors looking  
6 over your shoulder why (inaudible).

7 GROSS: (inaudible)

8 THOMSON: We would remind them that we, on two or three  
9 occasions, have asked for this and we wanted to give them every  
10 last chance so we are appealing to you--or we are stating that if  
11 that is here within 10 or 12 days, it will be considered in the  
12 decision that the Commission makes.

13 McGARRY: I think that it would make for a much better case and  
14 make it somewhat easier to make a decision on this.

15 THOMSON: Well, then you wouldn't have this matter up on Thursday  
16 because we won't have a full deck if you recall.

17 McGARRY: Commissioner Aikens.

18 AIKENS: Mr. Chairman, May I ask what was the time schedule on  
19 the Kennedy Audit?

20 McGARRY: Joe, do you?

21 STOLTZ: Time schedule, I'm not sure--

22 AIKENS: It was--their response was due back--for the Interim  
23 Audit Report was due back to the Auditors by when?

24 STOLTZ: I believe May 19th was the date.

25 AIKENS: And it was received on time?

26 STOLTZ: It was received on time.

27 AIKENS: And in the audit--and in our in-house schedule we are  
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1 AIKENS: giving the Committees 30 days from that point to supply  
2 any additional--I mean this was the schedule set out?

3 STOLTZ: No. They had 30 days before the 19th to respond.

4 AIKENS: All right. Once their response comes in, you have 5  
5 days?

6 STOLTZ: We normally have 5 working days--

7 AIKENS: And OGC has 5 working days.

8 STOLTZ: That's right and in this case it took a lot longer than  
9 that with the six thousand disbursements we had to go through one  
10 at a time.

11 AIKENS: Well, that's what I am trying to say, Joe. Our schedule  
12 has been maintained pretty carefully with most of the other  
13 Committees. We are already three months behind the schedule we  
14 set out for this Committee. I don't know, I agree with  
15 Commissioner Reiche. I would just as soon vote it up or down and  
16 see what happens. They have had three months to supply what was  
17 asked for following the Interim Audit Report and now we are going  
18 to bend over backwards and give them 10 more days to respond and  
19 then they will ask for an extension and I guess we will grant  
20 that.

21 REICHE: They get 30 days.

22 AIKENS: Oldaker signed the Campaign Counsel letter with all the  
23 rest of them saying you aren't getting your audits out quickly  
24 enough.

25 McGARRY: Mr. Harris.

26 HARRIS: Won't they have 30 days anyway to produce additional  
27 information?

28 AIKENS: Thirty days in the repayment process.  
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1 GROSS: Yes, after the report is published.

2 HARRIS: It seems to me that the problem would be to make sure  
3 that this Report is sufficiently specific as to what type of  
4 information you might expect.

5 McGARRY: Mr. Steele.

6 STEELE: The other factor--

7 TIERNAN: And that is what they are going to try to do by  
8 Thursday, but I--if they can do it, fine.

9 STEELE: It is certainly going to be tough, but I think--because  
10 I think there are a lot of areas that we have to go over and that  
11 means getting it back out again by mid-day tomorrow in order to  
12 get it to you in time to look at.

13 TIERNAN: I move the previous question so we can proceed on the  
14 basis that they can do it, if not really fully expecting them to  
15 do it.

16 McGARRY: I'm sorry. Bob Tiernan.

17 TIERNAN: No, but I--I say, as it now stands apparently, the  
18 Audit Division is going to try to put the specific requests or  
19 language that would fully inform the Committee as to what  
20 additional documentation or material has to be supplied, and that  
21 would be included in the Audit Report that would come up; and  
22 then we would vote it up or down, hopefully Thursday. I think it  
23 is a tremendous task for the Audit Division and the General  
24 Counsel to try to get that language together. We are going to  
25 have a sloppy work product at the end, I think, but that's, as I  
26 understand it, that's the posture we are in at the present time.  
27 If they can make it, fine; if they can't make it, then this just  
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1 TIERNAN: goes over into your next Executive Session meeting.

2 McGARRY: Well, Governor Thomson is--

3 TIERNAN: He is suggesting sending a letter out, but I--as  
4 Commissioner Harris says, why not put the report out? They have  
5 30 days to bring back their information we say they have to  
6 supply, before we say the allocation was proper or not.

7 STEELE: But the difference between those two courses of action  
8 in my mind is that by putting out the Final Audit Report you are  
9 making your first formal preliminary determination that these  
10 amounts are to be repaid; so you are in a posture that I think  
11 you ought to--I mean if that is the way you want to go, that's  
12 fine, but there is that difference as opposed to coming back in--

13 TIERNAN: The only problem that I have with Commissioner  
14 Thomson's recommendation would be that it is a little different  
15 than what we have set forth as the procedure to follow, and so,  
16 therefore, I think we should not do that. As Commissioner Harris  
17 points out, they would have 30 days before the final repayment  
18 figure would be arrived at by the Audit staff, and it would have  
19 to come back up here anyway. Apparently they got some  
20 memorandums indicating that they requested it before.

21 McGARRY: Joe Stoltz.

22 STOLTZ: I think one thing that would be of considerable  
23 assistance in our efforts towards Thursday if that is the way you  
24 decide to go, if we could get a good feel for how the Commission  
25 views some of the issues here. Now, for example, on the first  
26 one we pretty much agreed, it seems to me, that we are going to  
27 try to add some language and be a little more specific as to the  
28 type of information that is lacking. And we can do that.

1 STOLTZ (continuing): On the second area which was the Interstate  
2 Travel, we were going to put some totals in for what we did  
3 adjust. And unless there is something else, that is as much as  
4 we intend to do to that.

5 When we get to Media Expenditures, I don't believe we have  
6 any real argument there saying they have to go back and  
7 straighten up a few of their figures. I might point out, by the  
8 way, their new figures are not substantially different than their  
9 old figures. If you total the two states, one is higher and one  
10 is lower and it comes out within a couple of thousand dollars of  
11 what they had before.

12 National Press, I think what we would need there is some  
13 indication as to whether or not the Commission feels that if they  
14 are going to contend certain expenditures have been reimbursed by  
15 the press, what sort of a demonstration is required to show that  
16 those expenditures benefitted the press to begin with. Is it  
17 having the Committee go through and point them out and say,  
18 "these are the ones," or do they have to show that they were, in  
19 fact, for something that was press related. Or do they need to  
20 maybe to show that at least the press was in that state at the  
21 time those expenditures were made?

22 And then the second issue in that one, can they charge off  
23 advance persons' salaries to national operating if they were  
24 advancing or seeing to it that the press had buses and baggage  
25 transfer and hotel rooms. And I think some indication of which  
26 way you would want to go on that would be essential to any  
27 redrafting.  
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1 GENTNER: Just to follow up a little bit with respect to that.

2 McGARRY: Marsha Gentner.

3 GENTNER: I think that summarizing what we have here but with  
4 respect to the expenditure, if we do decide that we want more  
5 proof that a certain expenditure was related to the press, what  
6 types of things are we looking for? Are we looking for a memo on  
7 a check? Are we looking for an affidavit, or that sort of thing?

8 McGARRY: Mr. Reiche.

9 REICHE: It may be, Mr. Chairman, with respect to the last point  
10 Joe makes that we should vote up or down on it at this stage so  
11 as to provide them with sufficient guidance. I agree with you,  
12 Joe. It would be awfully hard--nigh impossible to write if you  
13 don't have that much guidance. I think that addresses those two  
14 paragraphs on page 24. And, if a motion would be in order, I  
15 would move that we agree with the sentiment and the implicit  
16 recommendation contained in those two paragraphs right in the  
17 middle of page 24 as presented to us by the Audit staff.

18 TIERNAN: Well-

19 McGARRY: Commissioner Tiernan.

20 TIERNAN: Do they contain the two points -- One point being that  
21 you would exempt the expenditures for the national press, and  
22 then treat the additional, because as I understood it, it was an  
23 overcharge; and then the Committee tries to offset that  
24 overcharge by saying that they provided these other services. Am  
25 I correct?

26 STOLTZ: That's correct.  
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1 TIERNAN: So that you are really talking about two, or do you  
2 want to have it one package?

3 REICHE: Oh, I'm sorry, Bob, I was only referring to the national  
4 press you know, the possible exemption when you minister to their  
5 needs and so forth. It had been my understanding that that's  
6 what you wanted a resolution of. If you need the resolution on  
7 the first point, too --.

8 STOLTZ: There are two points that we need to--is it necessary  
9 for the Committee to make some sort of a concrete showing that  
10 expenditures which they contend were for services to the press,  
11 in fact relate to the press? Or is it the mere matter of them  
12 designating which ones of them they believed were that way, like  
13 I say, even if it is no more than showing that the press was  
14 there at the time.

15 REICHE: I think we had better do it separately; so I would like  
16 to confine my motion just to this--to the second of those two and  
17 then we could hit the first one.

18 McGARRY: Why don't you restate that now? Commissioner, I think  
19 we should hear from the General Counsel before we go ahead.

20 REICHE: I would move that we approve in substance the sentiments  
21 expressed by the Audit staff in paragraphs two and three on page  
22 24 with respect to the possible exemption of expenditures related  
23 to ministering to the needs of the national press in individual  
24 states and therefore, the exemption from allocation for state  
25 spending limit purposes.

26 McGARRY: Commissioner Reiche moves that with reference to page  
27 24, and that's 24 on the bottom, paragraphs 2 and 3 that we  
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1 McGARRY (continuing): approve the recommendation that is  
2 implicit in those two paragraphs relating to the exemption of  
3 expenditures in covering the press. And I think now we should  
4 hear from the General Counsel's Office on this unless you have a  
5 comment first, Mr. Harris?

6 HARRIS: Well, the second paragraph, the one beginning, "The  
7 Audit staff finds no ,..." If we take that position, we don't  
8 need the second sentence which says it hasn't been documented.  
9 If you are going to say that this is not something--we are going  
10 to say that this is chargeable to the states, we don't also want  
11 to tell them that they have got to document it, if we are going  
12 to turn them down anyway.

13 McGARRY: So do you want to exempt that sentence?

14 REICHE: Yes, I would be willing to accept that modification of  
15 the motion to include striking of the second sentence of  
16 paragraph three.

17 McGARRY: Yes, Mr. Steele.

18 STEELE: As I understand the motion, it seems to me to say that  
19 what you are going to determine here is that the costs of  
20 ministering to the national press that come in are going to be  
21 off-set against your state limits, I guess that--in effect. It  
22 seems to me that you again, that you come to a question of  
23 whether you have taken that position and where you have taken  
24 that position. I think it hard to establish that position as a  
25 matter of your regulations or anything else, in effect what you  
26 are saying is that that cost becomes a cost of their doing their  
27 campaign there. It seems to me that even if you take that  
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1        STEELE (continuing): position you have a great difficulty in  
2 saying that you are going to do that in the course of an audit  
3 where you are going through on the state-by-state allocations  
4 because I don't think that you have said that previously. Ken,  
5 did you want to add to that?

6        McGARRY: Ken.

7        GROSS: The only thing I can refer back to is the letter, again,  
8 that went out to the campaigns recently that was supposedly some  
9 liberalization, at least a recognition of the difficulty that we  
10 have in this area of state-by-state limitations and, in fact, a  
11 policy statement that said that if the activity is related to a  
12 national campaign effort, and I can't imagine something more  
13 typical of a national campaign effort than ministering to the  
14 national press, that people who are on national salary, the  
15 national staff salary which is precisely what we have here, doing  
16 that kind of limited activity seems to fall even without this  
17 letter, but buttressed by this letter squarely within the policy  
18 of some leniency in recognition of the state-by-state allocation  
19 problem. And feel strongly that this is precisely the type of  
20 activity the Commission was not seeking to allocate--particularly  
21 after this statement.

22        McGARRY: Ray Lisi.

23        LISI: I would point out here, all of the individuals on the  
24 Kennedy payroll were on the national salary and were paid through  
25 the national office.

26        HARRIS: All of what individuals?

27        LISI: All of the individuals who worked for the Kennedy  
28 Committee were paid through the national office, even the  
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1 LISI (continuing): individuals out in the field. The field staff  
2 and the advance staff personnel which are the people we are  
3 talking about here. The advance staff people that we are  
4 speaking of here were the individuals who went out to the States  
5 and set up various functions that the candidate attended whether  
6 it be fundraisers or, when the candidate was in that particular  
7 state. Their ministering to the national press that they are  
8 speaking of here is the national press that was traveling with the  
9 candidate. And this would involve perhaps going out and taking  
10 the press from the airport. Seeing that they got from the airport  
11 to the function; that all of their everything was arranged  
12 properly. The purpose of the--the purpose for the national press  
13 being there was the fact that the candidate was there and he was  
14 campaigning in that state. And we feel that that is the test for  
15 whether the expenditures for those services should be allocated to  
16 that state. Another thing I might point out here, too, we  
17 have--just to confuse the issue a little more--

18 HARRIS: That isn't necessary.

19 LISI: I hate to do this, but, again, the Committee, again, did  
20 not allocate an entire staff person's salary and say that this  
21 person worked the national press and their entire salary was  
22 allocated to the national press. They came up with a thirty-three  
23 percent allocation. In the next Section of this--or in the  
24 Advance Staff Personnel Section of the report we refer to this 33%  
25 charge-off to national press which, again, is something that we  
26 have no documentation for, to support. So it would relate back to  
27 the compliance--or the overhead allocation finding where we did  
28 not have the documentation to support that; so we actually have  
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1 LISI: (continuing): two issues here. Whether we are accepting  
2 the Committee's--if we do accept the fact that ministering to the  
3 national press is, indeed, a non-exempt expenditure, or an exempt  
4 expenditure rather, that the--whether that 33% allocation figure  
5 is correct. Did that individual, indeed spend 33% of their time  
6 ministering to the national press; so that is another factor that  
7 has to be taken into consideration.

8 McGARRY: Mr. Reiche.

9 REICHE: And I think where Ken and I have our disagreement is  
10 that I don't really believe it is part of the national campaign  
11 effort as such--not once the decision has been made to go into  
12 that particular state and to report on that. You know, and I  
13 think you will be--it is true that it will be difficult to  
14 administer either way, let's be honest, but you are going to have  
15 difficulties if you go the way you are suggesting. Then you are  
16 going to have some tough difficulties there because then you get  
17 into the situation I spoke of before where a reporter is from  
18 within the state, so you handle it one way and someone is from  
19 right across the state line and you handle it another way. I am  
20 not sure I believe that is a rational basis for doing it. We  
21 disagree,? O.K.

22 McGARRY: Mr. Tiernan.

23 TIERNAN: Well, Ken, could you read me the portion of the letter  
24 that we sent out to the campaign committees that you think  
25 applies in this case.

26 GROSS: (Reading) The Commission, however, has recently  
27 determined tht the salaries and related expenditure--uh, related  
28 expenses of national campaign staff members who travel to a  
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1 GROSS (continuing): particular state for a limited purpose not  
2 constituting advance or field work, but rather associated with  
3 the national campaign effort need not be allocated to that state.

4 TIERNAN: Well, on the basis of what Ray Lisi just said, all of  
5 the people that were campaigning--that were in campaign positions  
6 in New Hampshire--were considered national staff?

7 GROSS: I think that the way the Kennedy people did it was that  
8 most of their advance and field people were paid on national staff  
9 which makes it important to look to their activities to see  
10 whether they fall within this policy and that's why we have looked  
11 to national press which is their activity, as being something  
12 that is not specifically related to that state--or at least falls  
13 within the parameters of the national campaign effort.

14 Otherwise, there is no--otherwise, I don't know where you would  
15 have any national allocations.

16 TIERNAN: The real difficulty I have with this is the fact--if in  
17 fact you get a campaign that says 50 people are on the national  
18 campaign staff, and 20 of those are up in New Hampshire almost  
19 constantly, let's say 75% of the time, you know, that's where I  
20 get--

21 GROSS: But those people should be allocated to the state.

22 TIERNAN: Those people should be, all right.

23 GROSS: If they are performing an advance function or field  
24 function for that state then they would fall within the AO, in  
25 fact the very AO issued to the Kennedy Committee; so we have to  
26 look to the activity here.

27 TIERNAN: On the other hand, if you have someone that is on that  
28 national payroll and you say, "Gross and Steele, I want you to  
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1 Tiernan (continuing): travel with the national press," and they  
2 go to New Hampshire, and the press is up there for 10 days prior  
3 to the election, and they are handling the luggage, they are  
4 handling the motel accommodations and everything, that would not  
5 be allocated to New Hampshire, as I understand it.

6 GROSS: Under the liberalization, yes.

7 TIERNAN: Yes, that's correct. The problem you get into is when  
8 you split up all these duties between the thirty people you have  
9 taken out of the national staff. Thirty people,--you know it is  
10 pretty hard for me to envision 30 people on the staff devoting 10  
11 minutes--uh, ten percent of their time taking care of hotel  
12 accommodations and buses and luncheons and dinners. That's  
13 difficult.

14 GROSS: I agree that it is an accounting problem. I think that  
15 what we are looking toward is giving the Committee in all  
16 instances the benefit of the doubt and that was pretty much what  
17 came out of this.

18 TIERNAN: Yeah, but that would be the biggest loophole, I mean,  
19 hell, all a committee would have to do is put everybody on the  
20 national press and say that they were all on travel up there -  
21 the national. If you take what they have given us, 33 percent  
22 national press as exempt, and take 20 percent compliance, and  
23 fundraising 17 percent, you are up to 70 percent of the payroll  
24 as being exempt.

25 GROSS: Well, there would be some demonstration that this is  
26 national press activity. If it is local press, then you have a  
27 different story and it would have to be allocated to the state.

28 McGARRY: Commissioner Harris.  
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1 HARRIS: Do we have a notion how many people we are talking about  
2 here? Say on page 52 at the bottom where the Committee counsel  
3 is describing these people who were assigned to the national  
4 press traveling with the candidate, do you have any notion how  
5 many people we are talking about?

6 LISI: I don't have a figure available. I do have a figure on  
7 what they charged off to national press.

8 HARRIS: What is that?

9 LISI: In each one of the states. In New Hampshire, the figure  
10 was \$19,373. And in Iowa was \$31,051.

11 HARRIS: What would all that cover? What all?

12 LISI: That basically was just the salaries charged-off to  
13 national press.

14 THOMSON: How many people did they have in New Hampshire?

15 MCGARRY: Governor Thomson.

16 LISI: The only way I could give you a figure on that as far  
17 as--well, the only figure I have on that would be that Fox letter  
18 in which they indicated--and those were only the field staff that  
19 were in New Hampshire--O.K. this advance staff personnel did  
20 travel from state to state and they would have been in New  
21 Hampshire around the time of the primary and then would have moved  
22 on to another state if the candidate were traveling in another  
23 state.

24 THOMSON: Well, I thought you said they were all on the national  
25 payroll and that there were 30 people in New Hampshire and 50 in  
26 Iowa.

27 LISI: That's the field staff. Those were the individuals who  
28 actually worked in the state office. The individuals we are  
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1 LISI (continuing): talking about now--is that all of the  
2 individuals who worked for the Kennedy Campaign were paid out of  
3 the national office. They were all national. They were not--I  
4 am not saying that they were all national staff, I think this is  
5 the problem here, I believe, in referring to them as national  
6 staff. The fact that they were paid out of the national office  
7 does not necessarily mean that they were national staff  
8 individuals. And the letter that Counsel was referring to, the  
9 statement that was in there, we even put it in our cover memo, is  
10 that salaries and related expenses of both advance personnel and  
11 field staff, for example, coordinators working in a state must be  
12 allocated even though the individuals involved may be assigned to  
13 the national headquarters for payroll purposes. And I think this  
14 is exactly the situation that we have here.

15 McGARRY: Well, we had a motion floating around, Mr. Reiche, and  
16 we still have discussion relating to that motion. Commissioner  
17 Aikens.

18 AIKENS: Could I ask one other question before we take a vote.  
19 If we do not delete the paragraph--or the sentence Commissioner  
20 Harris spoke of, "further no definition has been offered,"  
21 suppose they did provide worksheets that showed that these people  
22 who earned this \$19,031 traveled on the press plane with the  
23 press everywhere they went, that way they would not be allocable,  
24 is that correct?

25 LISI: I would think that in that case then they would charge off  
26 all of their salaries rather than just 33 percent.

27 AIKENS: Yes, but if they cannot show that in workpapers, but it  
28 shows that those people were actually in New Hampshire and in  
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1 AIKENS (continuing): Iowa and met the plane when it came in and  
2 carried the bags and set them in the hotel and carried them to  
3 dinner and took them to whatever the function was, put them back  
4 on the plane and waved good-bye, it would be allocable?

5 LISI: I would think so. Of course, again, we have got to make  
6 the-or agree on the fact that the national press would not be  
7 allocable or would be allocable, ministering to the national  
8 press and that question still has to be answered, in that  
9 instance.

10 McGARRY: Commissioner Harris.

11 HARRIS: I would buy the distinction which Commissioner Aikens  
12 makes. The submission from the Committee counsel doesn't say,  
13 doesn't say whether these people were already in New Hampshire or  
14 weren't, it simply says that campaign staff was also assigned to  
15 national press traveling with the candidate. Whether they were  
16 people already up there in Iowa or New Hampshire or whether they  
17 were people out of the national office, it doesn't say.

18 AIKENS: How do you put that into that sentence that you wanted  
19 to remove anyway? I don't know how you--

20 TIERNAN: Maybe the sentence should stay in there.

21 AIKENS: That's what I was concerned about was taking that  
22 sentence out. If there is some way that they can show that they  
23 could be.

24 LISI: If I might--

25 McGARRY: Ray Lisi.

26 LISI: Make a comment which may help clarify this. If I can  
27 explain to you how we arrived at the national--or the allocation,  
28 or the amounts for the national staff. The way we did that was  
29 to  
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1 LISI (continuing): go to the Committee's files on events that  
2 were held in the various states. O.K.? In most cases--in some  
3 cases there was an advance person's name on the document which  
4 indicated that they were at that event that was held in the  
5 state. As I say, the purpose of the advance people was to be  
6 there and set up events for the candidate to attend. We then  
7 went from there to expense reimbursement vouchers and found out  
8 how long the person was in that city based on that reimbursement  
9 voucher; therefore, we verified that the individuals, indeed,  
10 were in the cities at the time these events took place. O.K.?  
11 They were not traveling to the event, they were either there two,  
12 three, or four days before and a couple of days after. So we  
13 then took the person's salary and determined how many days they  
14 were there from the daily salary and came up with a figure for  
15 the advance staff amounts. So we have verified that the  
16 individuals were there. They were not traveling around with the  
17 candidate at that time, and exactly how many days they were  
18 there.

19 AIKENS: It is a function of advance people to look after all the  
20 VIPs coming in, including press.

21 LISI: Yes, I understand that.

22 AIKENS: It is not a function normally performed by someone who  
23 travels with them. It is normally an advance that I don't think  
24 should be allocated.

25 TIERNAN: You get to a point in connection with a national  
26 campaign where it is six of one and half dozen of the other in  
27 terms of reference. And it is going to be really tough to  
28 distinguish this. That's why--faced with what we say in that  
29 letter out to all of these campaigns--we are almost in between.  
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1 McGARRY: Commissioner Reiche.

2 REICHE: It would strike a more sympathetic response if we tried  
3 to draw the line between those members of the national  
4 headquarters staff assigned to go throughout the country with the  
5 national press and, in part, to minister to their needs, that not  
6 being allocable as opposed to those working on behalf of the  
7 campaign, but working in the states who, when national press  
8 comes, minister to their needs, somewhat, that part being  
9 allocable. Would that help?

10 TIERNAN: It helps, Frank, but I think you have a tough time if a  
11 committee goes in and says that in fact that Kenny Gross was an  
12 advance man in New Hampshire, and he was assigned to take care of  
13 Brinkley or whoever came into the state, to make sure that he was  
14 at the Lodge home, or wherever on a certain night, and he spent a  
15 whole day doing that. I would certainly argue that that would  
16 come under handling the national press, and would be an exempt  
17 expenditure.

18 REICHE: Well, I think Commissioner Aikens makes the point and I  
19 think it is a valid point that your advance people, your field  
20 people do have as part of their responsibilities and related  
21 solely to the campaigns in those particular states ministering to  
22 the needs of not only the local but the national press as well.  
23 And to that extent, I think it ought to be allocable. I am just  
24 asking because I would be happy to--if that sort of a distinction  
25 had meaning for some of my colleagues, I would be happy to  
26 modify that motion which I am not sure I am happy I made sometime  
27 ago at this point.  
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1 McGARRY:

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7 And I think

8 we're---you know this was the second Presidential election cycle.  
9 Obviously, there were many problems and these things are very,  
10 very difficult and hopefully the third time around will be--we  
11 were much better off the second time around than we were the  
12 first and hopefully we will be one heck of a lot better off the  
13 third time.  
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17 REICHE:  
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21 McGARRY: Joe.

22 STOLTZ: Ray can correct me if I am wrong, but I don't think we  
23 will waive the \$19,031 hold-off by the Committee. We have a nice  
24 neat little group of people involved. A few days--a third of a  
25 few day's wages for this one, and a third of this day's wages for  
26 that one, I think it would be very difficult to draw that line.

27 McGARRY: Commissioner Harris.

28 HARRIS: Could you draw the line between those who went from  
29 Washington out to Iowa with the national press and those who were  
30



1 HARRIS (continuing): already there?

2 STOLTZ: It may be possible that if you got back into the  
3 Committee's files on all their travel vouchers and knew what date  
4 the event was for sure and what date each person arrived and then  
5 what they did when they got there, but the records may be  
6 sufficient to allow you to do that and they may not.

7 AIKENS: We would be asking them to provide that, not we going  
8 back into their files.

9 STOLTZ: That's true, exactly. In none of these cases, and again  
10 Ray correct me if I am wrong, deals with a situation where  
11 somebody arrived in a state Saturday morning and left Sunday  
12 morning for an event Saturday night. If they weren't there  
13 longer than that, they are not an issue.

14 AIKENS: Oh, oh. That's interesting.

15 McGARRY: Do you want to press your motion, Mr. Reiche?

16 REICHE: I may want to withdraw. I was trying to help us resolve  
17 this, but I am afraid I've involved us.

18 AIKENS: Well, I would go back to your motion in that case.

19 REICHE: Well, if that's, I mean -- this is a bit of information  
20 that--

21 AIKENS: Let's run through that again.

22 REICHE: Yes.

23 STOLTZ: Well, generally when we were looking at people traveling  
24 in the states if they weren't there for longer than a day, we  
25 ignored it.

26 REICHE: Well, that's a different story.

27 STOLTZ: Because we tried to allocate some portion of one day's  
28 salary, is it worth the aggravation involved?  
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1 REICHE: I think under those circumstances, I would let my motion  
2 stand.

3 HARRIS: Do you remember what it was?

4 REICHE: Not clearly. I have a very vague recollection. As I  
5 was saying to Ken earlier today, the farther away you get from  
6 the event, the harder it is to recall.

7 McGARRY: Do you want to let the second sentence in the second  
8 paragraph stand, Mr. Reiche?

9 REICHE: Yes, I think I'd rather leave that in there.

10 McGARRY: Leave that in?

11 REICHE: Yes.

12 McGARRY: That was your original motion.

13 REICHE: Yes, I think I'd rather leave that in.

14 McGARRY: Once again, it's on page 24 on the bottom, Commissioner  
15 Reiche is moving with references to paragraph two and three and  
16 paragraph two begins with, "The Committee has also stated. . ."  
17 and paragraph three, "The Audit staff finds no statutory or  
18 regulatory basis. . ." a with reference to the audit staff  
19 recommendation implicit in these two paragraphs relating to  
20 exemptions on expenditures relating to the national press, if  
21 there is no further discussion, the vote will occur on that  
22 motion. All in favor, say aye. (A voice vote was heard). All  
23 opposed? (A voice vote was heard). It appears to the Chair that  
24 the vote fails to carry by a vote of three to three with  
25 Commissioners Reiche, Aikens and Thomson voting for and  
26 Commissioners Harris, Tiernan, and McGarry voting against.

27 McGARRY: Perhaps we sink a little more into the mud--

28 THOMSON: Well, with that I think we would be time saved if we  
29 sent the letter.  
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1 McGARRY: Yes, I was with you from the very first moment and I  
2 still am. I really think that would clear the air and be helpful  
3 to everybody. I could be wrong and I realize what Commissioner  
4 Aikens, you know, is saying as far as the time schedule, but we  
5 have to face the problem that is before us right here at this  
6 moment and try to dispose of it in the best possible manner and I  
7 think that would really set a much better record when we reprove  
8 the report.

9 THOMSON: Well, at the rate we are going, the answer will be back  
10 while we are still arguing.

11 AIKENS: Mr. Chairman, may I ask what we would be asking of them  
12 in this case if we sent them a letter. What would we say? Why  
13 did you allocate the salaries, or not allocate the salaries of  
14 the staff people? They already answered the question.

15 McGARRY: I think--Ken Gross.

16 STEELE: But again, I think that goes back to--

17 McGARRY: Mr. Steele.

18 STEELE: That the Auditors feel that they don't have adequate  
19 information on which to make this decision. I understand them to  
20 have said that the information that they think they need to make  
21 that recommendation is basically the audit papers that were used  
22 to develop these figures by the Fox people. But that really  
23 comes down to what I think seems to be needed and I don't think  
24 it has to be closed off that that's it, but that you send the  
25 letter saying that the Commission feels it needs that kind of  
26 information in order to make a determination.

27 McGARRY: Joe Stoltz.

28 STOLTZ: I might point out that, for example, the Section we have  
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1 STOLTZ (continuing): been discussing, or that we discussed last,  
2 the national press, doesn't relate to the Fox stuff. It is  
3 totally separate from that. The question there was, are advance  
4 people ministering to the national press a national expense or a  
5 state expense? And then, if it should be decided that they may  
6 be a national expense, then there has got to be some questioning  
7 of where the 33 percent came from. That was not part of the Fox  
8 study as best we know; in fact, we are not real sure where that  
9 came from.

10 STEELE: Well, all--I agree that it is not the Fox study. It  
11 means is that it seems to me that the statement in the Audit  
12 Report is the Committee has not provided any information to show a  
13 relationship. What you are seeking is information that will show  
14 that relationship. That you would specify that in a letter.  
15 That throughout this, it seems to me that perhaps it doesn't take  
16 care of all of them, but that there are a substantial number of  
17 these areas where, as I read the report anyway, it says that the  
18 Committee has not provided information, et cetera, et cetera.  
19 Suggesting to me, anyway, that you think there is information that  
20 could be provided that would enable a decision to be made.

21 STOLTZ: In some areas, many areas, yes, that's true. In certain  
22 other areas, I don't know whether we would be a lot better off.

23 MCGARRY: Mr. Tiernan.

24 TIERNAN: Joe, if we could redraft the language beginning on the  
25 top of page 24 to indicate that their theory might be acceptable,  
26 but that there hasn't been the documentation provided to  
27 substantiate it, and then to go on to relate also this question  
28 of devoting all or a part of their time to the national  
29 press.....In other words, I have no objection to that being  
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1 TIERNAN (continuing): included, if the Committee is going to be  
2 in a position to come, in, and say, "Yes, Tiernan was assigned to  
3 New Hampshire, but he was told to meet the press at Manchester,  
4 and to stay with them for two days, and he allocated two days of  
5 his time even though he was in New Hampshire," or whatever way  
6 they did it. Can that be done? Can this--the reason I say that  
7 is that the only way I think you are going to be able to resolve  
8 this question and I am prepared to vote that way. Rather than  
9 just say we are not going to accept--you know--this that you have  
10 done--we are not going to accept that. That's what I felt your  
11 vote, or what your motion resulted in, Frank. And that's why I  
12 was saying the first part of that is the question of the charges  
13 that they made to the national press and the  
14 reimbursement--whether those expenditures should be included in  
15 the state limit or the national limit--and the difference between  
16 the two hundred and, what--fifty percent, and the one hundred and  
17 fifty percent, whether or not you could show that there were some  
18 services, ground services, typewriters and all the others. If  
19 they could substantiate that, fine, we will give them the credit  
20 for that. You know, I think the same thing on the time  
21 allocation.

22 McGARRY: Mr. Reiche.

23 REICHE: I would like to try a compromise, if I might, and that  
24 is along the lines that I was talking later in the game, of  
25 attributing for state limitation purposes the expenses made by  
26 campaign personnel who were already in the states, that is the  
27 expenses made by them in ministering to the needs of the national  
28 press. Those would be allocable; whereas those expenses made by  
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1 REICHE (continuing): national campaign staff members traveling  
2 regularly with the national press would not be allocable even  
3 though made in a specific state.

4 TIERNAN: Can I respond?

5 MCGARRY: Yes, Mr. Tiernan.

6 TIERNAN: Well, I find that rather inflexible. I mean--because I  
7 don't know that we know all the facts, and that's exactly how  
8 they handled it, and also in light of this letter. I think that  
9 if you write the language in the report indicating we don't  
10 disagree with the theory but we are not satisfied that you have  
11 substantiated that, in fact, that's the way it was done, we don't  
12 have any basis, and that's what I understood Joe and Ray to say  
13 initially.

14 REICHE: But I--

15 TIERNAN: They didn't disagree with what the General Counsel's  
16 Office was saying with regards to the fact that they could have  
17 made these allocations on that basis, but you don't know if they  
18 did, in fact, do that, and attribute certain expenditures to the  
19 national press.

20 STOLTZ: There are two areas. The first area talks about the  
21 reimbursements they received for expenditures for services  
22 provided. In theory, we have no problem with that. Right now, we  
23 can't tie any given expenditure to the press, but in theory,  
24 there is no problem.

25 The second one was the staff advance persons' salaries being  
26 charged as a national expenditure because they happen to be  
27 dealing with the national press. We disagreed with that theory.  
28 So, in the first instance while we did not disagree with the  
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1 STOLTZ (continuing): theory, however, we can't see the  
2 application, and in the second, we disagreed with the theory.

3 REICHE: And the compromise--

4 McGARRY: Commissioner Reiche.

5 REICHE: As I refer to it really would accord with your view of  
6 the second because, as you said, those who were not in the state  
7 longer than a day or so, just ignored the theory that they were  
8 part of national campaign expense. Whereas those who were your  
9 advance people working in a state who did minister to the needs of  
10 the national press you would have charged. Am I right, Joe?

11 STOLTZ: Yes, when we developed our salary figures in the  
12 original Interim Audit Report, a person who was not in a state  
13 for a day, we ignored them.

14 McGARRY: Mr. Gross, would you comment on Mr. Tiernan's  
15 suggestion?

16 GROSS: Well the seeking of further information at this point--it  
17 seems to me--we would favor at this point the--

18 HARRIS: Can you make a little more noise?

19 GROSS: We would favor the letter route at this point. There is  
20 a legal problem or a legal difference we have on this  
21 advance--what's allocable to the state, the advance or the media  
22 problem and that is a legal problem. On the other issue, we  
23 disagree on the theory because at this point after the fact the  
24 auditors seem to be looking for specific evidence of the  
25 expenditure linked to a particular press activity when the  
26 invoices are being identified by the Committee as being press  
27 invoices. If we could word some kind of factual request for  
28 information to buttress whatever it is they have put forth so far,  
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1 GROSS (continuing): possibly it will ameliorate-help the  
2 situation, although I still think we will have to grapple with the  
3 underlying legal question as to whether these activities in the  
4 field are allocable or not. I don't know whether that was  
5 helpful or not, but we see a better resolution in the letter  
6 route, fortunately at this time, even though it has been delayed.

7 McGARRY: Mr. Harris.

8 HARRIS: I think there is difficulty with Commissioner Reiche's  
9 compromise suggestion because you would, at that point, be  
10 setting forth a new legal position as to what is allocable and  
11 what isn't in what purports to be a Final Audit Report.

12 Obviously they would not have had a chance to reply factually to  
13 that standard.

14 REICHE: But my understanding is that's the way apparently Audit,  
15 excuse me, has treated all of them up to this point to the extent  
16 that the question has arisen in campaigns and furthermore, if  
17 they want to challenge it, Tom, they can come right back at us  
18 and challenge it in the 30 days they have. So it is not as if  
19 they won't have an opportunity to challenge us on this.

20 HARRIS: But we are saying that we don't know the--what you are  
21 saying is that we don't really know the answer because we don't  
22 know what the facts were. It is awkward to do that in a Final  
23 Audit Report.

24 REICHE: No, no excuse me, I wasn't saying that. What I was  
25 saying, I would either allocate it to a state or not dependent on  
26 who it was that ministered to the needs of the national press, --  
27 were they national campaign staff traveling around or were they  
28 advance people already in the state. And I think that is a  
29 defensible distinction and apparently, in fact, it is what  
30 Audit's been doing anyway. Or it certainly is how they regarded



1 REICHE (continuing): it in this case.

2 STOLTZ: When we went through the matter of general application  
3 for this series of audits, when we went through travel files, if  
4 the guy wasn't there for at least a day, we didn't feel it worth  
5 pursuing.

6 REICHE: Yes, that's why I thought this might be a better  
7 compromise.

8 McGARRY: Mr. Josefiak.

9 JOSEFIAK: Joe, are you saying here that we cannot under--no  
10 matter what theory you go under, whether you allocate it as a  
11 national expense or allocate it as a state expense you can't make  
12 any judgment one way or another at this point based on the  
13 information that you have. You cannot say that 33 percent of the  
14 time was state or 33 percent of the time was a national  
15 expenditure, even assuming that you accept that as a national  
16 expense.

17 STOLTZ: Even assuming you accept the premise, the 33 percent, I  
18 have no idea where it came from.

19 JOSEFIAK: So wouldn't it be easier than, instead of trying to  
20 make a judgment--a substantive judgment as to whether it is right  
21 or wrong and just eliminate it--that first sentence in the third  
22 paragraph and just say, "No definition of these activities has  
23 been offered--no definition or explanation of these activities  
24 has been offered by the Committee, etc." And then the next  
25 paragraph, as a result, the Audit staff has not adjusted any of  
26 these amounts. And then they would have the 30 days to respond  
27 one way or another and then the Commission could decide  
28 substantively whether once they got the information whether it  
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1 JOSEFIAK (continuing): was a national expenditure or whether it  
2 was an allocable state expenditure at that point. I  
3 mean--Commissioner Harris was right. You cannot go back now and  
4 say that this was not or was a national expenditure until you  
5 know how they treated it, how they broke it down, what their  
6 rationale was. It seems to me that you don't have to make that  
7 substantive decision at this point until you hear what their  
8 response is to your suggestion that you don't have enough  
9 information to base it on.

10 McGARRY: I personally would prefer the Thomson letter, but that  
11 is an excellent fall-back position. Mr. Gross.

12 GROSS: The only problem I have and the reason I prefer  
13 Commissioner Thomson's suggestion is because this Audit Report  
14 that we are releasing comes under 9038.2. And this is when we  
15 are supposed to give them the legal and factual basis for  
16 repayment which may underlie a particular excess in a particular  
17 state and we don't have that basis right now, at this juncture.  
18 And I think that presents a problem. So you could you know--what  
19 you are suggesting, I think puts that down the road possibly  
20 after we get the information, but I think the vehicle is  
21 preferable--

22 JOSEFIAK: But the explanation you could give as your legal and  
23 factual basis is the fact that you know, you've got the public  
24 money and you cannot decide because you did not get adequate  
25 information; therefore, you have got to say--

26 GROSS:  
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1 JOSEFIAK: What have we done in the past with other audits, for  
2 failure to respond? I mean if we have asked for the information,  
3 if we don't have the information to base it--I mean, how did we  
4 come out in other cases?

5 STEELE: The problem is that the Commission has to make that  
6 finding that there is a factual and legal basis for saying  
7 repayment. And the question in my mind is that if you go that  
8 route then you--is the Commission makes a determination saying we  
9 don't have the factual and legal basis to make this finding; and  
10 therefore, you owe it to us to disprove it. But the Commission  
11 under its own regulations and under the statute, I think has to  
12 make a legal and factual basis for the determination that there  
13 is a repayment. And you are enforcing all of this through the  
14 repayment.

15 TIERNAN: But if we send a letter out, and they don't send back  
16 the information, what are you doing to do then? What is your  
17 recommendation going to be?

18 STEELE: Well, you have the same problem. You have; however,  
19 there put in a specific factual request, the Commission has said  
20 this is information that we think that we need in order to make  
21 this determination. That to me is the advantage to that.

22 TIERNAN: Well, we have already made that request to them you  
23 know.

24 STEELE: Well--

25 TIERNAN: But now you are saying because we are going to put it  
26 in a letter. And you are going to hold up the Audit Report?

27 STEELE: Well--  
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1 TIERNAN: Couldn't you take what Tom has suggested, and I think  
2 that is--and I realize the difficulty you have because you don't  
3 have a legal and factual basis, but it seems to me that the  
4 Commission has been put in the position of not being able to go  
5 forward with a factual basis by the Committee. You might want to  
6 include a sentence to that--that the Committee has been  
7 requested--or the factual basis for this has been requested of  
8 the Committee on--maybe you don't say numerous times--but you say  
9 has been requested of the Committee, and it has not been  
10 supplied. And if you have no facts, you certainly can make a  
11 legal analysis on that basis. The Committee has had ample  
12 opportunities. We may be in the same position two or three weeks  
13 from now if, in fact, the Committee says our--we just now have  
14 the documents. Then what are you going to do? Are you going to  
15 hold it up again?

16 THOMSON: Well, we are going to say you should have kept adequate  
17 records to supply this information. And since you didn't keep  
18 the records, we are going to find against you because it looks to  
19 us like you owe it.

20 McGARRY: That's the wisdom of the Thomson letter as I understand  
21 it. Mrs. Aikens.

22 AIKENS: It was saying that anyway--

23 TIERNAN: It would say that here.

24 AIKENS: In the Audit Report when they have 30 days to respond.

25 McGARRY: Mr. Gross.

26 GROSS: I think the problem is that you are formulating for the  
27 first time what it is that you want in the final audit report.  
28 We have not said what it is that we really want here.

1 McGARRY: That's the problem. That's why the Thomson letter is  
2 looking more and more brilliant every minute.

3 AIKENS: It is not to me, Mr. Chairman, I'm sorry, I mean I don't  
4 see any reason to change our procedures at this point for a  
5 Committee that has not supplied documentation that has been  
6 requested numerous times and that has had three months in which to  
7 do it. More than three months. Three months since they got the  
8 Interim Audit Report. I think that the Auditors have been put  
9 through enough in doing this Audit Report in the first place  
10 without putting anymore on them. What will happen is that they  
11 will get six car-loads of materials and by the time they sort  
12 through them it will take six months again.

13 McGARRY: Joe. I'M going to recognize you. Don't make me sorry  
14 that I recognized you.

15 STOLTZ: Maybe I'll go now. One thing that we do have is the  
16 calculation of what we felt was chargeable to the limitations  
17 based on a review of their records, testing their system, and  
18 identification of items which we felt their system missed. We  
19 know how much that is. We know which disbursements they are, and  
20 we know how they were charged. At least from that standpoint we  
21 have a factual basis for coming up with a number. The Committee  
22 has come back and said, "Well, maybe so, but over here we would  
23 like to take a little piece of this expenditure out and a little  
24 piece of this expenditure out and a little piece of this one out  
25 and come up with a number that is under the limit." That is what  
26 we are really dealing with now, is how much of that they can pull  
27 out of the figure we have already calculated based on their  
28 records and an analysis of their system. So at least from that  
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1 STOLTZ (continuing): point of view, it's not a lack of any  
2 factual basis for a repayment number. We have one and we know  
3 exactly how we got there. What we don't know is exactly how the  
4 Committee decided some of the things that had already been  
5 charged should now be uncharged.

6 McGARRY: What would the scenario--yes, Governor Thomson.

7 THOMSON: Then the answer is just to approve this Report and send  
8 it out to them and then the burden is on them.

9 STOLTZ: That was our feeling.

10 McGARRY: I think we have to make a better case than that, Joe, I  
11 really don't think the burden is on them when it comes to  
12 repayment, and we have a real problem.

13 AIKENS: Mr. Chairman. Would it be possible to continue the  
14 discussion on the other items. We seem to have been stuck on  
15 this one and we have not reached a resolution. I don't think we  
16 are going to resolve this today, and it will probably have to come  
17 back to us on the 9th and probably not even be released even  
18 then, but we could continue with the discussion for awhile.

19 McGARRY: Yes. Madam Secretary, I know it has been a long day  
20 for you, would a couple of minutes break be in order? I think it  
21 would be appropriate if everyone doesn't mind. We can come and  
22 go as we choose, but poor Marge is stuck there. So we will break  
23 for four minutes. Is four minutes sufficient?

24 AIKENS: How about five minutes, to 4:30p.m.?

25 McGARRY: Four thirty. (The meeting broke.)

26 McGARRY: All right, Madam Secretary for the record, we will  
27 resume after our short recess. My reading of this right now,  
28 before we leave this area, and I could be wrong and please feel  
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1 McGARRY (continuing): free to correct me. We are not going to  
2 move it with the 10 day proposal even though that is the route I  
3 would like to go. The closest, if we have any possible room for  
4 agreement on this it's I think, Tom Josefiak's proposal, and it  
5 would require modifying the language and saying, in effect, "you  
6 were requested to supply this information. Your failure to  
7 provide same," and this would be right in the Report, "makes it  
8 impossible for us to conclude and accordingly," it's being--that  
9 would allow the report to go out and and give them the 30 days  
10 and theoretically, they are going to have plenty of opportunity  
11 to respond.

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17 But in any event, I know we have spent  
18 an awful lot of time on this and is Audit against the 10-day  
19 letter, as such? Joe.

20 STOLTZ: If the Commission thinks that is the way to proceed, we  
21 will work with the Counsel in putting it together. Ten days is a  
22 very short time for the quantity and types of information that  
23 you would be asking the Committee to come forth with.

24 McGARRY: In any event, it looks like we may be able to get  
25 support, the necessary votes for the Josefiak proposal which  
26 would allow the report to go out and would certainly give them  
27 ample opportunity to come back and present any--it would modify  
28 the language so to take out the critical sentences and merely put  
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1 McGARRY (continuing): in that they were requested to supply this  
2 information; failure to provide same as requested puts us in a  
3 position where we cannot allow this would obviously have to be  
4 rejected. I don't know. It seems as though there may be support  
5 for that around the table and should we go that route if that's  
6 where we stand? I am ready to go to that fall-back position, and  
7 Mr. Reiche, what are your thoughts?

8 REICHE: I would support that. I cannot support the letter,  
9 because I think that is a totally different procedure and I think  
10 we would be treating this Committee far differently from the way  
11 we have treated anyone else.

12 McGARRY: Now, how would that stack up? I know it isn't what you  
13 would like, Mr. Steele, but we are trying to find an  
14 accommodation here and what is your response?

15 STEELE: My response, and I think I have made most of it before,  
16 is if you do that you are then saying that you have a legal and  
17 factual--that you now have a legal and factual basis for your  
18 determination. Second of all, if you put in the report that you  
19 have requested this information and it has not been given you  
20 are-- in mind--putting yourself in a very tenuous ground because  
21 you have nothing to document that the specific information has  
22 been requested. I understand that the Auditors feel that they  
23 have requested it. I think the discussions here make it very  
24 clear to me that exactly what information is wanted is unclear in  
25 everyone's minds so I think you would then be in a position of  
26 having put in the Audit Report that you demanded certain  
27 information and will have a very hard time establishing that. So  
28 I think that that course is certainly one that the Commission can  
29 follow, but I think it will bring you difficulty down the road.



1 McGARRY: Mr. Josefiak.

2 JOSEFIAK: I don't think you have to put the Commission in that  
3 position about saying that the information was requested and not  
4 received. All you have to do is say the information has not been  
5 provided by the Committee to etc., etc., the language that is in  
6 here, that there has been no definition or explanation of how  
7 this was broken down. I don't think you have to put the  
8 Commission in the position of saying that if you don't have the  
9 documentation to justify it.

10 STEELE: The Committee's feeling will then be, what is it that we  
11 have not provided? And I think they will have a sympathetic case  
12 to saying what is it that we should provide? Again, that we will  
13 be saying in effect, "we don't--we consider our--this is the  
14 numbers we would come up with, we don't consider yours reasonable  
15 and we won't accept it because you have not provided us  
16 information." The question is what information is it they have  
17 not provided.

18 JOSEFIAK: Don't you reach a point where the lack of getting  
19 information has to serve as some factual and legal basis for a  
20 decision? Or else you would never--

21 STEELE: If you specify. Yes, in my mind if you can specify what  
22 information it is that they have been required to keep that they  
23 have not come forward with, I mean, since we have gone through  
24 all of their records. What information it is that you feel they  
25 were required to keep that you have made certain demands for, and  
26 in my mind asking for it orally is very--you have a very  
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1 STEELE: unsympathetic case if you do not ask for it in writing.  
2 And said, "This is what we want that you have not provided." So,  
3 yes is the answer, but it seems to me you have to be in that  
4 situation and I am not convinced that you are.

5 McGARRY: Mr. Harris.

6 HARRIS: What are you recommending at this point, specifically?

7 STEELE: It seems--given the various alternatives, my  
8 recommendation would be to go the letter route. In other words,  
9 to sit down and have it specified out as to what information it  
10 is that the Commission feels necessary to make this decision and  
11 seek that information that way. Because I don't see how you can  
12 come up with a legal and factual basis for your finding that this  
13 wasn't without that information. I think that is replete  
14 throughout this Report.

15 HARRIS: Well, on the national press for example. What  
16 information would you ask for here on the bottom of 23 and the  
17 top of 24?

18 STEELE: Well, I think that probably what you would ask for is as  
19 I understand the Audit Report is that we need information to show  
20 a relationship between any particular expenditure or group of  
21 expenditures which they have charged to exempt national press and  
22 the activities of the national press. That they want something  
23 that shows that relationship.

24 HARRIS: I don't understand the last couple of sentences. I  
25 don't understand the relevance of that myself. Of the first  
26 paragraph.

27 STEELE: Well, I have that same problem. Indeed, when you asked  
28 me that question one of my difficulties is that I don't  
29 understand what additional information it is that the Commission  
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1 STEELE (continuing): feel that it has requested that it needs to  
2 make this determination. That is indeed one of my underlying  
3 difficulties. I don't see what information it is that you have  
4 asked for that you haven't gotten that you think would help you  
5 make the determination.

6 JOSEFIAR: Well, what would you put in the letter--I mean how  
7 would you even address that in a letter if you don't know--

8 STEELE: What I am saying is that I think that is what the Audit  
9 staff has a sense of what it is that they want. In other words,  
10 their recommendation is that without this information we can't  
11 make a determination and that the easy way to go about that is to  
12 put it down. They feel that they have asked for it, but what you  
13 want to do is put it down on paper that we have asked for it and  
14 that this is the information they feel they need. The one  
15 specific that I used which is not relevant to this one, but the  
16 one specific that has come up is the workpapers underlying the  
17 Fox thing, the earlier issue. Here, as I say, it seems to me  
18 that the request is for--I have difficulty in the long run,  
19 legally, with trying to enforce this because it seems to me to be  
20 requiring a higher standard--it may seem to be requiring a higher  
21 standard. I don't know. In other words, if you have to have  
22 that the invoice--if they got an invoice and it shows that they  
23 rented the car and it shows that they had the car for the days  
24 the claim came in and the invoice doesn't say, "And this car was  
25 allocated to the national press," is also going to be a hard  
26 battle. But at least factually you ask for that kind of  
27 information--I'm not sure you can enforce that demand, but at  
28 least you say, "Well, that's the kind of stuff we are looking  
29 for."

1 JOSEFIAK: But where does this--where does all of this fit into  
2 the Audit Procedures themselves and how far can you go along in  
3 any situation where you just--you have to keep refining the  
4 information that you are requesting. I mean, where do you decide  
5 that you have gone far enough and you can proceed--or not  
6 proceed--what do you do in a case like this where a Committee  
7 will not provide you the information or doesn't know what to  
8 provide or you don't know what to ask for. I mean, where do you  
9 end up in a situation like this in the audit process?

10 STEELE: I think it illustrates one of the difficulties of trying  
11 to enforce the state-by-state limitations through this process.  
12 It is certainly one of the things that it exemplifies--

13 JOSEFIAK: But that's a given. We have gone through the campaign  
14 and we have done that--whether it was right or wrong--

15 STEELE: But what I am saying is that what you there have is that  
16 you have to have something that shows that there--that it's an  
17 unreasonable allocation and therefore you have to have records  
18 that you would show that says that they can't reasonably have  
19 made that allocation.

20 JOSEFIAK: But what if you haven't anything to base that on?  
21 What if you can't make that decision one way or the other. what  
22 do you do? Do you just not vote at all?

23 STEELE: You look at all of their records. You have looked at  
24 all of their payroll records, all of their time records, you have  
25 looked at everything. Now what you are saying is that how they  
26 went back and looked at it and said, "Well this goes here and  
27 this goes there," that's not in the record and you are asking  
28 them to provide further information along those lines. Beyond  
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1 STEELE (continuing): that, I don't see what you can do. But  
2 again you also have that problem and I think you have to face  
3 which is the specificity with which you have required them to  
4 keep that kind of information is going to be hard to come up with  
5 in all of these cases.

6 McGARRY: Mr. Reiche.

7 REICHE: Since we're back to square one, which appears to be  
8 where we are, what ever happened, Charlie, to your original  
9 theory that if the Audit Report itself were, perhaps fleshed  
10 out--in other words so that Audit indicated more clearly in your  
11 view, what they needed that that would be an agreeable way to  
12 proceed.

13 STEELE: Well, I think--

14 REICHE: Because that seems to be what you said originally and,  
15 you know, I'm not disagreeing with that, I--the problem I--

16 STEELE: Well, O.K., but if I said it, I'm disagreeing--

17 REICHE: Well, O.K.

18 STEELE: Is what it comes down to. I don't remember saying that.  
19 The discussion, certainly it is going to be mindboggling when we  
20 go back and listen to this tape, I'll tell you that, but the  
21 proposition in my mind is one that I think and I think,  
22 Commissioner, that two sides have been phrased and I don't think  
23 it's a happy decision either way, but the difficulty that I have  
24 with going forward now without getting the information is that it  
25 seems to me you would be going forward with a Report that says we  
26 don't have information where you've had, you know, as I say, you  
27 don't have a basis for, I think for, for proving contumacious  
28 refusal. You don't have--you have looked at all their records; so  
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1 STEELE (continuing): if you go to that Audit Report stage, a  
2 Final Audit Report, preliminary determination of what is owing  
3 back, I think you are going to be in bad factual shape. You can  
4 go that way, but you then are not going to have a basis--we then  
5 have to go in and say, "Well the basis for the Commission's  
6 determination was that despite the audit and despite all the  
7 information that was brought forward in that, they felt that they  
8 couldn't make a determination."

9 REICHE: O.K. But what you are forgetting in that process is  
10 that if we do that by way of the Report, which is the normal way  
11 we have done for all of the other campaigns, that by the time this  
12 reaches court they then will have had that additional 30 days,  
13 they will have had time in which they could have provided that  
14 information so that what might have looked like an arbitrary  
15 judgment on our part will result in an additional 30 days being  
16 given to them. And not only that, I'm not suggesting at this  
17 point that the Report go out in the present form. I acknowledge  
18 the need to flesh it out, but if we do have auditors as assisted  
19 by counsel embellish so that some of those needs that they  
20 perceive are spelled out in greater detail, Charlie, I think that  
21 would suffice. Or I will put it this way, you then have a choice  
22 and Tom put the choice very well I think when he is saying, "What  
23 do you do when someone doesn't provide you the information,"  
24 although given opportunities and requested repeatedly to do so?  
25 Do you just not vote it up or down?  
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1 REICHE (continuing):  
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6 STEELE:  
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14 McGARRY: Do you want to offer a motion, Mr. Reiche?

15 REICHE: Well, I would move, Mr. chairman that we--well, do you  
16 want--are we talking in limited terms of this whole section here?  
17 Are we talking of national---I mean we had better decide what we  
18 are talking about before any motion.

19 McGARRY: It is my understanding at this stage, we are talking  
20 about the Josefiak proposal to modify the language so that it  
21 will conform to what the true situation is and move that.

22 REICHE: But I think, and I think Tom himself modified his prior  
23 thoughts somewhat, it's not so much a case of reciting in there  
24 that we have repeatedly asked for this information,  
25

26 McGARRY: I know, I think that on reflection--

27 REICHE: Am I right, Tom? Yes, yes--

28 McGARRY: Mr. Josefiak, why fight that battle if we don't have  
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1 McGARRY (continuing): to? If they can provide it--

2 REICHE: So, it's more a case of seeing if we can't, well, if  
3 Counsel and Audit can't agree on some of the additional items,  
4 pieces of information that would be advisable to have, but barring  
5 that, then we would have to say that there is insufficient  
6 information to find in their favor, and say we don't think you  
7 have submitted sufficient information, or whatever the details are  
8 and then go from there.

9 McGARRY: And go, and let the Report go out.

10 REICHE: And let the Report go out. I still think that process  
11 is going to involve Counsel and Audit getting together over the  
12 next 10 days, or however long it takes.

13 McGARRY: Can I interrupt? I really, my own feeling, I'd  
14 welcome, I really think it is unrealistic to impose that burden,  
15 and I know Commissioner Aikens feels very strongly, but we have to  
16 make the best of a bad situation. We are in a bad situation and  
17 I just don't think it is realistic to go from tonight till  
18 Thursday morning and think we are going to--

19 AIKENS: I would agree, Mr. Chairman. I think there is too much  
20 unresolved that I don't think we are even going to get through the  
21 rest of this today. I would think that we would have to hold  
22 this over for final resolution, and I suspect that it would not  
23 even be final on the 9th of September. Much as I don't like to  
24 see that because that's going to mean probably there will be  
25 matters unresolved even on the 9th and we will hold it over from  
26 then and we are going to be far off our timetable, but we are  
27 already far off. We are already five months behind on this one.

28 REICHE: Well, Mr. Chairman.



1 McGARRY: Mr. Reiche.

2 REICHE: What about asking Audit, based on our discussion today  
3 assisted by Counsel to examine the Section entitled Allocation of  
4 Expenditures to States. The summary that you gave before, Joe, at  
5 least up until the point where we got into national press, I mean  
6 I think you summarized beautifully the changes that everybody  
7 agreed on to that point, and then see if, with respect to  
8 national press and the other two items you can't at least come  
9 closer and where you wind up not necessarily agreeing, then at  
10 least tell us what the disagreement is, give us the choices, give  
11 us the alternatives, and submit it back to the Commission that  
12 way. Would that be a--

13 McGARRY: Yes, that's certainly a sound proposal.

14 REICHE: Because I think that might resolve the problem we have  
15 with this.

16 McGARRY: Joe.

17 STOLTZ: I have no problem with that. We will take a shot at it,  
18 and if there are still some areas that the Commission feels they  
19 need more explanation, we can do it as a result of the next  
20 meeting.

21 McGARRY: Mr. Harris.

22 HARRIS: I would like to call attention to this first sentence at  
23 the top of page 24, this reference that there is no, "don't show  
24 any relationship between particular expenditures and the  
25 activities of the national press." I don't know what that means,  
26 but it seems to be a very unfortunate wording. On one other  
27 thing, would it be helpful to take a vote on whether we are going  
28 in favor of allocating the salaries of personnel that they say  
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1 HARRIS (continuing): are devoting all or part of their time to  
2 national press? Isn't that an issue that the Commission ought to  
3 resolve before referring it back?

4 STEELE: I thought effectively that that was the issue that was  
5 brought forward on the Reiche motion that resulted in the tie  
6 vote. Perhaps it could be differently phrased, but in effect  
7 that was the--approve the sentiments expressed by the Audit staff  
8 in paragraphs two and three.

9 HARRIS: There was a tie vote on it, and it seems to me that if  
10 there was a tie vote on it, we'd better not ask for repayment on  
11 it.

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26 REICHE: That's right.

27 STEELE: Particularly in amount. You are talking about very very  
28 large amounts for a very--  
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1 McGARRY: Yes, Mr. Reiche.

2 REICHE: Mr. Chairman, could I put the thought that I expressed  
3 earlier on in the form of a motion referring that entire Section  
4 on Allocation of Expenditures to States back to the Audit Division  
5 assisted by Counsel for an attempted redraft based upon our  
6 discussion of today?

7 McGARRY: Yes, I think that would be--

8 REICHE: Don't kill me for it, everybody, but it's, we've got to  
9 get out and see if we can't resolve some of this.

10 McGARRY: Would you state that again, Mr. Reiche?

11 REICHE: I would move that we refer back to the Audit Division,  
12 assisted by Counsel, a review of the Section entitled, "Allocation  
13 of Expenditures to States" beginning on page 15 and continuing  
14 through page 20--

15 McGARRY: Fifteen on the bottom?

16 REICHE: Fifteen at the bottom and continuing through the top of  
17 page 26 and that they attempt to reach agreement in those various  
18 areas and failing that at least in a memo to the Commission, they  
19 indicate the areas of disagreement and the alternatives which we  
20 have for action by the Commission.

21 McGARRY: Well, Mr. Reiche moves that the matter be referred back  
22 to the Audit Division to have them confer and work with the  
23 Office of General Counsel specifically with reference to page 15  
24 on the bottom Section C, entitled "Allocation of Expenditures to  
25 States" and to, uh, yes, Mr. Steele?

26 STEELE: Might I just seek clarification? I understand from the  
27 motion that that is the area you want us to concentrate on  
28 inasmuch as there are other areas where in the preparation of this  
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1 STEELE (continuing): we have been left with some disagreement,  
2 I assume that there is no intention in the motion to preclude us,  
3 if we can with regard to other areas of the report, coming  
4 forward with further clarification? I am thinking particularly  
5 of the fact that we do have the whole--the whole area of the loan  
6 and so forth and that we might work on that part of the Report as  
7 well in the hopes of merely just focusing it better for the  
8 Commission?

9 REICHE: Well, I assume, Charlie, that we were going to continue  
10 it through and if we got to that point and if we felt the same  
11 way, by all means. But I limited it to this because I think up  
12 to this point we were--or we have reached agreement through  
13 that--or until we reach that Section. But if we get to the other  
14 stage, obviously, you know.

15 STEELE: I was making the assumption that inasmuch as we were  
16 foundering here that the best thing to do was to not continue on  
17 through--but that the Commission was going to presume not to  
18 continue on through since it is five o'clock, but that was an  
19 assumption when I stated that.

20 REICHE: Well, I defer to the Chair.

21 TIERNAN: Well, would it be helpful though to have some  
22 discussion? The major one is going to be the art.

23 STEELE: Sure.

24 TIERNAN: I don't see how the Audit and the General Counsel can  
25 resolve that, myself. I may be mistaken.

26 STEELE: I think that's true.

27 TIERNAN: If you wanted to drop everything else and move to that  
28 one question and try to resolve it today; if not, I think you  
29 ought to have a meeting tomorrow morning and try to get it done.  
30

1 STEELE: Well, I think that's true, it's just--

2 McGARRY: I'm sorry, Bob, have a meeting tomorrow morning?

3 TIERNAN: No, I'm just saying that if you have got enough time  
4 tonight, I don't know that we've got enough time to resolve that  
5 art question. But that's the biggest one of them all that I can  
6 see where you have difficulty.

7 McGARRY: It certainly is. The Chair is amenable to whatever the  
8 sense of the Commission is. I would welcome, but in any event--

9 TIERNAN: Could we continue on from "D" on 17 and dispose of as  
10 many of these as we have no objection to?

11 McGARRY: Sure, but let's dispose of the Reiche motion and report  
12 back to the Commission--

13 REICHE: I did not try to establish a date for reporting back. I  
14 don't know what you all think is appropriate. They obviously  
15 need some time to do their work. It is not easy.

16 McGARRY: I think any date before the 15th is not realistic to be  
17 honest with you and that's my own personal opinion, but--

18 STOLTZ: The next scheduled meeting is the fifteenth?

19 McGARRY: Uh huh (an affirmative response).

20 TIERNAN: The ninth.

21 STOLTZ: Let us shoot for that date and if it doesn't look like  
22 we will make it, suppose we send a memo around advising the  
23 Commission?

24 McGARRY: Right.

25 REICHE: That would be fine, thank you. That would be fine and I  
26 would be happy to incorporate that in the motion.

1 McGARRY: If you would. Well, if there is no further discussion,  
2 the vote will occur on the motion. All in favor say aye, (a  
3 voice vote was heard.) All opposed? It appears to the Chair  
4 that the vote is six to zero. And I think we will follow through  
5 on Commissioner Tiernan's suggestion and we go now, Ray Lisi, to  
6 page, if you would Ray--

7 LISI: Page 26.

8 McGARRY: That's 26 on the bottom.

9 LISI: The Finding is D, "Contributions from Other Political  
10 Committees". At the bottom of the page, we have an itemization  
11 of the finding. Our review of their reports revealed 28  
12 political committees which reported 21 contributions to the  
13 Committee totaling \$30,322 which were not itemized. We  
14 recommended that the Committee in the Interim Report itemize these  
15 contributions and they did file an amendment on May 19th which  
16 did itemize the contributions.

17 TIERNAN: Mr. Chairman. I move approval of the Audit staff  
18 recommendation appearing on the page, page 27, the top of page 27  
19 under "Itemization of Contributions from Political Committees."

20 McGARRY: Is that at the top of page 27?

21 TIERNAN: It is, yes.

22 McGARRY: Commissioner Tiernan moves approval of the Audit staff  
23 recommendation contained at the top of page 27. If there is no  
24 further discussion, the vote will occur on that motion. All in  
25 favor say, aye (a voice vote was heard). All opposed? I would  
26 like to interrupt at this moment. The Staff Director advises me  
27 that with reference to another matter on the Agenda involving  
28 RAD, he has them waiting in the wings and he just wants to know,  
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1 McGARRY (continuing): and perhaps you can state it better--don't  
2 open the door or we will all get pelted with rotten tomatoes--

3 CLUTTER: With respect to the audits that have been--that you  
4 have-- on Mr. Tiernan's motion that we brought back today, that is  
5 one issue. The second issue which I think the Commission should  
6 address and the Audit Division has put forward a recommendation  
7 for an examination of a committee that they have already noticed  
8 for possible audit, that needs to be, that either needs to be  
9 addressed today or tomorrow for some resolution of that matter.  
10 On the other Audit Referrals, if the Commission wants to delay  
11 them until the next Executive Session, it would put the Audit  
12 staff back two weeks potentially, if audits are authorized, but  
13 that's sort of the lay of the land at this point. Some of the RAD  
14 staff is on flex time, and I have been told that a few of the  
15 Analysts on the other referrals the Commission has already dealt  
16 with have departed, but the Analyst who is dealing with this  
17 particular Committee is relatively new and is available.

18 McGARRY: Yes, Commissioner Aikens.

19 AIKENS: Mr. Chairman, I--since I have been here since ten  
20 o'clock this morning, it has been a long day. I like  
21 Commissioner Tiernan's suggestion even though we have to Sunshine  
22 it, which I am opposed to, of holding a meeting tomorrow. I  
23 think to get into the discussion of this artwork at this stage in  
24 the evening after this day would not be productive. It would be  
25 counter-productive.

26 McGARRY: I could not quarrel with you on that, Commissioner, and  
27 unless somebody has an objection, now that would be putting  
28 everything over until tomorrow morning, Commissioner?  
29  
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1 AIKENS: Yes.

2 TIERNAN: Yes.

3 AIKENS: I would just put the rest of the Agenda over to tomorrow  
4 morning.

5 McGARRY: And we would meet at 10:00 a.m. tomorrow morning?

6 AIKENS: Yes, I would make a motion that we continue this  
7 Executive Session to finish the Agenda at ten o'clock tomorrow  
8 morning.

9 TIERNAN: What will you do with the RAD people?

10 CLUTTER: They will be available for tomorrow.

11 TIERNAN: Yes, but the point is that if you take this up it is  
12 going eat up most of your day. You may not get to your RAD  
13 people tomorrow.

14 AIKENS: Well, we haven't done it today, either.

15 TIERNAN: Could you take the RAD people up first thing?

16 CLUTTER: Of course, first, we could do that.

17 McGARRY: I think that would make sense.

18 TIERNAN: Because otherwise they are just going to have to sit  
19 around all day again.

20 McGARRY: To deal with the RAD matter first off. So,  
21 Commissioner Aikens moves that we suspend any further  
22 consideration of any and all matters on the Agenda for today and  
23 resume at ten a.m. tomorrow morning and putting as the first item  
24 on the Agenda the RAD Division with the--dealing with the 438b  
25 situations.

26 TIERNAN: Mr. Chairman. Is there any urgency to any of the  
27 personnel matters?

28 CLUTTER: No.

29 McGARRY: No, there is not. Madam Secretary?  
30



1 EMMONS: I would just like to address a question to the General  
2 Counsel. If this is not adjourned, but recessed, we wouldn't have  
3 to Sunshine this would we?

4 STEELE: I'll figure it out before tomorrow morning.

5 AIKENS: Before we spend one hundred and twenty five dollars, I  
6 would like an answer to that, Charlie.

7 McGARRY: Well, it is after the fact, but I don't see any problem  
8 with that.

9 TIERNAN: There is one matter that is to be acted on by the close  
10 of business. I personally am not opposed to it, but I don't  
11 think that was the intention of the program.

12 CLUTTER: Do you want--why don't we extend--

13 TIERNAN: Can you extend the deadline on that until tomorrow?

14 CLUTTER: Yes.

15 TIERNAN: I just want a discussion here.

16 CLUTTER: Yes.

17 McGARRY: So if there is no further discussion, the vote will  
18 occur on the Aikens' motion. All in favor say aye. - (A voice  
19 vote was heard). All opposed? It appears to the Chair that the  
20 vote is six to zero. Thank you very much everybody.

21  
22 THE EXECUTIVE SESSION OF AUGUST 25, 1981 ENDED.  
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3 McGARRY: We will go back now, Ray, to where we left off with the  
4 Kennedy matter. Ray, why don't you just bring us quickly up to  
5 date where we are and what you perceive our direction to be this  
6 morning?

7 LISI: Fine, I think at the close of the meeting yesterday we had  
8 just - the vote had just been taken on the recommendation on the  
9 finding at the top of page 27 on the audit report, and we have the  
10 next finding to be considered would be Excessive Contributions  
11 from Registered Committees. We'll go into this finding, this is  
12 the last of the title 2 findings, I am sorry there is one other  
13 finding after this, which will complete the Title 2 section of  
14 the report. Then I think we can go into the matters which were  
15 referred to the Office of General Counsel. We have at least one  
16 matter there where there is a - two matters - where I believe the  
17 Counsel would probably want to have some discussion on the  
18 matters that we recommended be referred. And then into the Title  
19 26 question, the NOCO statement, and the artwork.

20 McGARRY: So where specifically do you want to pick up this  
21 morning?

22 LISI: On page 27.

23 McGARRY: That's on the bottom?

24 LISI: On the bottom. Correct. It's number 2, Excessive  
25 Contributions from Registered Committees, it is "2-D."

26 McGARRY: With that as a background, Madam Secretary, we'll pick  
27 up from there, and Ray, do you want to proceed--

28 LISI: In this situation, we have, in this finding, we have three  
29 contributions which were received from, one from a multicandidate  
30

1 LISI (continuing): committee and two from nonqualified  
2 multicandidate committees. The contribution from the  
3 multicandidate committee was in excess of the allowable limit by  
4 \$4,875.00, and we had two additional contributions from other  
5 political committees which were not qualified as multicandidate  
6 committees. Excessive portions of those where totaled \$3,702.60.  
7 Our recommendation in the Interim Audit Report was that the  
8 Committee refund these contributions to the committees. In the  
9 response to the Interim Audit Report, the Committee came back and  
10 indicated that one of the committees, one of the non-qualified  
11 multicandidate committees, was not in existence any longer so they donated  
12 the excessive portion to a charity. The other contribution from  
13 the non-qualified committee was refunded, I'm sorry, that was not  
14 refunded. The Committee indicated to us that that committee had  
15 met multicandidate status. We reviewed our records here, and we  
16 could determine, based on the records here, that at least two of  
17 the requirements had been met. The third, which is that the  
18 committee receive contributions from at least fifty individuals,  
19 we could not determine; however, the Committee did provide us with  
20 letters stating that they had received those contributions. Now  
21 that indicated that that committee had met its multicandidate  
22 status four days after the contribution had been made. The other  
23 contribution was refunded to the committee. So basically, our  
24 recommendation in this case is that the, that we take no further  
25 action on this matter. The fact that the multicandidate  
26 committee qualified four days after the contribution was  
27 received, we feel is a an immaterial fact at this point. I  
28 believe Counsel was in agreement with our recommendation.  
29  
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1 TIERNAN: Mr. Chairman, I move approval of the Audit staff  
2 recommendation appearing on page, at the bottom of page 27, with  
3 regard to Excessive Contributions from Registered Committees.

4 McGARRY: Commissioner Tiernan moves approval of the Audit staff  
5 recommendation contained at the bottom of page 27. If there is  
6 no further discussion, Mr. Harris?

7 HARRIS: We're in effect proposing to waive the fact that the  
8 Committee attained multicandidate status four days late. Have we  
9 had that question up before?

10 GROSS: Well, I don't think we're saying that it was not a  
11 technical violation, what we're saying here is that because they  
12 attained the status four days later it's not a matter worth  
13 pursuing, and I might add that it is a little difficult to even  
14 define a specific point in time whether it is four days, the exact  
15 filing date, and fifty contributions. This is when we have  
16 internally decided that. I think there is some confusion even  
17 from the committee standpoint of how we can communicate it to  
18 them, when that precise status takes effect. So without calling  
19 it a waiver, I'd say it's just a question of whether it's a  
20 matter worth pursuing four days later on a difficult determination  
21 is why we agreed with it not to pursue it beyond, and we also  
22 felt that it was better to have something like this in the audit  
23 report rather than just have it come out in a MUR that may be  
24 virtually inconsequential as far as any final resolution much  
25 much later after the fact.

26 HARRIS: They didn't give the money back yet?

27 GROSS: Not on that one. No.

28 McGARRY: Commissioner Aikens.  
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1 AIKENS: Ray, you say that the only proof we have of the fifty  
2 contributors is a letter from the committee, it is not on their  
3 reports?

4 LISI: There were not fifty itemize contributors on their  
5 reports. Okay. It's very possible that the unitemized figure  
6 could contain a number. There would be no way of determining  
7 that.

8 AIKENS: Is the unitemized figure large enough to have fifty  
9 contributions?

10 LISI: Yes. You know, based on-

11 AIKENS: What was the committee?

12 LISI: It was the United Farm Workers. The committee was very  
13 inactive for - they've been registered since 1972 and apparently  
14 became active in this election campaign.

15 McGARRY: Thank you, Ray. If there is no further discussion, the  
16 vote will occur on the Tiernan motion. All in favor say aye. (A  
17 voice vote was heard.) All opposed? It appears to the Chair  
18 that the vote is 6-0.

19 AIKENS: How about five?

20 McGARRY: Five. I'm sorry. Commissioner Reiche absent. Thank  
21 you very much, Mrs. Aikens.

22 AIKENS: I am sure he would like to vote.

23 McGARRY: Yes. Ray Lisi.

24 LISI: The next finding appears at the top of page 28 and  
25 concerns Undisclosed Debt. In this instance we have a situation  
26 where we noted that there were \$177,149.32 in debts which were  
27 not disclosed by the committee on their, as of November 30, 1980,  
28 and we also determined that their disclosed debts were overstated  
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1 ISI (continuing): by \$34,749.27. In our interim Audit Report,  
2 we recommended that the Committee amend their December monthly  
3 report and any subsequent reports to the extent that they were  
4 affected to accurately reflect those outstanding debts, and the  
5 Committee, did file amended reports which corrected the errors;  
6 therefore, we're recommending no further action.

7 TIERNAN: Mr. Chairman, I move approval of the audit staff  
8 recommendation appearing at the bottom of page 28.

9 AIKENS: Mr. Chairman, could we correct one typo? Isn't it May  
10 19, 1981 they filed their amended reports? That's right?

11 LISI: Yes.

12 McGARRY: Thank you. Madam Secretary, would you note that  
13 without objection, the Chair hearing none. Commissioner Tiernan  
14 moves approval of the audit staff recommendation contained at the  
15 bottom of page 28. If there's no further discussion, the vote  
16 will occur on the motion. All in favor say aye. (A voice vote  
17 was heard.) All opposed? It appears to the Chair the motion  
18 carried by a vote of 5-0 with Commissioner Reiche absent. Ray  
19 Lisi?

20 LISI:  
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LISI (continuing):

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TIERNAN:

McGARRY:

TIERNAN:

McGARRY:

1 LISI: The next finding concerns the review of the loan records  
2 by the Committee, oh, by the Audit Staff. The matter involved  
3 here originally included in the audit report was the fact that  
4 the Committee had not provided us documentation to support 23  
5 loans that they had received from various banks. Our  
6 recommendation in the Interim Audit report was the Committee  
7 supply this documentation for these loans. The Committee did  
8 provide us with documentations for all but two of the loans.  
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7 McGARRY: Mrs. Aikens.

8 AIKENS: Mr. Chairman, I am going to ask that my motion not be  
9 voted. At the time, I noted Commissioner Reiche would like to  
10 vote on it, and I would ask that it be held or withdrawn or  
11 whatever is your pleasure, or just leave it on the table for now.

12 McGARRY: Whatever the General Counsel suggests.

13 STEELE: It would seem to me that if you are going to move on,  
14 you are going to come to this same problem later, so I would  
15 think you are going to have to suspend voting (inaudible).

16 McGARRY: I ask Allen (inaudible) the status report on Mr.  
17 Reiche. We are just going to suspend voting, because he has an  
18 interest.

19 CLUTTER: He is still up in the nurse's office.

20 THOMSON: Well, I have a noon engagement made many many days ago,  
21 Wednesday noon, but if you aren't going to be doing any voting, I  
22 am going to my meeting.

23 McGARRY: I can't quarrel with that, Governor.

24 THOMSON: I'll try to be back at 2:00.

25 HARRIS: Is the proposal to put off all the rest of this or what?

26 McGARRY: No. We were hoping we would get a report. I asked  
27 Allen. He just came back and said the Vice Chairman is still up  
28 in the nurse's office, and we can't get any reading. Apparently,

1 McGARRY (continuing): he is resting up there. So we are in  
2 sorta of a limbo state. Right where--

3 HARRIS: I would think we ought to go ahead and vote. If you put  
4 it off, you don't know when you are going to get any more members  
5 than five.

6 McGARRY: Well, I think what - certainly we can vote on that.  
7 Commissioner Aikens would feel better about it.

8 AIKENS: I would want my request to stand - that just wait awhile  
9 to see if the Vice Chairman is coming back. I know that he has  
10 an interest in this, and I know he wants to vote on it. I would  
11 request that we hold for awhile.

12 McGARRY: Well, one course we could follow where Governor Thomson  
13 is going to a meeting at noon and where Mr. Reiche and the  
14 Governor both have a continuing and abiding interest in all of  
15 these matters and the discussion and (inaudible) in hearing from  
16 both Audit and General Counsel. Perhaps you will be available at  
17 2:00 and perhaps at that time we will have a reading as to Mr.  
18 Reiche's condition. I think we can better assess the situation.

19 HARRIS: I think you better make it 2:15 as far as I am  
20 concerned.

21 McGARRY: 2:15? We certainly want to accommodate everybody here.  
22 This will be one that gets accommodations for three different  
23 people. (inaudible) In any event, I think we can probably break  
24 right now, Governor, and we will come back at 2:00.

25 HARRIS: 2:15.

26 ALL: (in unison) 2:15.

27 McGARRY: Thank you very much.

28 TIERNAN: All kinds of concessions.  
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1 McGARRY: Yes. Recess until 2:15.

2 RECESS

3 McGARRY: The Federal Election Commission will please come to  
4 order, Madam Secretary, for the afternoon session, continuing on  
5 where we left off. Now, we have the afternoon session the  
6 Executive Session, a special Executive Session for Wednesday,  
7 August 26, 1981. We broke for lunch in the middle of the Kennedy  
8 audit, and where did we leave off, Ray? You can pick up.

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LISI: Backing up a little bit here, I am going back to page 29. These are the findings which relate to Title 26 of the United States Code and the termination of net outstanding campaign obligations. First finding is A, which is the termination of the net outstanding campaign obligations. We audited the Committee's obligations as of November 28, 1980, and the NOCO statement appears on page 35 of the audit report, as Attachment 2. As the statement shows as of November 28, the Committee had a net outstanding obligation deficit of \$1,134,566.51. That figure does not include again, as we note in the audit report, the value

1 LISI (Continued): of the artwork which we have been discussing  
2 periodically.

3 McGARRY: Thank you, Ray Lisi.

4 LISI: O.K. going on a little further. In the interim audit  
5 report, we recommended that the Committee supply us with an  
6 independent appraisal of the artwork and, as we noted previously,  
7 we have not received that appraisal (inaudible) or the fact that  
8 it would cost them at least \$10,000 to have an appraisal done of  
9 the work. They have not done it. They also cite a number of  
10 other reasons - the fact that there was no basis in the  
11 regulations on which they are to determine a fair market value  
12 for those, for the artwork. They also cite the advisory opinion  
13 1980-136, in which they say the Commission was unable to decide  
14 whether the Committee could lawfully use the artwork to settle  
15 debts, and they also make an argument that the artwork should not  
16 be treated as a capital asset for NOCO purposes. Now without  
17 including the artwork as an asset in the calculations, the  
18 Committee would not have received any matching funds in excess of  
19 its entitlement as of that date. Our recommendation again in the  
20 report is that, until such time as the Commission approves or  
21 propose permissible alternatives as to the disposition or  
22 liquidation of the artwork, no further action can be taken in  
23 this matter. The Counsel may have some comments (inaudible).

24 STEELE: Again, the only thing I would say is (inaudible) but we  
25 do have the memorandum around which summarizes things, but I  
26 think everything in it is stuff we have been through many times,  
27 Brad. Brad did remark that this had a deja vu quality to it as  
28 we went back through it again. The question is this, the real  
29 question is, as we analyze it, whether under the regulations you  
30

1 STEELE (Continued): value this as a capital asset. It seems to  
2 us very difficult to do that particularly in regard even without  
3 the question of what the effect of the AO's - the Connally AO  
4 followed by the non-AO 1981-36 is - it is very difficult to do  
5 that. You have these pieces of disposable - in one fashion that  
6 we've gone through which is the individually for less than the  
7 contribution amounts to people who haven't contributed that much.  
8 They probably are disposable though I don't think then of the  
9 Committee disposing of them in the fashion that Commissioner  
10 Tiernan referred to, which is, if they are attached or taken over  
11 by a debtor for a debt that has not been paid - the debt  
12 presumably that banking institution which would be the creditor in  
13 this case can dispose of that. Again, it seems to us that the  
14 question of whether this is a capital asset which comes out is  
15 one that you have to resolve, not have to but, we would recommend  
16 resolving (inaudible) it is not listed as a capital asset.

17 McGARRY: Mr. Tiernan.

18 TIERNAN: Thank you, Mr. Chairman. Charles, if I recall, I think  
19 it was the Udall campaign where we had some problems with the  
20 mailing list and the treatment of those.

21 GROSS: Not this time.

22 TIERNAN: No, I mean in '76.

23 GROSS: '76.

24 TIERNAN: How did we treat those? -- as a capital asset? We  
25 didn't, did we?

26 STEELE: We think not.

27 TIERNAN: We think not. No. We were all talking about  
28 - certainly you know depending on the timeframe, but at  
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1 TIERNAN (Continued): least at some point, mailing lists are  
2 valuable, but

3 GROSS: (inaudible)

4 STEELE: But again, I maybe shortchange the analysis in effect  
5 but the capital, but the question of what is and what is not a  
6 capital asset depends a little bit on as your regulations make  
7 clear on its declining value and or whether you view it as an  
8 individual item, which I think that in some sense that almost  
9 1981-36 by not responding to it it's almost made it so that they  
10 can't treat it any other way because they can't dispose of it  
11 under the Connally AO except within the contribution limitations,  
12 so they are going to have to dispose of it in some individual  
13 way.

14 McGARRY: Mr. Josefiak.

15 JOSEFIAK: I find it difficult to - a mailing list - there can be  
16 a varied value on that. Here we've had appraisers come in and  
17 say these things prints are worth \$750.00 and in some cases  
18 they're worth \$1500.00. Whether or not the Committee can get rid  
19 of them at \$1500.00, the matter whether where there is a joint  
20 contribution or whatever, but they still appraise at \$750.00 or  
21 \$1500.00. If the Committee has to get rid of them at less,  
22 that's what they have to do under the contribution limits, but  
23 there's still an appraised value of that at \$750 or \$1500. It's  
24 a little different than a mailing list. Here we have a concrete  
25 or supposedly concrete figure saying, "This is what the value  
26 is."

27 STEELE: (inaudible)

28 TIERNAN: Still able to get a loan on it.  
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1 AIKENS: Yes.

2 JOSEFIAK: That's right. I don't see how you can then say that  
3 this now the value depends on the contribution, because you could  
4 have a joint contribution. If the print cost \$1500, then you  
5 could then get two people, a husband and wife buying the print  
6 together who have not purchased, who have not given to the  
7 Committee before. And because you have to go out and seek those  
8 kinds of people, individuals, doesn't mean that the value of that  
9 print becomes a \$1,000 because you can't get one person to buy a  
10 \$1500 print. Because you could get two people to buy that \$1500  
11 print.

12 TIERNAN: Yes.

13 JOSEFIAK: I just don't-

14 STEELE: You couldn't sell it to foreigners either. I think you  
15 have to take the restrictions into account in the valuation of it  
16 in the NOCO statement is the bottom line recommendation is that  
17 the restrictions restrict the value of it in actual terms.

18 JOSEFIAK: But you, what am I saying is, a \$1500 print, and I  
19 don't have a copy of that to see if any- that you can go out and  
20 find people, two people, a husband and wife who can buy that.  
21 And just because you are limited to a group of individuals who  
22 can purchase it to me does not diminish the value of that - of  
23 the print itself. It still has a value. Now if those two people  
24 go out and sell it the next day, once they buy it and sell it for  
25 \$2000, it's a value. I can see your point that the contribution  
26 limits do have an effect, but what I am saying is there are ways  
27 people can buy that at \$1500. An individual can't but two people  
28 can.

1 MCGARRY: Mr. Gross.

2 STEELE: In my mind, you're drastically restricted, in my mind  
3 you're drastically restricted in the market, which they can sell  
4 it to and, but that affects the value of it.

5 JOSEFIAK: That might enhance the value.

6 STEELE: You mean if corporations can't buy it, (inaudible).

7 TIERNAN: No, you can resell it, so it is more valuable. In  
8 other word, if you restrict it to a \$1,000, but it's worth  
9 \$5,000, I'll come up with a \$1,000 and then I can make a \$4,000  
10 profit. Or if I know I can get \$10,000 for it, I can get my wife  
11 to put up a \$1,000 and I'll put up \$1,000 and we'll buy it for  
12 \$2,000. So it could be more valuable. Not more valuable to the  
13 Committee, I agree with that. But there is a capital value.  
14 There has to be some.

15 STEELE: There is a value to it. The question in my mind is  
16 whether you call it a capital asset. A lot of things that they  
17 have that are valued--

18 TIERNAN: No, Charles, I mean it is a capital asset. It may not  
19 be the capital asset that an appraiser puts on the artwork  
20 because of the limitations in contributions.

21 STEELE: All I am saying is that if they have to dispose of them  
22 individually in effect, they can't sell fifty of them--

23 TIERNAN: I agree with that. But if they sell fifty of them at a  
24 \$1,000 a shot, you got \$50,000, that's a capital asset isn't it?  
25 It may not be, if you could sell them for \$2,000, you would have  
26 a capital asset of \$100,000.

27 STEELE: The question is in those that are valued, individual  
28 prints that are valued over \$500, by our own regulations, \$500 is  
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1 STEELE (Continued): where you draw the line. What I am saying  
2 is that you have to see them as individual prints, because that's  
3 the way they must dispose of them. And we would agree that any  
4 that are valued over \$500 should be valued as a capital asset. I  
5 think that what the auditors are saying is that you should take  
6 the total value of all of these prints and call that a capital  
7 asset. But since you have all the restrictions on their disposal  
8 it seems to me that you can't -- it would be hard to establish  
9 that. But that is the question.

10 TIERNAN: If there is no further discussion, Mr. Chairman, I move  
11 approval of the Recommendation appearing on page 31.

12 McGARRY: Commissioner Tiernan moves approval of the Audit staff  
13 recommendation appearing on page 31. If there is no further  
14 discussion, the vote will occur on that motion. All in favor say  
15 aye, (Voices were heard.) All opposed. It appears to the Chair  
16 that the vote is five to zero (5-0) with Commissioner Reiche  
17 absent. Ray Lisi.

18 LISI: The next finding is on page 31, it involves apparent  
19 non-qualified campaign expenses. The first part of this finding  
20 deals -- goes directly back to Finding 2.C. on which the Audit  
21 Staff and the General Counsel's Office are going to meet and  
22 attempt to redraft that finding, which I believe was up for  
23 discussion on September 15th. Our recommendation--

24 McGARRY: Commissioner Aikens.

25 AIKENS: Go ahead, Ray.

26 LISI: I just wanted to say that our recommendation in that case  
27 was that the \$238,000 figure which we had noted in Finding 2.C.  
28 be considered non-qualified campaign expense, the value to be  
29  
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1 LISI (Continued): repaid in full to the U.S. Treasury within 90  
2 days. I think a vote on that would be affected by the discussion  
3 on the 15th.

4 AIKENS: So we really should not vote this recommendation now?

5 TIERNAN: We can't because maybe the amount may be affected,  
6 right?

7 LISI: I think that possibly it could be affected because of the  
8 discussion on the 15th.

9 AIKENS: May I ask when we are planning to take action on the  
10 last recommendation on page 31. Is that going to be with this  
11 document?

12 TIERNAN: The point on 31, Joan?

13 AIKENS: Yes.

14 TIERNAN: Which one?

15 AIKENS: "Until such time as the Commission approves or proposes  
16 permissible alternatives as to the disposition or liquidation of  
17 the artwork, no further action can be taken."

18 TIERNAN: That was the motion I just made.

19 AIKENS: I know that. But I am asking at what point, I am asking  
20 the General Counsel or the Staff Director, at what point are we  
21 going to take action? When are we going to approve or propose?  
22 Is that within this?

23 STEELE: I don't know what action you -- it seems to me that you  
24 would have the action you would take would have to come from some  
25 source and I don't see where it would come from. Now, as I say,  
26 I meant for that to be part of -- that memorandum be part of the  
27 discussion here. With the three-three vote on the AO, I don't  
28 know what action we can propose except dealing with it in  
29  
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1 STEELE (Continued): regulations or something else. Unless you  
2 decide that you can dispose of it.

3 AIKENS: Well, it impacts on the repayment, obviously, or on the  
4 final NOCO statement, obviously. I think we have to take some  
5 action on it.

6 STEELE: Well, I guess in my mind that unless you reverse the  
7 Connally AO, unless you take some action to reverse the Connally  
8 AO, or to reverse the non-action in 1981-36, that those  
9 restrictions on it, on the disposition of it are what we are  
10 talking about. And again I don't know what the Audit Staff  
11 recommendation is meant to encompass in terms of what the  
12 Commission is going to do, but I don't have proposed action on  
13 that in terms of that, but it seems to me to be deadlocked by the  
14 AO.

15 AIKENS: Then do we just ignore it? Drop it?

16 STEELE: I think you are in the position where what you have  
17 is-is-is-the valuation of it - is affected by that. That the  
18 question of its valuation is that you have limited them to  
19 disposing of it as individual pieces. And, accordingly, with the  
20 question of whether it is a capital asset is dependent upon that,  
21 i.e., is it that? Are the individual prints valued at greater  
22 than \$500? Those that are, are a capital asset. Those that are  
23 valued greater than that are a capital assets. Would be my  
24 analysis of it. I don't know what expected action there is of  
25 the Commission in terms of, you know, changing that status in  
26 effect. It seems to me the result of where you are is the result  
27 of the Connally AO and AO 1981-36.

1 AIKENS: So, then in order to decide the value as a capital  
2 asset, we need the appraisal? Or do we use the appraisal that is  
3 listed in the brochure which does not include all the artwork.

4 STEELE: I think that -- in my mind, the appraisal is the  
5 appraisal of the individual prints of which.

6 AIKENS: Which we don't know how many there are.

7 MCGARRY: Mr. Harris wants to clarify this.

8 STEELE: I agree.

9 HARRIS: I didn't say "clarify." I merely indicated that I  
10 wanted to talk.

11 HARRIS: If you take their inventory -- If you accept Charlie's  
12 position that the \$500 thing is measured against the value of the  
13 individual print, which is set out in this memo that was  
14 circulated today, I don't know that I do, but if you do and take  
15 their appraisal then as of August 1980, they had only \$34,500.  
16 There were only two of these items that they were trying  
17 to -- no, no, there are more than that. You'd arrive at a  
18 mid-way figure if you took their appraisal.

19 STEELE: I think that is correct, yes. I am sorry, I don't have  
20 the appraisal with me.

21 HARRIS: But you would also get to the peculiar result that if  
22 the prints have not been run off from original so that all you  
23 have is the original with the right to make prints from it, that  
24 would boost the value of the original up above the \$500.

25 MCGARRY: Mrs. Aikens.

26 AIKENS: And how do we square the fact that we allowed them the  
27 appraisal of the artwork for collateral to be equal to a \$240,000  
28 loan and now we are saying as a capital asset it is not worth  
29 anything, basically. Or is it not a capital asset?  
30

1 STEELE: It's worth money, certainly. I mean, I think, I agree.  
2 I think that is the distinct problem, is that you have it set  
3 forth as an appraisal in total value against which--which has  
4 been collateralized against the loan because the bank has been  
5 willing to say if we can get our hands on whatever it is, 1,200  
6 prints, we can dispose of them for that kind of money. The  
7 question, in my mind, when it comes down to it being in the  
8 Committee's hands, is how do you make it a capital asset? You  
9 say you have to take all of the prints and combine them together  
10 even though they can't sell them that way. So, in order to get  
11 it valued as a capital asset, say to be \$200,000 or whatever, you  
12 have to deal with all of those prints as a lot, or whatever it  
13 is. Like the--Wyeth, that Pennsylvania man, 1980-2 Wyeth that  
14 you take all of the prints from that and say this is the asset.  
15 Is the 200 prints that are each worth \$500 or whatever. The  
16 difficulty with that, in my mind, is that you are then saying--in  
17 the position of saying to the Committee, "Well, for purposes of  
18 valuing them, we are going to value them in a way you can't  
19 dispose of them." And it seems to me by the Connally AO and the  
20 1981-36 that said "You can't dispose of them like that." You  
21 have to dispose of them individually. Whether its to a value of  
22 \$1,500 to two people or whatever, the question then, you still  
23 have to dispose of them individually and that the ones that are  
24 valued at \$800 a print are a capital asset. Again, that's the  
25 regulations. I don't know where the figure \$500 came from as a  
26 capital asset in the original regulation. The question being  
27 whether you treat all of them together as the artwork the Kennedy  
28 Committee owns and that is a capital asset. As I say, the  
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1 STEELE (Continued): difficulty in the way of doing that in my  
2 mind is that you are then saying that you have to treat it as a  
3 single capital asset whereas you are telling them that they have  
4 to dispose of them on an individualized basis.

5 THOMSON: Mr. Chairman.

6 MCGARRY: Yes, Governor Thomson.

7 THOMSON: I think Commissioner Harris is the only one who has the  
8 inventory with the pictures, and I know he has studied at great  
9 length on this matter. I would appreciate his appraisal of the  
10 value of them.

11 HARRIS: I think you would have to be for Kennedy to buy one of  
12 them!

13 TIERNAN: That's another restriction, Charlie.

14 STEELE: That's the real value of them.

15 THOMSON: These responses are totally unrehearsed!

16 STEELE: Brad, who had to go through this when we did the AO,  
17 indicates that he thinks that out of the 31 they had that seven

18 STEELE (continuing): (7) of them are listed with an appraised  
19 value of over \$500. The Rauschenbert, the Serra, the Warhol, the  
20 Wyeth.

21 TIERNAN: Do they have any of those in the inventory left?

22 AIKENS: Are you advocating buying one?

23 TIERNAN: I would like to have one of the Olympic players, the  
24 hockey players.

25 STEELE: I don't believe the inventory is in the papers in the  
26 Commission's records, but I have not seen it myself.

27 HARRIS: Yeah. They have got a list of them here. And some of  
28 those--many of those are left.

1 MCGARRY: Joe Stoltz.

2 STOLTZ: I might point out that inventory does not include the  
3 ones that were given away as Christmas gifts and we have no idea.  
4 It's our understanding that it was several hundreds that were  
5 given away.

6 HARRIS: Well, as of what date would the value of the inventory  
7 be relevant?

8 STOLTZ: Normally, we would say the date of ineligibility. In  
9 this case, with the problems that we have had in trying to make a  
10 decision on it, the question is does that become a fair  
11 distinction? Does that date have any relevance if now we go back  
12 and say, "Well the ones that you gave away for Christmas after  
13 not getting an Advisory Opinion on it have to be put back in the  
14 inventory in value."? The Treasurer has indicated a couple of  
15 times that he doesn't believe, at this point, that the appraised  
16 value is reflective of the market value which is entirely  
17 possible; given that that appraised value that was included on  
18 there was a fundraising device. Further, the market mechanism  
19 now is very difficult given the inability to sell them off  
20 wholesale to some sort of a dealer or something. That is, once  
21 indicated, would probably generate--if they were allowed to do  
22 that--would generate somewhere around twelve cents (12c) on the  
23 dollar on the final cash proceeds.

24 TIERNAN: Has anyone seen the inventory of prints on hand?

25 STOLTZ: No.

26 TIERNAN: I don't see Joel Joseph listed here.

27 STEELE: It doesn't come under the capital asset, certainly.

28 AIKENS: It would be well under the \$500 value.

1 TIERNAN: You mean that print on the wall isn't worth more than  
2 \$40?

3 STEELE: It is very scarce, it probably--

4 MCGARRY: Where are we?

5 LISI: We were at the recommendation on the artwork. I believe  
6 the vote was taken on--on page 22.

7 MCGARRY: You want to deal with the recommendation at the bottom  
8 of the page there?

9 TIERNAN: That's the one you will have to wait on because of the  
10 money. Is that correct?

11 LISI: That's correct. This is the recommendation that I think  
12 it would be best to wait until the next meeting when we do  
13 discuss it. The final recommendation, the final finding in the  
14 report, which I think we--

15 TIERNAN: I will move that we approve the Recommendation.

16 LISI: What I really wanted to say is (inaudible) the \$141 in  
17 parking tickets which we determined to be non-qualified campaign  
18 expenses.

19 TIERNAN: One-forty-one-fifty.

20 LISI: Approximately.

21 TIERNAN: It must have been in the (inaudible). That's the  
22 lowest amount that we have had, though, generally, it is a lot.  
23 Well, they didn't have many volunteers.

24 MCGARRY: Did you move approval?

25 TIERNAN: I did. I moved approval of the recommendation.

26 MCGARRY: Commissioner Tiernan moves approval of the  
27 recommendation at the bottom of page 32. All in favor, please  
28 say aye. (A voice vote was heard.) Opposed? It appears to the

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1 MCGARRY (Continued): Chair that the vote was five to zero (5-0),  
2 Commissioner Reiche absent.

3 TIERNAN: I think we ought to commend the Audit people on that  
4 very fine presentation.

5 MCGARRY: This has not been easy from the very beginning and  
6 there were an awful lot of problems beyond the audit that were  
7 involved in this whole matter. I want to thank you very much,  
8 Ray, and Sue and Joe, Bob and Rick. Thank you very much. Where  
9 are we? We are going into Personnel now. Thank you once again,  
10 folks. Appreciate it.  
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1 PARTIAL TRANSCRIPT, EXECUTIVE SESSION OF SEPTEMBER 15, 1981  
2 (Tape #1 at approximately 48 minutes into the tape)  
3 Relating to the Final Audit of the Kennedy for President Committee

4 CHAIRMAN McGARRY: So, now without any further ado we're ready to  
5 go into the Kennedy Audit and we'll proceed with that. Who is  
6 going to take the lead on that this morning? Ray are you going  
7 to lead off?

8 LISI: Yes, I am, Mr. Chairman. As we note in our cover memorandum  
9 there are two findings which the Commission has not voted on in  
10 the Kennedy Report, and the main finding is the allocation of  
11 expenditures to states, and the Office of General Counsel and the  
12 Audit Division have conferred on this matter. The Counsel's  
13 office has prepared a cover memorandum pertaining to the finding.  
14 What we have done -- the finding begins on page 10 of the  
15 document before you, or the section that -- at the bottom of page  
16 10.

17 TIERNAN: The number is 10 at the bottom?

18 LISI: The number is 10 at the bottom. And what we have done  
19 here is revise the finding somewhat from the way it appeared in  
20 the Interim Report. In the Interim Report we had six subsections  
21 pertaining to the Committee's response to the Interim Audit  
22 Report recommendation. We have now condensed that into four  
23 subsections, hopefully to make it a little more easier to present  
24 and also for the public to understand. The first section,  
25 beginning on page 10, small a., Compliance and Fundraising, and  
26 what we have done here we have combined all of the Committee's  
27 response as it relates to any expenditures for which they charged  
28 any portion off to compliance and fundraising as exempt  
29 categories. The first category of expenditures -- categories of  
30 expenditure, I should say, that they charged off were overhead  
expenses and these again were based on the Fox & Company study

1 LISI: (Continued) which we discussed extensively the last time we  
2 discussed the report. The Committee stated that they had  
3 isolated all of their overhead expenses and applied a percentage  
4 of 17% of the overhead expenses were exempt expenditures for  
5 fundraising and 22% were expense because they related to  
6 compliance. And these were based, again on the Fox & Company  
7 study. The second portion that's included in there is the field  
8 staff salaries which also were a portion of, were charged off to  
9 exempt compliance and fundraising. Again, these figures were  
10 based on the Fox & Company study. The final types of  
11 expenditures that were charged off were advance staff salaries,  
12 and in this case, we find that they only charged off fundraising  
13 or a portion of the salaries to fundraising exempts, and in that  
14 case it was anywhere between 10 and 17% and the Committee has not  
15 provided us any documents at this point to support those  
16 allocations. What we have done in this, in the report which was  
17 different from the previous report that was before you. I have  
18 included a recommendation at the end of each subsection in which  
19 we ask for specific information from the Committee in order for  
20 us to determine whether the allocations, the allocations that  
21 they came up with are accurate and also whether they are  
22 reasonable. At the top of page 12 are the, is the recommendation  
23 for the information that we're requesting from the Kennedy  
24 Committee in order to determine whether these compliance and  
25 fundraising exemptions are again accurate and reasonable. We're  
26 asking for all the workpapers which were generated by the  
27 Committee and/or the accounting firm which were used to derive the  
28 compliance and fundraising allocations. We are also asking for a  
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1 LISI: (Continued) list of the questions that were asked of the  
2 individuals who were interviewed. In this case, according to a  
3 letter we received, the people that were interviewed were desk  
4 people, or the person in charge of the campaign in that state.  
5 Also, if available, we are asking for any job descriptions or  
6 time sheets for the individuals whose salaries were allocated.  
7 We are also asking for a description of the duties of the  
8 individuals who were interviewed and also a basis for the  
9 selection of the four states which were used.

10 COMMISSIONER THOMSON: Mr. Chairman, I would like to ask when the  
11 Fox Company was hired?

12 LISI: I don't have a date that they were hired. The only  
13 information we have as to when the interviews took place and that  
14 was in May, according to a letter from the Fox Company, in May of  
15 1980. Now while we were doing the threshold audit --

16 COMMISSIONER HARRIS: 81.

17 VOICES: No.

18 VOICES: INAUDIBLE.

19 LISI: While we were conducting the Threshold Audit, at that  
20 point we know that there was at least one individual from Fox &  
21 Company at the Committee. And also during the, that was  
22 conducted in March of 1980, and also when we were conducting the  
23 Post-Primary Audit which began in September of 1980, there were  
24 individuals there from various accounting firms.

25 COMMISSIONER THOMSON: Well, do you think they made these  
26 allocations or percentage figures prior to the end of the  
27 campaign?

28 LISI: Well, I say the only information we have is the letter  
29 from the accounting firm which states that they were done in May  
30 of 1980. Now late last week they did provide us with some

1 LISI: (Continued) workpapers additional workpapers, and there are  
2 no dates on those workpapers to indicate the time that they were  
3 prepared. So then we don't, I'm not sure exactly when the  
4 workpapers were prepared or when it took place other than the  
5 fact that the accounting firm did state in their letter that it  
6 was in May of 1980 that the interviews were conducted.

7 COMMISSIONER THOMSON: Well, I think it would be important to  
8 know whether it was done before or after.

9 LISI: Mr. Chairman, would the Commission like to vote on each  
10 one of these recommendations?

11 COMMISSIONER MCGARRY: Yes, I think that would be the orderly way  
12 to proceed, Ray. Mr. Harris.

13 COMMISSIONER HARRIS: I would like to know whether either legal  
14 or audit has any questions about this business of computing,  
15 taking a sample of four states and then getting a weighted  
16 average which they apparently use nationally. The questions with  
17 which we are concerned are really the allocations for New  
18 Hampshire and Iowa, which are two of the states they picked. If  
19 they have the actual figures for New Hampshire and for Iowa,  
20 wouldn't it be more accurate to use those figures rather than  
21 extrapolating some kind of nationwide average on the basis of  
22 showing in Ohio and New York, which are, of course, states very  
23 different from Iowa and New Hampshire. Iowa and New Hampshire  
24 are small states where they spend disproportionate amounts of  
25 money. New York and Ohio are two very large states -- what's the  
26 validity of this, of taking this nationwide average based on four  
27 states?  
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1 GENTNER: Well, I think we are questioning that, and that is why  
2 point e. of the recommendation asks for the basis of selection of  
3 the four states used.

4 CHAIRMAN MCGARRY: Mr. Gross, do you have any further comment?

5 GROSS: No, No.

6 CHAIRMAN MCGARRY: Thank you, Marsha. Ray Lisi.

7 LISI: I think if I could point out here, we did look at the  
8 percentages in each individual state that were used and if we  
9 used the percentages based on just New Hampshire and Iowa and in  
10 New Hampshire the percentages were 21% for fundraising and 16%  
11 for compliance as opposed to the 22 and the 17. And in Iowa it  
12 would be 8% for fundraising and 17% for compliance.

13 COMMISSIONER HARRIS: So in the case of Iowa it would raise the  
14 allocation to the states by how much?

15 LISI: Well, when we add in New York and Iowa they do increase  
16 the allocation. If we average just New Hampshire and Iowa  
17 together-

18 COMMISSIONER HARRIS: No, I mean suppose you simply took the two  
19 states -- for Iowa you took the Iowa figures and New Hampshire  
20 you took the New Hampshire figures --

21 LISI: Okay, in that case, the fundraising figure for New  
22 Hampshire they would be allocating a larger amount to exempt, but  
23 a smaller amount to compliance. And in Iowa both a smaller  
24 amount to compliance and in fundraising would be exempted, based  
25 on those percentages.

26 CHAIRMAN MCGARRY: Thank you, Ray. Anything further? We have  
27 the recommendation now before us --

1 COMMISSIONER HARRIS: I take it we have not committed ourselves  
2 in accepting this four state thing or not.

3 STEELE: No, I think you are definitively asking for information  
4 about it. It is of course an allocation figure which, of course,  
5 comes to that horrendous problem that we faced in all of this  
6 area, that where you have costs that are not, you are not able to  
7 identify dollar-for-dollar to something that the Commission and  
8 the campaigns have been forced into some form of allocation. I  
9 don't think you were, by this, committed to the idea that you  
10 will have to average the four states. That was what they did in  
11 response to the Interim Audit Report saying we don't think, again  
12 this whole role over here in regard to Commissioner Thomson's  
13 question, that is, if the threshold audit is going on, they're  
14 listening, these people are coming in with new ways of doing it.  
15 So you have a changing scene as the audit is going on, as the  
16 campaign is going on; but in effect, I think, you have not  
17 committed yourself to anything, and by asking you for that, you  
18 are saying you consider that basis for selecting those four is  
19 relevant.

20 COMMISSIONER HARRIS: How does your answer comport with the  
21 footnote on page 12 where you say, "No records were provided for  
22 the Iowa computations."

23 LISI: Okay, that footnote relates to the allocations for long  
24 distance telephone calls only.

25 CHAIRMAN MCGARRY: Mr. Harris, yes. Did you have anything  
26 further on that? Let me defer to Governor Thomson.

27 GOVERNOR THOMSON: Could you determine by payments made to the  
28 Fox Company when they began and when their real activity took  
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1 THOMSON: (Continued) place for the amount of money that was paid  
2 to the Fox Company?

3 LISI: We don't have that information available. It's possible  
4 that some of it may, there may have been some costs associated  
5 which were paid by the Committee for Fox & Company. Some of it  
6 could have been also exempt.

7 COMMISSIONER THOMSON: Well, you don't run across that when you  
8 make an audit?

9 LISI: Well, there are a number of cases where there are  
10 accounting firms where individuals are on loan to the, to the  
11 committee, and I believe that this is probably what happened in  
12 this instance.

13 COMMISSIONER THOMSON: You think the Fox Company was on loan and  
14 was not paid by the Committee?

15 LISI: It's possible. We don't have any information on that at  
16 this point to determine whether --

17 STOLTZ: It was very common during this last campaign for  
18 accounting firms to send staff to various campaigns free of  
19 charge, which they are permitted to do, and so you don't really  
20 see billings going back and forth.

21 CHAIRMAN MCGARRY: Mr. Steele.

22 STEELE: We did have one point with regard to the recommendation  
23 here on page 12 which we have noted in our memorandum with regard  
24 to the difficulty we think you have here with recommendation  
25 "c.", and I would like Marsha to address that briefly.

26 GENTNER: This issue is discussed a bit before and that the  
27 question of what's going to suffice as documentation of the  
28 percentage figures derived by the Kennedy for President  
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1 GENTNER: (Continued) Committee, particularly with respect to  
2 staff time spent on the various activities. Now, point "c." of  
3 the recommendation requests job descriptions and/or time sheets  
4 for the individuals for whom, who were used as a basis of the  
5 computations in this regard. The August 21st letter from the Fox  
6 & Company states that the figures were derived based on  
7 interviews with heads of the state offices and, if the heads of  
8 the state offices did not have actual knowledge, they were  
9 instructed to go directly to the staff members and interview  
10 them. And these interviews took place in May of 1980. Now this  
11 assumes, and we are not sure that the assumption is correct, that  
12 the definition used in the interviews of the various, you know,  
13 compliance, those terms exempt activities are correct. But if we  
14 do assume that, then the Office of General Counsel feels that the  
15 percentages derived from staff interviews ought to be accepted  
16 without further documentation. We don't object to point d., a  
17 description of the duties of the individuals involved, we think  
18 that is relevant, but requiring time sheets or job descriptions  
19 we think goes beyond what is necessary for the committee to put  
20 forth since they have done actual staff interviews and we do ask  
21 for their workpapers computing the information derived from the  
22 staff.

23 CHAIRMAN MCGARRY: Thank you very much, Marsha. Mr. Reiche.

24 COMMISSIONER REICHE: I think the real question there is what we  
25 have required in other cases, so that we achieve some measure of  
26 consistency here, and if you are suggesting, I'm not sure you are  
27 Marsha, but if you are, then this goes beyond that, and that's  
28 one thing.

1 STEELE: Also, I think you have the problem as to whether you ask  
2 them to keep those kinds of records ahead of time, which is a  
3 separate and distinct problem, and asked for them in other audits  
4 which I don't know, but whether or not, I would see difficulty in  
5 trying to enforce this that you are effectively saying that they  
6 had to keep job descriptions, they had to write job descriptions,  
7 and they had to keep time sheets.

8 COMMISSIONER REICHE: Well, as long as you don't carry that one  
9 too far and say that you must have spelled out precisely in  
10 writing, in advance, everything by way of record that had to be  
11 retained by them -- maintained and retained. You could go too  
12 far with that. I'm with you to a point, but I don't want to go  
13 too far.

14 STEELE: I just raised it that if they come in with other records  
15 which is really what, in some sense I think that the interviews  
16 during the period right after the threshold audits represent, is  
17 talking to people, etc.; I'm not sure that you are going to get  
18 very far if you say well now we have to have, you know. It took  
19 the Commission long enough to get job descriptions; getting a  
20 campaign to write job descriptions for everybody and so forth  
21 there may be something you'd have difficulty saying, "If you  
22 don't give us that," you have to look at the overall  
23 documentation of it.

24 COMMISSIONER REICHE: But as I understand the request contained  
25 in the recommendation here there is no one of these which is the  
26 sine qua non in terms of providing sufficient documentation, but  
27 these are the types of documentation we are looking for. If they  
28 fail to come up with one or more, we will then consider whether  
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1 COMMISSIONER REICHE: (Continued) the documentation provided is  
2 sufficient for our purposes. I mean isn't that the thrust of  
3 what we would be doing by approving the recommendation?

4 STEELE: Well, I think my problem with the recommendation is that  
5 you seem to be saying they have to produce, and it says, I have  
6 two problems with it; one that at this juncture that we're not  
7 prepared to say whether it is good enough that I think there is  
8 going to be difficulty with the statement of, "Well we are going  
9 to ask for this but after we get it we're not sure that's going  
10 to be enough." But, secondly, you seem to be saying with regard  
11 to this item, "You better have this or else."

12 COMMISSIONER REICHE: In terms of addressing the first part, by  
13 not saying right now whether it's going to be deemed sufficient,  
14 I don't think we can say that right now, not just in this  
15 context; but, I mean, in any similar context, when people are  
16 submitting documentation to us, how can we say in advance it's  
17 going to be sufficient. I don't think we can. I don't think we  
18 should. I'm a little worried about your second point though.

19 STEELE: I agree, and this is only your preliminary determination  
20 by your own regulations. Your next step from this is that you  
21 are going to have to make a final determination and as we  
22 discussed before, the question of whether you can make a final  
23 determination that you owe us money because you are not  
24 satisfied -- you have to have some situation where you have asked  
25 them for records which they have refused to produce or said they  
26 don't have and decided that well that failure of that  
27 documentation is sufficient to warrant seeking a full repayment.  
28 That is something that is immediately put in track after you make  
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1 STEELE: (Continued) his preliminary -- you've made a preliminary  
2 determination if you approve this that they should be having job  
3 descriptions and time sheets.

4 CHAIRMAN MCGARRY: Joe Stoltz, Mr. Harris has been seeking  
5 recognition during this discussion. Perhaps we should hear from  
6 him briefly to see if he can shed some light. Mr. Stoltz.

7 STOLTZ: And possibly, some, shed a little bit of light on  
8 comparability of the cases. Ray has with him copies of the study  
9 that was performed by the Carter Campaign. This was for  
10 headquarters staff, but it is the same principle involved. That  
11 one was performed by an accountant from Peat, Marwick and  
12 Mitchell who was on loan to the campaign from the accounting  
13 firm. Rather extensive document, considerable detail. Behind  
14 that was a bundle of interview notes that he had gone through  
15 and talked to various people to come up with the percentages.  
16 We were then able to go back and check, talk to some of the same  
17 people, check some of what we thought of some of their  
18 determinations. We finally agreed to change a few of them based  
19 on what we come up with when we talked with them. And it was all  
20 very carefully laid out and they kept it and it was available to  
21 us. So though a lot of the types of things we are asking for  
22 here we may not have had to ask for in this case, but it was  
23 there and we did go through it. We now have workpapers for this  
24 calculation which at least allows us to go through the  
25 mathematics of it. They did send that much in. It's unclear who  
26 prepared it. It appears this was a joint effort and a lot of it  
27 may well have been done by the Committee staff, particularly in  
28 that if you notice the letter from the Fox Company. The last one  
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1 STOLTZ: (Continued) said, "It is their understanding that this is  
2 the way it was conducted." These workpapers start with the  
3 percentages for each individual and go from there. There is no  
4 indication on how the percentages were determined, what each  
5 individual's functions were and what parts of his functions were  
6 considered to fall in the compliance and what parts were  
7 considered to have fallen into fundraising and into operating.  
8 We feel we would like to see some basis for the derivation of  
9 those percentages, because otherwise, we have no way of knowing  
10 anything beyond what the mathematical accuracy of the  
11 calculations.

12 COMMISSIONER HARRIS: Do you think they have given you all of the  
13 workpapers?

14 STOLTZ: I suspect that they have. I don't know for a fact, but  
15 I suspect that they have.

16 COMMISSIONER HARRIS: I think that the question Commissioner  
17 Reiche was asking was not whether other committees had kept more  
18 complete records or kept the kind of data that we would be  
19 looking for here, maybe not finding, but whether we had refused  
20 to make adjustments for other committees on the basis of their  
21 not having this kind of documentation.

22 COMMISSIONER REICHE: INAUDIBLE.

23 COMMISSIONER HARRIS: On the wording of the recommendation at the  
24 bottom of page 11, it appears to me that Charlie is correct that  
25 what we are saying is that absent the presentation of the  
26 documentation, no adjustment be made. I would gather from that  
27 unless this documentation which is spelled out on top of page 12  
28 is forthcoming, that we are not going to make any adjustments.



1 COMMISSIONER HARRIS: (Continued) And then when you say that "this  
2 documentation should include but is not limited to," that "is not  
3 limited to" language, I have a great deal of trouble at this  
4 point. It seems to me that we ought to be able to tell them what  
5 we want. If we ask all of this stuff and then say you didn't  
6 give us anything more than that so we are not going to make any  
7 adjustment, that doesn't make sense. At this point in the audit  
8 we ought to know what we want. I don't see the justification for  
9 that "but is not limited to" --

10 STOLTZ: One of the problems is we don't know for sure what  
11 exists in relation to this.

12 COMMISSIONER HARRIS: But you are asking for all the workpapers?

13 STOLTZ: And, second, it has been our experience that almost  
14 every time something is submitted by this committee, additional  
15 questions are raised or it is incomplete, and we hate to limit  
16 ourselves so that if they do send in something that technically  
17 meets the definition here, but is it really responsive? The  
18 other problem we have had is terminology with this committee.  
19 For example, when we were looking at state accounts, we asked for  
20 check registers. They said, "Well we don't have check  
21 registers." And so we started doing it the hard way without  
22 check registers. Well, it came out later that what they had were  
23 a lot of check stubs where the balance and so forth is kept. It  
24 wasn't a separate register. Well, they said you didn't ask for  
25 check stubs, you asked for registers. And ours aren't separate  
26 registers. It's those kinds of problems that make us very  
27 reluctant to limit this kind of thing until we see what they have  
28 and what they can produce.

1 COMMISSIONER REICHE: I would just note that that is worded  
2 "should include" not "must include" and I think -- I'm not  
3 suggesting that that fills in the greatest of leeway, but I think  
4 it does build in some leeway in interpreting the language itself.

5 CHAIRMAN MCGARRY: Mr. Josefiak.

6 JOSEFIAK: Joe, I think when the last time we met on this you  
7 said some of this material was asked for orally, that you had had  
8 telephonic conversation with the Committee and asked for certain  
9 information --

10 STOLTZ: Ray would be a better person to respond.

11 JOSEFIAK: Of the items listed here a, b, c, d, e; what has  
12 already orally been requested? All of it?

13 CHAIRMAN MCGARRY: Ray Lisi.

14 LISI: The questions asked of the individuals interviewed, I'm  
15 sure at one point, we have asked. The other information I am not  
16 sure. I couldn't say right now whether we had actually asked for  
17 that information or not. I know item e. we did not ask for  
18 verbally. Very possibly c. we may have asked for in our  
19 conversation. I can't give you an exact answer on that.

20 PASCHEN: If I could add a statement. Item d., a description of  
21 the duties, was asked for in the entrance conference of the  
22 threshold audit so that is written in the entrance conference  
23 notes that that was asked for.

24 CHAIRMAN MCGARRY: Thank you Sue. So we have, Ray, your  
25 recommendation at the bottom of page 11, is that correct?

26 LISI: Beginning on the bottom of page 11 and going to the top of  
27 page 12.

1 COMMISSIONER REICHE: Mr. Chairman, I would move approval of the  
2 recommendation which begins at the bottom of page 11 and goes  
3 over to the top of page 12.

4 CHAIRMAN MCGARRY: Commissioner Reiche moves approval of the  
5 audit staff recommendation beginning at the bottom of page 11 and  
6 carrying over to the top of page 12. If there is no further  
7 discussion, the vote will occur on that motion.

8 COMMISSIONER TIERNAN: Mr. Chairman, before you take -- take a  
9 vote on it, I'm concerned about the last sentence on page 11  
10 also, and I am wondering whether or not any rewrite of that could  
11 be obtained. Because I think at this stage to say, "should  
12 include but is not limited to," does -- then you -- then  
13 proposing to request these five different items -- it seems to me  
14 it would be quite extensive. And then, you know, but not limited  
15 to -- what other -- I mean, I agree, Joe, you gave us the  
16 examples of the check stubs rather than the check registers, but  
17 what, what other information could they give us that would have a  
18 bearing on whether or not we felt that the allocations were  
19 reasonable? Shouldn't we try to make -- at this stage, shouldn't  
20 we try to include everything in the request that we're going to  
21 suggest that they provide us with -- worksheets, timesheets.

22 STOLTZ: We tried to write it as broadly as possible. All  
23 workpapers, questions -- some of these things contained in b, c,  
24 d, and e. probably should also be contained in a.

25 COMMISSIONER TIERNAN: Well, couldn't you say that --

26 STOLTZ: But it's hard to tell. We really don't know what they  
27 have.

1 COMMISSIONER TIERNAN: Well couldn't you say that this  
2 documentation should include more specifically these following  
3 items to help us in making the repayment calculations, some  
4 language along that line?

5 STOLTZ: Would it be of any assistance if we, instead of saying  
6 that should include all documentation in the possession of the  
7 Committee or the accounting firm relating to the allocations and  
8 then specifically should include?

9 COMMISSIONER TIERNAN: Something along that line.

10 STOLTZ: We feel it is important in being very, very broad  
11 otherwise --

12 COMMISSIONER TIERNAN: I'd rather have the language saying, you  
13 know, the broadest sense, but what you are saying here is,  
14 "should include but is not limited to," and then you give five  
15 specific areas, I mean five specific things that you need,  
16 apparently, to make a determination. It would seem to me that  
17 when you get down to that small a specification -- that you want,  
18 that if there is anything else -- we should include it. We  
19 should have an f., g., h.

20 STOLTZ: Again, assuming we know what they have and --

21 CHAIRMAN MCGARRY: And that's really the crux of the problem.

22 STOLTZ: That's really the problem, we don't know what all may  
23 exist.

24 CHAIRMAN MCGARRY: I'm in sympathy to what Commissioner Tiernan  
25 is saying, but I've been in the frustrating position where you  
26 are specific and then they come back and they have something that  
27 is an alternative to one of the five items and -- but they merely  
28 say you asked for that, we don't have it.

1 COMMISSIONER TIERNAN: Couldn't you have that in the  
2 recommendation though, Mr. Chairman, like f. "any any other  
3 materials that were used in arriving at the allocations"?  
4 Something general rather than putting --

5 CHAIRMAN MCGARRY: That could be helpful, and Joe is offering  
6 that but I can appreciate --

7 COMMISSIONER TIERNAN: Is that your concern --

8 COMMISSIONER HARRIS: My concern is that I'm not prepared at this  
9 point to say that I won't vote for any adjustments in the  
10 allocations if, for example, the Committee didn't have any job  
11 descriptions or time sheets.

12 COMMISSIONER REICHE: As the proponent of the motion, let me just  
13 say that I don't construe it that way. Now we may differ in  
14 that, Commissioner Harris, but I don't construe myself as  
15 blocking this in. I think they then come up with, and I have no  
16 objection to an addition of the type Commissioner Tiernan is  
17 talking about, you know, an f. possibly, but I think that they  
18 come up with as much information as they can making specific  
19 reference to items a. through e. and also checking their records  
20 to see if there is anything else they deem relevant, they then  
21 submit it -- it then is within the province of the Commission to  
22 consider that as sufficient documentation or not, as the  
23 Commission sees fit. But I don't think the absence of one or  
24 more sounds the death knell as far as they're concerned. At  
25 least I don't construe it that way, but maybe I'm wrong.

26 CHAIRMAN MCGARRY: Mr. Harris.

27 COMMISSIONER HARRIS: I don't mind asking them for anything  
28 they've got. I'm prepared to go along with that, but this  
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1 COMMISSIONER HARRIS: (Continued) business of "absence of  
2 presentation of documentation of how adjustments will be made," I  
3 can't vote for that recommendation.

4 CHAIRMAN MCGARRY: Well, we have Commissioner Reiche's motion  
5 pending, and the floor is certainly open to any other comments  
6 from anyone -- Commissioner or staff. Mr. Reiche.

7 COMMISSIONER REICHE: May I just ask Commissioner Tiernan with  
8 respect to the addition of a provision of the type he mentioned,  
9 I would certainly have no objection to the motion being amended  
10 along those lines if he so wishes.

11 COMMISSIONER TIERNAN: Well, I make that as a suggestion, I'm not  
12 concerned whether or not you want to make that change, but I am  
13 saying that in the present form I wouldn't be supporting it. And  
14 I think the second point that Commissioner Harris raises is one  
15 that I would be concerned with also, because if in fact, when you  
16 get over to c., I would not be prepared to vote for that -- on  
17 the basis of the discussion we just had previously by the General  
18 Counsel's office. And so, if, in fact the Commission approved  
19 c., and they didn't have them, does that mean that we would not  
20 make any adjustments? But they had all the other four, or some  
21 additional material, such as an interview by an accountant of the  
22 man in charge of New Hampshire or the woman in charge of New  
23 Hampshire or Iowa describing what Frank Reiche did in  
24 headquarters -- is that going to be accepted as a job  
25 description?

26 CHAIRMAN MCGARRY Marsha Gentner.

27 GENTNER: The General Counsel's office would make a  
28 recommendation on some alternative language which would be to  
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1 GENTNER: (Continued) have the first paragraph, the last sentence  
2 of the first paragraph stop at "after include" so it would say  
3 "this documentation should include," listing a., b., and we still  
4 believe that c. should not be listed, d. and e., and then it  
5 would be, if our recommendation were adopted, e. -- "any other  
6 information or documentation which the Committee believes would  
7 support its allocations."

8 STEELE: The other suggestion that I might make is --

9 CHAIRMAN MCGARRY: Thank you, Marsha. Mr. Steele.

10 STEELE: In regards to the point Commissioner Harris raised, is  
11 that if you take that sentence on the bottom of page 11 and take  
12 out that language about no amendments be made, you can just say  
13 the audit staff recommends that the Committee present  
14 documentation verifying the accuracy and reasonableness of  
15 compliance in fundraising within 30 days of the receipt of this  
16 report, and end the sentence there -- in other words it would  
17 seem to me if you did that, you sharpened that what you're saying  
18 is that the Committee has to present documentation verifying the  
19 accuracy and the reasonableness, you then have examples of what  
20 you mean. It seems to me that that's the language along that  
21 line would also take care of some of the problems that I think is  
22 quite valid here. You would say at the beginning, the Committee  
23 present documentation verifying, that's your generalized -- you  
24 have to have some generalized statement there of what the  
25 documentation should be -- and it seems to me you do that, the  
26 Committee present documentation verifying the accuracy and  
27 reasonableness.  
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1 CHAIRMAN MCGARRY: We'll just let audit comment on that -- Joe  
2 Stoltz.

3 STOLTZ: I think our only concern there is to make it clear that  
4 if every scrap of information the Committee has on this subject  
5 is submitted, and it doesn't tell us anything we don't already  
6 know, there is no guarantee that we are going to accept the thing  
7 as reasonable.

8 CHAIRMAN MCGARRY: Mr. Steele.

9 STEELE: My point would be that if you asked them if the  
10 Committee present documentation verifying the accuracy and  
11 reasonableness, etc. What the Commission then does at the next  
12 stage is to decide whether you've got documentation which  
13 verifies the accuracy and reasonableness.

14 STOLTZ: Yes, as long as we leave ourselves open to that  
15 determination after we have seen whatever is produced. I think  
16 that was our major concern.

17 STEELE: No, I certainly think that that should be so.  
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1 CHAIRMAN MCGARRY: Mr. Reiche is seeking recognition.

2 COMMISSIONER REICHE: It seems to me that what we are saying, at  
3 least in part at the present time, is that the documentation thus  
4 far submitted is insufficient and that we need not documentation  
5 but additional documentation. If they did not as of this time  
6 submit any additional documentation, then we would not make  
7 adjustments. Now, that being the case, one thing, and I'm trying  
8 to address myself to the concern that Commissioner Harris feels,  
9 is to add in the second line of the recommendation the word  
10 "additional" before "documentation" because I think that might be  
11 helpful, and as far as the other amendments which have been  
12 suggested, the last line of this documentation should include but  
13 is not limited to and then the concern that Counsel feels with  
14 respect to c. and some of the Commissioners feel with respect to  
15 c., maybe that could be taken care of by language which says  
16 that, something along these lines -- "to the extent it exists,  
17 such information should include." I'm trying to soften it  
18 somewhat and leave us the discretion still when it comes back to  
19 move in whatever direction we see fit. I'm just tossing out a  
20 bunch of ideas and maybe they don't appeal to anyone else, but  
21 I'm hoping they'll help.

22 CHAIRMAN MCGARRY: Mr. Harris.

23 COMMISSIONER HARRIS: I move to amend Commissioner Reiche's  
24 motion so that the recommendation at the bottom of page 11 reads  
25 as follows: "The audit staff recommends that pursuant to 11 CFR  
26 §9038.2(b) that the Committee present additional documentation  
27 verifying the accuracy and reasonableness of the Committee's  
28 compliance and fundraising allocations within 30 days of receipt  
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1 COMMISSIONER HARRIS: (Continued) of this report. This  
2 documentation should include but is not limited to:" and no  
3 changes on page 5. That would not commit us as to what we would  
4 do -- this would ask them to produce this additional  
5 documentation and it wouldn't say what we would do if they  
6 produced part of it but not all of it or if they didn't have  
7 these records.

8 CHAIRMAN MCGARRY: Commissioner Harris offers an amendment to the  
9 Reiche motion, specifically with reference to the recommendation  
10 contained on the bottom, beginning on the bottom of page 11 that  
11 the audit staff, if that recommendation now reads, "The audit  
12 staff recommends that pursuant to 11 CFR §9038.2(b) the Committee  
13 present documentation verifying the accuracy and reasonableness  
14 in the Committee's compliance and fundraising allocations within  
15 30 days of receipt of this report." Mr. Harris?

16 COMMISSIONER HARRIS: Yes.

17 CHAIRMAN MCGARRY: This documentation should include but is not  
18 limited to? Is that sufficiently clear, Madam Secretary?

19 COMMISSIONER REICHE: The question I would ask and I have to ask  
20 it of the Commissioners, I though we had concluded -- I say  
21 concluded, that's too strong, but it seemed that there was a  
22 consensus that if additional documentation were not submitted,  
23 that we would not make adjustments -- in other words, that on the  
24 basis of that submitted so far, no adjustments would be made.  
25 Now. If that were the case, then I could not agree with  
26 Commissioner Harris' motion. On the other hand, if we haven't or  
27 if there isn't a consensus along those lines, then perhaps  
28 Commissioner Harris' motion is appropriate.

1 COMMISSIONER TIERNAN: Mr. Chairman.

2 CHAIRMAN MCGARRY: Yes, Mr. Tiernan.

3 COMMISSIONER TIERNAN: But Frank, I think if you read the last  
4 paragraph prior to the recommendation, it flows into that --  
5 "Therefore, other than those expenditures which could be clearly  
6 identified as relating to compliance and fundraising activities,  
7 no adjustments have been made to the expenditure of allocations  
8 in New Hampshire." Based on that, then you go into the  
9 recommendation, the reason why, and then this is the  
10 recommendation of the audit staff -- that they present to the  
11 Commission.

12 COMMISSIONER REICHE: It doesn't say though, Bob, if there is no  
13 further documentation that we will not make adjustments and, you  
14 know -- Well, we may disagree on that but I'm just saying --

15 COMMISSIONER TIERNAN: But I think from the basis -- from what  
16 Joe has said, and what Ray said -- apparently they feel that  
17 there is going to be some of these materials presented to the  
18 Commission. In fact, apparently, they have given you something  
19 within the last few weeks, haven't they?

20 STOLTZ: The last couple of days.

21 COMMISSIONER TIERNAN: The last couple of days. So if they do  
22 give you that, it may be that there would be an adjustment made.  
23 There may not be, but that's the determination that we would have  
24 to see on the basis of the audit -- the audit staff is going to  
25 come back when they get whatever they get -- if they don't get  
26 anything, then they are going to come back and say they didn't  
27 get anything, so there would be no adjustment made. If they get  
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1 COMMISSIONER TIERNAN: (Continued) something, they'll say it  
2 doesn't go far enough, or that we can make an adjustment. I  
3 think we have to do it that way.

4 COMMISSIONER REICHE: I just think it's more effective, if in  
5 fact, the presentation of no additional information will, and we  
6 know it now, result in no adjustment. I think we ought to say  
7 so. I think it's a more effective way of dealing with them,  
8 but -- to each his own.

9 COMMISSIONER TIERNAN: But that's the kind of a presumption  
10 that -- which I think at this stage -- is not a presumption that  
11 we should undertake. I think we should give the Committee the  
12 opportunity to present, and that's why we are asking them to come  
13 in with this additional information and documentation.

14 COMMISSIONER REICHE: That's not what I'm talking about. I'm  
15 just saying that if no further information is submitted, I for  
16 one would say no adjustment.

17 COMMISSIONER TIERNAN: Okay.

18 COMMISSIONER REICHE: Yes, but why not tell them that, Bob?  
19 Because what you do by it is that you encourage them. You  
20 frankly spur them on to submit the information and this has been  
21 a recalcitrant Committee from the start, so I think it might be  
22 very helpful.

23 COMMISSIONER TIERNAN: But in the amendment that Commissioner  
24 Harris has offered, he says that the Committee present to the  
25 Commission within 30 days of the receipt of this report -- I  
26 mean, I think that's a deadline that they are going to recognize.

27 COMMISSIONER REICHE: I'm just trying to tell them what we really  
28 mean, but maybe we don't really mean it.

1 COMMISSIONER TIERNAN: No, I think we do mean it.

2 COMMISSIONER AIKENS: I will have to agree with Commissioner  
3 Reiche. we are already going beyond what we have ever done in an  
4 audit report for a Committee before by laying out exactly what we  
5 do want. Has not our practice been, Joe, to in this final audit  
6 report which is where we arrive at a repayment figure, to make  
7 this statement "that unless the Committee can verify or document  
8 that there will be no change?"

9 STOLTZ: Generally that's the way it works. Absent some  
10 indication --

11 COMMISSIONER AIKENS: Absent the showing that there should not  
12 be -- we will require this repayment. Commissioner Reiche has  
13 said this has been a Committee that has refused to give us  
14 anything -- the auditors have had to reconstruct the whole audit.  
15 Maybe we should just re-audit them. Start over. We seem to be  
16 basing our recommendations now on material that was not included  
17 in the original audit and maybe we should just go back and start  
18 all over again.

19 CHAIRMAN MCGARRY: We have now pending the Harris substitute  
20 motion to the Reiche motion. And if there is no further  
21 discussion the vote will occur on that motion. All in favor say  
22 aye. All opposed. It appears to the Chair that the vote fails  
23 to carry by a vote of 3 to 2 with Commissioners Harris and  
24 Tiernan voting for and Commissioners Reiche, Aikens and Thomson  
25 voting against and Commissioner McGarry abstaining. We now go to  
26 the Reiche motion, the main motion. If no further discussion,  
27 the vote will occur on that motion. All in favor say aye. All  
28 opposed. It appears to the Chair that the vote fails to carry by  
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1 CHAIRMAN MCGARRY: (Continued) a vote of 3 to 2 with Commissioners  
2 Reiche, Aikens and Thomson voting for and Commissioners Harris  
3 and Tiernan voting against and Commissioner McGarry abstaining.  
4 Joe Stoltz.

5 STOLTZ: Would it be of any assistance if a statement was placed  
6 in that recommendation that simply said, "based on materials  
7 submitted to date, no adjustments have been made?"

8 ?: Except as noted with a few that we were clearly able to  
9 identify.

10 CHAIRMAN MCGARRY: Commissioner Reiche.

11 COMMISSIONER REICHE: I think that helps, Joe, in the sense that  
12 you tend to telegraph your punch a little bit more. You're  
13 saying that on the basis of information submitted thus far, no  
14 adjustments have been made and then you follow that presumably  
15 with your request for additional documentation and you could  
16 continue it here. Would that have an appeal to anyone?

17 COMMISSIONER TIERNAN: I apologize. I was distracted.

18 COMMISSIONER REICHE: Bob, the suggestion was that we include  
19 language sort of to this effect, I am paraphrasing what Joe said  
20 namely "On the basis of information or documentation rather  
21 submitted thus far, we have made no adjustments." And then on to  
22 ask for the additional documentation and then follow that with  
23 the illustration and so forth --

24 COMMISSIONER TIERNAN: That's what I thought we said in the  
25 paragraph prior to the recommendation.

26 COMMISSIONER REICHE: Yes, but would you include the business  
27 about the -- well, you don't have to -- you're getting over the  
28 hump that bothers me in the sense that I want them to know that  
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1 COMMISSIONER REICHE: (Continued) as of -- if they do not submit  
2 anything more, we are not going to make the adjustments. Now  
3 this doesn't say it the way I would like to say it, but it gets  
4 closer, and I think we've got to move off a dime here and get  
5 something done so I can go with that type of proposal.

6 COMMISSIONER TIERNAN: Well, even if they submit all this  
7 material it doesn't necessarily mean that we would approve an  
8 adjustment.

9 COMMISSIONER REICHE: That's right. That's understood.

10 CHAIRMAN MCGARRY: Yes, Mr. Reiche. We have nothing pending at  
11 the moment.

12 COMMISSIONER REICHE: Mr. Chairman, I would move that the  
13 recommendation be reworded as follows: "Based upon the  
14 documentation thus far submitted by the Committee to the  
15 Commission, no adjustments to the amounts allocable to New  
16 Hampshire or Iowa have been made. The Audit staff recommends  
17 that additional documentation verifying the accuracy and  
18 reasonableness of the Committee's compliance and fundraising  
19 allocations be submitted within 30 days of receipt of this  
20 report." And then the last sentence, "This documentation should  
21 include but is not limited to," and then you go over to your  
22 listing of five, and then I think it is probably advisable to add  
23 a sixth, f., and that would be, "any other information deemed  
24 relevant,. well, all right, "any other," taking the General  
25 Counsel's language that Commissioner Aikens gave me, "any other  
26 documentation which the Committee believes would support their  
27 allocation."

28 CHAIRMAN MCGARRY: Joe Stoltz.  
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1 STOLTZ: I would only add that the first sentence be caveated to  
2 note that those items which we mention in the last paragraph,  
3 that we were able to verify, have been adjusted, except as noted  
4 above.

5 COMMISSIONER REICHE: Oh, all right. That's, if that would be  
6 agreeable to the Commission, we could add the language, "excepted  
7 as noted above,..." and then go into the rest of the wording.

8 COMMISSIONER HARRIS: I would like to hear it again.

9 CHAIRMAN MCGARRY: Yes, we're certainly going to do that --

10 COMMISSIONER REICHE: Would someone please take it down?

11 CHAIRMAN MCGARRY: My shorthand is a little grubby this morning,  
12 Madam Secretary. How are you making out, would you want to be  
13 the one to restate that?

14 COMMISSIONER REICHE: I'm with you Madam Secretary.

15 EMMONS: You are going to add, "Except as noted above,"  
16 preliminarily, to what you gave me?

17 COMMISSIONER REICHE: Yes.

18 EMMONS: Based upon the documentation --

19 CHAIRMAN MCGARRY: I'm sorry, Madam Secretary, would you take it  
20 from the beginning? We are going to reword the recommendation at  
21 the bottom of page 11. How does it begin?

22 EMMONS: All right. "Except as noted above, based upon the  
23 documentation thus far submitted by the Committee to the  
24 Commission, no adjustments to the amount allocable to New  
25 Hampshire or Iowa have been made. The Audit staff recommends  
26 that additional documentation verifying the accuracy and  
27 reasonableness of the Committee's compliance and fundraising  
28 allocations be submitted within thirty days of receipt of this  
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1 EMMONS: (Continued) report. This documentation should include,  
2 but is not limited to," then we list the five that are already  
3 listed and add another section, titled "f.," "any other  
4 documentations the Committee," no, "by any other documentation  
5 that the Committee believes would support their allocations."

6 CHAIRMAN MCGARRY: Mr. Reiche, how does that sound to you, the  
7 author?

8 COMMISSIONER REICHE: That sounds fine. The only thing I am  
9 wondering is, perhaps allocation should be pluralized because we  
10 are talking about two states, their allocations, I didn't include  
11 it originally, Marge, but I think it should be.

12 CHAIRMAN MCGARRY: Commissioner Aikens.

13 COMMISSIONER AIKENS: I noted that the same language is included  
14 in the next several recommendations, I assume that this means  
15 that we will be changing the language in all of those? Is it the  
16 intention of the Commission to change the language for the  
17 future, for this kind of recommendation in the audit reports?

18 CHAIRMAN MCGARRY: Joe, do you have a comment on that?

19 STOLTZ: I don't think we have any problem with thinking  
20 consistent with this one and the others.

21 CHAIRMAN MCGARRY: Carrying that all the way through to the other  
22 recommendation?

23 COMMISSIONER HARRIS: I don't know that the same problems arise.

24 STOLTZ: Most areas they do.

25 CHAIRMAN MCGARRY: Thank you, Madam Secretary. If there is no  
26 further discussion, the vote will occur on the Reiche motion,  
27 which seems to have been abundantly clarified by the Secretary.  
28 And there appearing to be no further discussion, the vote will

1 CHAIRMAN McGARRY: (Continued) occur on that motion. All in favor  
2 say aye. All opposed. It appears to the Chair that the vote is  
3 5-1 with Commissioner Aikens voting against.

4 CHAIRMAN McGARRY: Ray Lisi.

5 LISI: The next recommendation, the next finding, I'm sorry,  
6 begins on page 12 and it involves the Committee's allocations for  
7 in-state travel and communications of long distance telephone  
8 calls. The, we have revised this finding again to include the  
9 amounts, and this is on page 13, the middle of page 13, on the  
10 underlined status. Here we have included the amounts that we  
11 have accepted for the Committee for interstate travel and  
12 delivery services, which they did have supporting documentation  
13 supporting the allocation of those expenditures to the exempt  
14 categories. The Committee had not provided us with the  
15 information that was requested for long distance telephone calls  
16 in a letter that was sent out on July 2. This was sent out to  
17 all of, to four of the presidential candidates who still had  
18 matters pending before the Commission concerning allocations.  
19 Our recommendation, again, the, as we stated previously, will be  
20 changed to be worded consistent with the previous recommendation,  
21 and the information that we are requesting here, are the itemized  
22 telephone bills for all the telephone numbers for which charges  
23 have been allocated to an exempt category. We are also asking  
24 for expense and travel reimbursement forms including receipts and  
25 invoices, for example, airline tickets and gas receipts,  
26 verifying interstate travel for those items which have not  
27 already previously been documented. And also any Committee  
28 generated workpapers including adding machine tapes which were  
29 derived from this information above.  
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1 CHAIRMAN MCGARRY: Thank you, Ray.

2 COMMISSIONER TIERNAN: If there is no discussion, Mr. Chairman,  
3 it is my understanding that the language -- the language in that  
4 recommendation be revised. I'd move approval of the  
5 recommendation.

6 CHAIRMAN MCGARRY: Commissioner Tiernan moves approval of the  
7 Audit staff's recommendation which, of course, is the same as  
8 the, carrying forward the recommendation that we just approved in  
9 which the previous one having begun at the bottom of page 11  
10 carrying over to top of page 12, and we're now dealing with the  
11 recommendation in the middle of page 13 and carrying through that  
12 same conformatory language. Mrs. Aikens.

13 COMMISSIONER AIKENS: Mr. Chairman, I just would like to state  
14 for the record that this seems to be the language approved by the  
15 Commission, so I will vote for it in the future, but I do not  
16 agree with. I still think we should tell them that we may not  
17 adjust their repayment. That has been our standard practice up  
18 til now. If we're changing it -- we'll change it, fine; but I  
19 still think we should retain the language recommended by the  
20 auditors.

21 CHAIRMAN MCGARRY: Thank you, Commissioner. And for the sake of  
22 Mr. Harris before we go ahead, Commissioner Tiernan, Mr. Harris'  
23 move that we approve the audit staff recommendation which would  
24 be conforming to the language of the prior recommendation, the  
25 prior one beginning at the bottom of page 11 and carrying over to  
26 the bottom, top of page 12. We're now dealing specifically with  
27 the recommendation in the middle of page 13 carrying that  
28 language forward, Commissioner Tiernan's moving approval of that  
29 audit staff recommendation, no further discussion, the vote will  
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1 CHAIRMAN McGARRY: (Continued) occur on that motion. All in favor  
2 say aye. All opposed. It appears to the Chair the vote is 6-0.  
3 Ray Lisi.

4 LISI: The next item begins on, the next subsection rather begins  
5 on the bottom of page 13, c. Media Expenditures. In this  
6 instance we, there was additional information that we still  
7 needed from the Committee in order to verify the media  
8 allocations. The Committee in their original allocations, the  
9 media firm had used the Area of Dominant Influence calculations  
10 to determine media allocations and then in their response to the  
11 Interim Report changed that to use County Coverage Reports. We  
12 stated in the report that we have no problem with this change;  
13 however, there were some problems associated with the Committee  
14 switching from one method to the other. The first was that  
15 the -- there were media buys in at least five stations which  
16 would have been allocable under the County Coverage Reports which  
17 were not under, were not allocable under the Area of Dominant  
18 Influence calculations. We're therefore requesting information  
19 concerning those media buys. There was also one other media buy  
20 which we did identify in a station during the audit field work  
21 which was denoted in the New Hampshire primary and this was in a  
22 Burlington, Vermont TV station which would have been included  
23 again under the CCR but -- the County Coverage Reports, but not  
24 under the Area of Dominant Influence and, also the Committee had  
25 given us a schedule of refunds which they had calculated and  
26 stated should be deducted from the New Hampshire and Iowa  
27 limitations or allocations and those again were based on the ADI  
28 computations and not the County Coverage Report computations.  
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1 LISI: (Continued) The recommendation for this finding appears at  
2 the top of page 16, and again we would have to revise this to  
3 conform with the previous recommendations. And here we're  
4 requesting that the Committee provide us documentation for all  
5 the media buys made at the five stations noted in sections a. and  
6 b. above and also that they provide us with revised refund  
7 schedules using the County Coverage Report data as noted in  
8 section c. above in the audit report.

9 CHAIRMAN MCGARRY: Thank you, Ray. Any further discussion? Mr.  
10 Reiche.

11 COMMISSIONER REICHE: If not, I would move approval, Mr.  
12 Chairman, of the recommendation which appears with respect to  
13 media expenditures at the top of page 16 as it will be amended in  
14 accordance with Commission consensus achieved earlier today.

15 CHAIRMAN MCGARRY: Yes, Commissioner Reiche moves approval of the  
16 Audit staff recommendation contained at the top of page 16, once  
17 again carrying forward the conformatory language which amended  
18 the recommendation contained at the bottom of page, at the top of  
19 page 12 in which is the intention of the Commission to carry  
20 forward in all the subsequent recommendations. If there is no  
21 further discussion, the vote will occur on that motion. All in  
22 favor say aye. All opposed. It appears to the Chair the vote is  
23 6-0. Ray Lisi --

24 LISI: The next subsection begins on page 16, the middle of page  
25 16, it's entitled "National Press." In this section, we have  
26 incorporated all of the categories of expenditures again that the  
27 Committee has allocated to an exempt category based on National  
28 Press, or contributions to the National Press. The two areas  
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1 LISI: (Continued) that the Committee did allocate were the -- a  
2 portion of the advance staff salaries which they stated were at  
3 least 33% of each advance persons salary should be charged to an  
4 exempt category based on the fact that those individuals were  
5 administering to the National Press and, therefore, the  
6 expenditures were exempt. The other category of expenditures  
7 which relate to National Press were those expenditures which they  
8 feel were covering ground costs for the National Press while they  
9 were in the states of Iowa and New Hampshire which were  
10 subsequently reimbursed by the press to the Committee. We have  
11 no problems with the allocation, the Committee's contention on  
12 the reimbursement of the expenditures for the National Press.  
13 However, the problems that we have with that is that we do not  
14 have enough information at this point to verify that their  
15 figures are accurate. The other situation concerning the  
16 advanced staff salaries, which the Committee is stating should be  
17 allocated to an exempt category, a vote was taken on that in the  
18 last Commission meeting. I believe the Commission voted 3-3 to  
19 accept the Committee's contention in that matter. We haven't  
20 included that in the Audit Report for discussion purposes because  
21 we are unclear at this point as to how the Commission would like  
22 us to proceed on that issue. Our recommendation on this finding  
23 begins on the bottom of page 17 and what we're asking for here --  
24 (a.) is the total amount billed to the national press by trip and  
25 the total amount received from the press based on these billings;  
26 (b.) the types of expenditures charged to exempt national press  
27 and their relationship to the national press. And at a minimum,  
28 we are saying that this documentation should indicate that for  
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1 LISI: (Continued) the expenses charged to the national press,  
2 that at least the national press were in the area at the time the  
3 services were provided; and also any workpapers used to derive  
4 the percentages applied to the salaries of advance staff  
5 personnel allocated to exempt national press. At the top of page  
6 18, d. we're asking for the activities performed by the advance  
7 staff personnel which constitute national press activity and the  
8 amount of time spent by each of these individuals in those  
9 activities as well as the method employed in making these  
10 determinations.

11 COMMISSIONER REICHE: Before we call upon Counsel in this matter,  
12 first, I would like to refer back to the action which the  
13 Commission took in August and, Madam Secretary, please check me  
14 on this if you will, but the recommendation, I believe, was along  
15 the following lines that the audit staff said that it found no  
16 statutory or regulatory basis for exempting these expenditures.  
17 Further no definition of these activities has been offered by the  
18 Committee nor have any worksheets or other documents supporting  
19 this allocation been presented to the audit staff, and then in  
20 the actual recommendation itself you requested additional legal  
21 or factual materials within the 30 day period. And there was, if  
22 the recollection's correct, Ray, there was a 3-3 vote on a motion  
23 which, I believe, was to oppose the recommendation of the  
24 auditors and, therefore, the motion failed. And it's just before  
25 we got further into this at least I wanted to be sure that other  
26 people's recollection of it was the same as mine and as my notes  
27 indicate so that we know where we stood as a point of departure.  
28 But if the recollection is faulty, please anybody feel free to  
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1 COMMISSIONER REICHE: (Continued) correct me on it. Would Counsel  
2 like to comment on this, because I believe you have some  
3 questions concerning it.

4 GENTNER: Yes, we would. First, I think it would facilitate the  
5 discussion if we took -- separated the two issues. The first  
6 issue deals with the question of whether you accept the theory of  
7 the Committee that they can back out expenditures which they  
8 contend were reimbursed because they received an excess over the  
9 cost of airfare for press travel which they say they applied to  
10 other expenditures they incurred for the press and, therefore,  
11 should be considered as reimbursed expenditures and not as part  
12 of their expenditure limitations. That's the first issue.  
13 That's the issue that the auditors agree with the theory and ask,  
14 but find that there hasn't been enough supporting documentation,  
15 and accordingly, request a. and b. are directed to that problem.  
16 The problem we have with point a. is that it asks for the  
17 documentation on a per trip basis and underlying this, I believe  
18 the auditors and they should correct me if I'm wrong, believe  
19 that the theory can only be accepted on a per trip basis, that  
20 is, only if the air fare for a particular trip was less than the  
21 amount received from the press for that trip and only if there  
22 were expenses incurred on the ground for the press for that trip  
23 will we back up the expenditures. The Office of General Counsel  
24 would do it on an aggregate basis, that is if they can provide  
25 the total cost of air fare for the press, the total amount  
26 received from the press if they get a surplus then apply that to  
27 the total cost incurred for the press in the state. We believe  
28 that should be accepted.



1 COMMISSIONER REICHE: Marsha, before we leave that, because I  
2 don't want to get too far away from that issue, I would like to  
3 have the response of the auditors on that. Joe Stoltz --

4 STOLTZ: There's a couple concerns we have with doing it on a  
5 campaign wide basis. First of all, the Counsel mentions problems  
6 with computing it on a trip-by-trip basis and the Committee was  
7 never told it had to keep records on a trip-by-trip basis. It  
8 would be our opinion that it would be difficult to come up with  
9 the aggregate figures unless you started from a trip-by-trip  
10 point, you know, unless we're going to get into another set of  
11 percentages that are calculated in some areas. The other problem  
12 is the changes that the campaign went through particularly after  
13 Iowa and before New Hampshire. For awhile, they had a chartered  
14 aircraft all the time. And the costs associated with that would  
15 be one type. Later they chartered planes for particular trips,  
16 and they didn't have one all the time. The cost structure there  
17 is going to be a little different. Later than that, they quit  
18 using charters altogether, as I understand it, in fact that did  
19 some bus tours and things like that. I think we could get into  
20 some offsetting of unlike things. The other problem with doing  
21 it on a campaign wide basis, it is conceivable, and again until  
22 you see all the numbers it's hard to tell, that, for example, a  
23 surplus that might have been generated in Iowa would in effect  
24 possibly wind-up offsetting a deficit in New Hampshire, so that  
25 you could have the press paying, say \$10,000 more than the  
26 combined air fare and ground costs in Iowa and \$10,000 less and  
27 wind-up netting, or even, in my mind a more serious problem, a  
28 surplus generated in some state such as New York or Ohio further  
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1 STOLTZ: (Continued) down the campaign, if there was a given  
2 charter or something in that state, could in effect wind-up  
3 offsetting a deficit in one of the states that are in question.  
4 So at a minimum I think we should look at it on a state-by-state  
5 basis, and it would be our opinion that the ideal is still on a  
6 trip-by-trip basis.

7 COMMISSIONER REICHE: Before referring back to Counsel on it,  
8 obviously if you were going to construct aggregate figures, I  
9 think at some point you are going to have to do it on a  
10 trip-by-trip basis, but --

11 STOLTZ: Unless you use some kind of averages --

12 COMMISSIONER REICHE: Yes, right, but, what is, shall we say, the  
13 vice in doing it on an aggregate basis? Is there any statutory  
14 or regulatory basis that you perceive suggests that we go in this  
15 direction.

16 STOLTZ: I don't think there is much guidance in the statute or  
17 regulations that would point you in either direction. So I think  
18 it's pretty much up to the Commission to which they want to do.  
19 There could be a benefit in it for the Committee if we allow them  
20 to do it on an aggregate basis. It still works the other  
21 direction. Until you see the numbers it's hard to tell. It  
22 would be our opinion that revenue generated relating to a given  
23 state should be offsetting against expenses in that state or even  
24 more specifically on a trip-by-trip basis as opposed to allowing  
25 revenues generated on one trip to offset expenses associated with  
26 another trip.

27 COMMISSIONER REICHE: Has this issue been raised in connection  
28 with any other audit?  
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1 STOLTZ: There is a question, I believe, in the Reagan case, on  
2 ground costs, and, if I'm not incorrect, I think Rick can  
3 probably explain it to us.

4 COMMISSIONER REICHE: Rick Halter.

5 HALTER: In the Reagan Post-Primary Audit Report, there were two  
6 instances where the campaign had taken up residence in two motels  
7 just across the New Hampshire line. Is that the one you are  
8 referring to, Joe?

9 STOLTZ: That was ground costs. I thought there was a question  
10 of air fare reimbursements to ground costs deducted. Maybe I'm  
11 mistaken.

12 HALTER: Not in the primary at least. If there was, we cleared  
13 it up at the final stage.

14 COMMISSIONER REICHE: Does Counsel have any additional comments  
15 on this specific issue before you move to the second? Because I  
16 haven't forgotten, Marsha, I cut you off before you got to your  
17 second.

18 GENTNER: Yes, just a point I would like to mention, I think the  
19 problem is raised that there is nothing in our regulations, in  
20 our guidelines that would tell the Committee that this had to be  
21 or would support a requirement on a per trip basis. With respect  
22 to the point about the -- a New Hampshire expenditure offsetting  
23 an Iowa expenditure, I don't think that would happen because  
24 interstate air travel is an exempt expenditure, it's not  
25 allocable to any state. Therefore, the only expenditures you're  
26 dealing with is your dealing with say a press expenditure -- an  
27 expenditure for cars for the press in New Hampshire, you would  
28 only apply that air fare surplus to that expenditure, to back out  
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1 GENTNER: (Continued) that expenditure for New Hampshire. It  
2 would not work to any benefit or detriment for Iowa.

3 COMMISSIONER REICHE: If there are no further Commission  
4 comments, would you like to proceed with your issue, Marsha.

5 GENTNER: Yes, point b., again, you don't have trouble with the  
6 requirement except that it states, "at a minimum this  
7 documentation should indicate..." We don't think that that's a  
8 minimum, we think that if the documentation indicates that the  
9 press was there at the time in question, that that's enough, and  
10 if in fact this is a minimum, then we think the Commission should  
11 state what else is required.

12 COMMISSIONER REICHE: Specifically, where are --

13 STEELE: Page 17, bottom, sec, recommendation b., end of the  
14 second line.

15 COMMISSIONER REICHE: Okay, thank you, Charlie. Do the auditors  
16 have any comment with respect to that? And any further comment  
17 with respect to that first issue?

18 STOLTZ: On the first issue, the only other comment is, and maybe  
19 I misunderstood what Marsha was saying, if, maybe I could put  
20 this question to her, if suppose in Iowa they collected \$50,000  
21 over and above the cost of the airplane from the press, ground  
22 costs for Iowa for the whole state was \$30,000 so they back out  
23 \$30,000 worth of disbursements in Iowa leaving a surplus of  
24 \$20,000 which they received from the press relating to Iowa trips  
25 for which there are no ground costs to which that money may be  
26 applied, may they then carry that over and apply it to ground  
27 costs in New Hampshire?

1 GENTNER: I would say yes, because the travel is surplus that  
2 they received is not allocable to a state in any event.

3 STOLTZ: The sur, the allocation of the surplus is really  
4 immaterial, it's whether or not that surplus may be used to  
5 offset otherwise allocable expenses in a different state.

6 GENTNER: Right, but it's connecting that air fare trip to New  
7 Hampshire is not relevant or necessary because we don't connect  
8 air fare travel with particular states, we say that's an  
9 unallocable expenditure.

10 STOLTZ: What we are doing though is connecting a revenue with an  
11 expense. A revenue generated in Iowa to an expense in Iowa, as  
12 opposed to a revenue generated from a trip to Iowa to an expense  
13 in New Hampshire.

14 GENTNER: Right, but you never, the revenue is never allocated  
15 anyway. I mean the --

16 STOLTZ: No, it isn't.

17 GENTNER: The expense incurred is never connected to a particular  
18 state so we don't feel that there is any problem in connecting,  
19 you know, because the air fare, air travel went to Iowa, we don't  
20 feel is particularly relevant.

21 STOLTZ: Well, that's where we part company. We do not  
22 misunderstand. The second one, we feel that, if the  
23 documentation, if the committee has documentation which shows  
24 something more than simply the fact that the press was in that  
25 area at that time, that by all means it is better than being able  
26 to show the minimum. The second sentence is designed to say,  
27 "that at very least this is what it should show," if there is  
28 more fine. That's why the minimum language.

1 STEELE: Our point is the same one as before, that you should be  
2 telling them now what you need and that if this satisfies it, it  
3 satisfies it. We seem to be leaving it open, much the same point  
4 as in the original discussion.

5 COMMISSIONER REICHE: Commissioner Aikens.

6 COMMISSIONER AIKENS: Isn't the basic question here a policy one  
7 by the Commission as to whether this is services to the National  
8 Press just because it's called National Press whether those  
9 services are exempt?

10 GENTNER: That would be on the second issue. We are talking here  
11 just on the first issue now and that's not dealing with idea of  
12 exempt expenditures. This deals with the reimbursement theory,  
13 which I believe as a theory not necessarily the application use  
14 by the Committee, but as a theory the auditors agree with.

15 STOLTZ: Yes.

16 COMMISSIONER REICHE: With respect to recommendation b. toward  
17 the bottom of page 17, would there not be some better way of  
18 wording it to make it, I would suggest, more relevant, because  
19 this, the second sentence there says, "At a minimum this  
20 documentation should indicate that for the expenses charged to  
21 the national press, that the national press were in the area at  
22 the time the services were rendered." That appears so vague and  
23 to me lacks a sufficient connection, a sufficient nexus. If you  
24 want to tie them in, just to say that they were in the area, for  
25 me, is not sufficient, but I don't know whether this bothers any  
26 other Commissioners. It certainly bothers me. And please don't  
27 ask me if I have any language to suggest at this moment, because  
28 I don't right now. It's just that I am bothered by that wording.

1 STOLTZ: This is an attempt, I guess, to give the Committee the  
2 benefit of the doubt. In many cases, expenses that the Committee  
3 says relates to the press, there is going to be no way to  
4 establish any kind of hard connection. If they have rented a bus  
5 for two days in a given locality, it's not going to say "Press  
6 Bus" on it. It's going to say "Bus Rental." And we felt that we  
7 would be willing to accept the contention if they could at least  
8 show that in that area where they rented the bus there was a  
9 campaign swing and the press were through there, and we all know  
10 they rent buses to get the press from the airport to wherever  
11 they are going, and we would leave it at that.

12 COMMISSIONER REICHE: But carrying this probably to an absurdity,  
13 the mere fact that someone associated with the National Press was  
14 in the area, might be sufficient here to document or support an  
15 expenditure if instead of just phrasing it this way you added  
16 words to the effect, "that members of the National Press were  
17 there for campaign purposes," or whatever; but tie it in. As far  
18 as we're concerned here with this wording someone could be there  
19 on a vacation. I mean I'm not suggesting that you would ever let  
20 that go through, I know; but my point is that the wording is so  
21 broad that unless it is tied to the campaign and coverage of the  
22 campaign, I think you have a problem.

23 STOLTZ: I have no objection to that. Restricting it a little  
24 bit to cover that contingency.

25 COMMISSIONER REICHE: Are there any other comments with respect  
26 to recommendations "a." and "b."? If not let's move on. And,  
27 Marsha Gentner, would you like to take up what is really the  
28 second issue?  
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1 GENTNER: The second issue is what Mrs. Aikens just brought up  
2 and that's the question of whether the Committee theory that the  
3 certain staff time was spent exclusively on ministering the  
4 press, to the National Press, and that therefore this wasn't an  
5 advance or field activity that should be allocable to a state but  
6 is more like an overhead activity that should not be allocated  
7 and actually this presents two issues and that if you accept the  
8 first -- the theory that the press activity, ministering the  
9 press is not allocable to a particular state then you move on to  
10 the documentation submitted to support the percentages derived by  
11 the Committee in computing the amounts that are not allocable.  
12 To that point, point c. and d. of the recommendation are  
13 addressed. I bring that up now only because if you adopt the  
14 auditors' view and reject the Committee's theory, you need not  
15 move on to c. and d. You can delete them.

16 COMMISSIONER REICHE: Well, this calls into question the  
17 fundamental issues as to whether or not the ministering to the  
18 National Press in a given state represents an allocable expense  
19 to that particular state. Do the auditors have anything further  
20 to say on this and I mean you stated your position in the  
21 original report?

22 STOLTZ: Yes, we did add here in this report a summary, reworded  
23 I guess, the summary we had of the regulation. It's important  
24 that the letter that the Commission sent on July 2nd talking  
25 about national staff travel, has to be read in light of the  
26 regulation, and the regulation states that expenditures for  
27 administrative staff and overhead costs directly relating to  
28 national campaign headquarters need not be allocated. The  
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1 COMMISSIONER REICHE: (Continued) Commission then says that  
2 national campaign headquarters staff, and it was our opinion that  
3 it, that the meaning was, that fit this definition, who travel to  
4 a state to conduct some national campaign business, which was  
5 stated in the letter, that was not advance or fieldwork, would be  
6 exempted, and we have not, we do not see how advance staff, who  
7 are simply ministering to the press, who are not local press,  
8 fall into that category.

9 COMMISSIONER REICHE: And yet, with respect to recommendation  
10 "c.", you are asking for additional documentation in the form of  
11 workpapers, used to establish the percentages applied to the  
12 salaries of advance staff personnel?

13 STOLTZ: As Marsha says, depending on the determination of the  
14 first question, "c." and "d." may or may not be necessary.

15 COMMISSIONER REICHE: I think the Commission should try and reach  
16 a conclusion with respect to that first question. As you well  
17 point out, we will not be reaching questions 3 and 4 or "c." and  
18 "d.", those two recommendations unless we respond in a certain  
19 way to the first. What is the Commission's pleasure with respect  
20 to that first question? Namely, should expenses related to the  
21 ministering to the needs of the National Press in a given state  
22 be allocated to that state?

23 COMMISSIONER HARRIS: I'd like to ask what the legal department,  
24 what justification they see for that?

25 STEELE: Well, again --

26 COMMISSIONER HARRIS: I mean for not allocating it really.

27 STEELE: Well, again, given the overall context of allocation and  
28 the Commission's wrestlings with it, it seems at least to me that  
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1 STEELE: (Continued) you have a situation where the Commission --  
2 all these things here are very hard to measure in terms of where  
3 things actually went, I mean you wind up with allocation  
4 formulas. And at least in my mind what you have here is  
5 something that comes to a question of where you have drawn the  
6 line in that letter and in the regulation. The National Press  
7 effort continues no matter where the candidate is, and it seems  
8 to me that in your, what you have said is that you have matters  
9 that are definitely allocable to the states because they relate  
10 to the activity going on in that state, that's fine. You have  
11 another category of material that is associated with the national  
12 campaign effort and some place in between that there is a gray  
13 area. The national campaign effort, again the letter that went  
14 out, seems to us to encompass this kind of activity, that you are  
15 looking wherever you are and wherever the candidate is and their  
16 campaign simultaneously going on all over the place, that you  
17 don't therefore say that because the National Press is coming  
18 through a given area that that is therefore all allocable to that  
19 state. It may obviously be -- does have an impact. It has an  
20 impact on some primaries simultaneously. But in effect that you  
21 have a real question there of policies, I think Commissioner  
22 Aikens said, of whether you want to force campaigns into saying  
23 that they are going, with all of this activity that they do with  
24 the National Press, that they are going to have to split it out  
25 to individual states. Again the residual in the regulation is  
26 that you would split it out by the figure that doesn't really  
27 relate to anything which voting age population. But it seems to  
28 me that the Commission here is faced with the question of saying,

1 STEELE: (Continued) "Well, yes we know that the National Press is  
2 going on and we also know that the state allocations are going on  
3 and we are going to enforce that you have to make some kind of  
4 allocation of all this ability to service the National Press down  
5 to the state level. I think that's a very hard allocation to  
6 make. But, and it also seems to me to be counterproductive in  
7 terms of trying to make sense out of the state allocation limits,  
8 but it certainly does seem to be a question that the Commission  
9 has to cope with.

10 COMMISSIONER HARRIS: What committee personnel is it we're  
11 talking about rendering these services to the National Press?

12 STEELE: I would have to rely on the auditors for a statement of  
13 actually who the individuals are.

14 COMMISSIONER HARRIS: No, I don't mean who the individuals are.

15 STEELE: Not who the individuals are but what their job functions  
16 are --

17 COMMISSIONER HARRIS: Yes, and are they located, say, in Iowa or  
18 in New Hampshire during the campaigns there? Are they somebody  
19 who has traveled from Washington with the National Press?

20 STEELE: I think you have categories of both, but I think perhaps  
21 Ray could outline more specifically what they are. But my  
22 understanding is you have both. And you have both coming and  
23 going in effect. Some people out there for a period of time.  
24 Some people going out on a daily basis, some people were there  
25 for a long period of time.

26 LISI: These individuals whose salaries were allocated were the  
27 advance staff individuals who were in a particular state and I  
28 think we stated this at the last meeting, for at least longer  
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1 LISI: (Continued) than 24 hours and the purpose of being in that  
2 state was to set up some sort of an event for the, which the  
3 candidate or some other person would attend, whether it be a  
4 fundraising event or a dinner or whatever. Their function, our  
5 understanding, was to arrange for the entire event and also to  
6 make sure that the press was taken from the airport to the event  
7 and all arrangements were made for the event and the amounts that  
8 we allocated, the salaries, were based on a review of the per  
9 diem and expense reimbursement forms that these people had  
10 submitted to the Committee stating that they were in the state  
11 during that period of time, and we determined the number of days  
12 that they were there and derived the amount of their salary that  
13 should be allocated to that state based on the amount of time  
14 that they were in the state. So the only amounts that would be  
15 allocable here would, we allocated anyhow, were the salaries of  
16 the individuals while they were in the state.

17 COMMISSIONER HARRIS: And you didn't allocate them unless they  
18 were there more than 24 hours?

19 STOLTZ: That's right.

20 COMMISSIONER HARRIS: But some of them might have traveled out  
21 with the National Press, I suppose, from Washington.

22 LISI: It would seem to us that if they did travel with the  
23 press, depending on how long the candidate stayed in the state,  
24 now if he were to go in for a one night event and fly back out  
25 again and someone were on the plane with him, an advance staff  
26 person, then that person's salary would not be allocated. It is  
27 possible that an individual may have traveled with the candidate  
28 and stayed in the state for 3 or 4 days with the candidate, but  
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1 LISI: (Continued) it was our understanding that these people,  
2 just in the context of their name -- advance staff were sent out  
3 in advance of the candidate to set up the event.

4 COMMISSIONER HARRIS: I don't see that the letter dealing with  
5 national staff personnel really reaches this.

6 STEELE: I don't say that it does. It seems to me that what you  
7 wrestled with there was the same problem of the allocation of  
8 something, a question of whether something is allocated to the  
9 national campaign or not. Again, the question of whether they,  
10 setting up events is not, is in itself the conclusion, I mean in  
11 effect, what the question in my mind is whether you are going to  
12 say that the costs of servicing the National Press when they come  
13 into these, into a state, of having these people there to service  
14 that, is a campaign cost which you are going to say to the  
15 campaign "Well, that's a necessary part of your effort in  
16 carrying Iowa or New Hampshire or whatever the state is," the  
17 National Press is going to come in there. It's not that you are  
18 setting up events for the National Press. The National Press is  
19 going to come to the states where you are campaigning and what I  
20 think the auditors are saying is you, therefore, have to say that  
21 that's a cost of your campaign. We would say that in effect  
22 that's the cost of your, that you should allocate that to your  
23 national campaign rather than to your state-by-state funds.

24 COMMISSIONER HARRIS: What have we done with the other committees  
25 on this?

26 STOLTZ: To the best of my knowledge, this is the first committee  
27 who has put this theory forward on advance staffs for National  
28 Press.  
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1 CHAIRMAN MCGARRY: I'm going to interrupt at this point. The  
2 hour is 12:30 and we know that Commissioner Aikens has an  
3 important engagement, and I just want to hear from you,  
4 Commissioner, as to -- it is obvious that we are going to be  
5 coming back at 2:00, but I think before I assess what the sense  
6 of the Commission is I would like to hear what your thoughts are  
7 on continuing and when, and what your role will be.

8 COMMISSIONER AIKENS: I have no problem with continuing, Mr.  
9 Chairman. If anyone has a luncheon engagement and wants to  
10 break, I will be back at 2:00. I will not be able to stay beyond  
11 3:00. 3:00 would be the latest.

12 CHAIRMAN MCGARRY: Whatever the pleasure of the sense of the  
13 Commission, we could break now or continue. I'd be totally  
14 guided by whatever the wishes of the Commission.

15 COMMISSIONER TIERNAN: I would suggest that we come back at 2:00.

16 CHAIRMAN MCGARRY: Is that --

17 COMMISSIONER REICHE: Is it possible before we adjourn to dispose  
18 of this one, because the problem is we're then going to read  
19 ourselves back into it a little bit at 2:00, and I don't want to  
20 waste --

21 COMMISSIONER TIERNAN: The only trouble is that you've got four  
22 parts there, and I think you are going to have some discussion on  
23 the first one. And it's 12:30 --

24 COMMISSIONER REICHE: I'm just trying to see if we can --

25 CHAIRMAN MCGARRY: Well then it appears we will come back at  
26 2:00. How does that fit in with your -- Without any further  
27 discussion, we will recess until 2:00 p.m. in which time we will  
28 continue on where we left off here.

1 CHAIRMAN MCGARRY: Madam Secretary, the Executive Session for the  
2 afternoon session of the Federal Election Commission for Tuesday,  
3 September 15, 1981, will get underway now and we are going to  
4 continue on where we left off to break for lunch. Ray Lisi, why  
5 don't you just summarize where we were at that time and where we  
6 are right now.

7 LISI: At the time we broke, I believe we were discussing the  
8 recommendation on the bottom of page 17 of the Audit Report which  
9 pertained to the allocation of staff to National Press. Earlier  
10 the discussion was centered around a. and b. of the  
11 recommendation which pertain to the requesting the total amount  
12 billed to the National Press and the amounts received from the  
13 National Press for expenditures made by the Committee in those  
14 two states.

15 CHAIRMAN MCGARRY: Yes, Mr. Reiche.

16 COMMISSIONER REICHE: I think we have progressed a step beyond  
17 that, too, in the sense that we were focusing on the second  
18 issue, that Marsha had discussed, namely, should any of these  
19 National Press expenditures as such be allocated on a national  
20 campaign basis as opposed to the state campaign basis. And then  
21 you get into the question -- Joe advised us that -- if people  
22 were there more than 24 hours in the state, I take it  
23 automatically, Joe, it was allocated to the state. If less than  
24 24 hours, it's not. Am I right?

25 STOLTZ: That's correct. Of course, that was done prior to the  
26 letter that the Commission issued.

27 COMMISSIONER REICHE: So I think we're on that one, I, and of  
28 course depending how we resolve that we may not get to c. and d.  
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1 STOLTZ: That's correct. One other point that was not discussed  
2 this morning, it appears that what the Committee has done,  
3 although it doesn't specifically say that in the response, but  
4 checking the numbers and the way they work out, is this  
5 percentage that they use for the National Press -- peoples'  
6 salaries were, was also applied in a number of cases to peoples'  
7 expense vouchers. The same theory, 33% per diem charged might be  
8 charged off to National Press when 33% of the person's salary was  
9 charged off to the National Press. So it went to both salary and  
10 expenses in some cases; and we would contend that no matter which  
11 way the Commission decides we would treat them both in a  
12 consistent fashion.

13 CHAIRMAN MCGARRY: Thank you, Joe.

14 COMMISSIONER THOMSON: Mr. Chairman, why are we arguing about  
15 whether you should bill by the trip or by the methods of the OGC.  
16 I thought that was more or less settled in the Reagan Primary  
17 where it says, "Further, the committee was requested to provide  
18 the audit staff with copies of documentation and papers inclusive  
19 of bank accounts and check number, date, amount, payee, and  
20 associated tour, supporting the associated ground costs for each  
21 tour." Now all we're asking, all the auditors are asking here is  
22 that they bill them by trip. It seems there was no question  
23 raised by anybody when they asked Reagan in the primary to come  
24 up with it in on a per tour basis. How did we happen to get into  
25 this argument?

26 GENTNER: Well, this is not the same situation as the Reagan  
27 situation. I have to say that I can't speak authoritatively --  
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1 COMMISSIONER HARRIS: Could you speak a little more loudly while  
2 you're speaking?

3 GENTNER: I have to say that I can't speak authoritatively on the  
4 Reagan Audit but as I understand it that was a situation, that  
5 was not a situation where you were dealing with a theory of a  
6 surplus received and applying that surplus to defray other costs.  
7 That was a situation, where, I believe, they came forth and said  
8 that they, that the ground costs were in fact reimbursed and we  
9 asked to see what those ground costs were.

10 CHAIRMAN MCGARRY: Joe Stoltz, want to enlighten us?

11 STOLTZ: Yes, it was somewhat different. The situation there  
12 was, the Committee had subtracted from their overall limit, now  
13 this wasn't a state-by-state problem, this was an overall limit  
14 problem, all the reimbursements they got from the press on their  
15 tours, and that amount was in excess of the air charter costs and  
16 the committee said, "Well there were ground costs which were at  
17 least equal to or maybe greater than the excess we received over  
18 the air charter costs that we paid." We asked them to show us  
19 those ground costs so that we could associate them with the  
20 expenses involved before they subtracted it out of their overall  
21 limitations.

22 COMMISSIONER AIKENS: So, one step further. For those that they  
23 did not provide documentation, we did not reduce the payback, is  
24 that correct? Or was there a payback involved?

25 HALTER: What actually happened -- All of the stuff was  
26 requested in the Interim Report where we technically had them  
27 over the overall limit because they had not made any allocation  
28 to the exempt legal and accounting category. As a result of  
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1 HALTER: (Continued) their response to the Interim Report, they  
2 then allocated on a reasonable basis a sufficient amount of costs  
3 from operating as originally reported into the exempt category  
4 which in turn made mute the issue regarding any possible profit  
5 on the tour since there was a sufficient reduction in the  
6 expenditures subject to the limit, so whether or not we let them  
7 keep the \$50,000 "profit" as a reduction, it didn't make any  
8 difference, they were, I think a couple hundred thousand dollars  
9 under the overall as a result of the response. So it was never  
10 pursued any further, it was no longer material.

11 COMMISSIONER AIKENS: In this instance, the allocations that they  
12 presented to us in response to the Interim Report were all new  
13 material from what had been developed, is that correct?

14 STOLTZ: The, they went back and reconsidered the whole --

15 COMMISSIONER AIKENS: Just did the whole thing over --

16 STOLTZ: And so we were looking at different disbursements and  
17 attempted exemptions of disbursements for different reasons that  
18 we had considered during the finish and field work. ;

19 COMMISSIONER AIKENS: With no documentation or backup as to how  
20 it was done -- so far?

21 STOLTZ: So far. In this particular instance we don't know what  
22 the air charter costs were, we don't know what the billings were,  
23 we don't know how much they got back and we don't know what the  
24 ground costs were, particular for any given trip, state, or at  
25 this point any total for what the campaign was.

26 COMMISSIONER AIKENS: Was the National Press, were the National  
27 Press costs allocated in any other campaign?

1 STOLTZ: The best that I know, this is the first time we have had  
2 this theory raised - that the National Press or -

3 AIKENS: Carter had expenditure limits - over the expenditure  
4 limits -

5 STOLTZ: That's correct. Reagan

6 AIKENS: Reagan was over.

7 STOLTZ: And I believe LaRouche.

8 AIKENS: LaRouche. Those are the only three?

9 STOLTZ: That's the only three.

10 AIKENS: How about Baker?

11 STOLTZ: No.

12 AIKENS: He was not over any of the limits. He was close. So  
13 that if we follow the General Counsel's position here in all of  
14 this, both in the expenditures concerning the National Press and  
15 in advance personnel, the chances are we will end up having to  
16 let the other campaigns reallocate, at this stage.

17 STOLTZ: I guess it would depend on whether or not you assume  
18 that this was covered in the Commission's July 2nd letter, and  
19 since the other campaigns didn't raise it they chose not to, or  
20 whether it is far enough beyond the July 2nd letter that it would  
21 require a separate notice.

22 STEELE: Have all the Committees responded? I just didn't know  
23 if all the Committees had responded.

24 STOLTZ: The Carter people responded to it. Their national staff  
25 section was contained in the Audit Report, I believe it was  
26 \$1,125.00 in total, so it didn't include this sort of thing. And  
27 then they did some work on the phone bill. The Reagan people,  
28 Rick, correct me if I'm wrong, have not responded as of yet.

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1 HALTER: But indicated that they may want to. The problem, well,  
2 not the problem, but the thing with the Reagan Committee is that  
3 they did not allocate on their reports any costs associated with  
4 national staff or people traveling that way. Although we did  
5 assert that certain of these costs should be allocated. So we  
6 are trying to revise what is in the Audit Report and take out the  
7 costs, based on that letter, that should not now be allocated,  
8 and was sent to the Counsel's office, but other than that we just  
9 don't know, we have contacted them several times and it's  
10 possible that their attorney might still wish to respond. As of  
11 right now we have not received anything. And with respect with  
12 the LaRouche Committee, we have also contacted their attorney  
13 several times and have delivered a letter to them several times  
14 and as of about a week or so ago we attempted to call them again  
15 to find out if they are going to respond or not and we just  
16 haven't been able to get in touch with them.

17 STEELE: We have some contact with them in New York. You might  
18 check with Larry and see because we have, of course, they have  
19 attorneys representing them in this suit up in New York; and if  
20 you are not able to contact them we should be able to put those  
21 two together. You'll have to talk to Larry about it. They are  
22 suing us up there.

23 MCGARRY: Mrs. Aikens, did you have anything further?

24 AIKENS: No, I don't think so Mr. Chairman, except to say that  
25 the note that we ended on at the lunch break concerning the  
26 advance staff, I don't think, I think this is first of all not a  
27 legal issue but a policy issue that the Commission should decide  
28 and, if that is not what an advance, part of what an advance  
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1 AIKENS (continuing): staff is supposed to do, I don't know what  
2 it is. And I think for us to fool around with the figures or let  
3 this Committee fool around with the figures to allocate that  
4 advance staff personnel at this stage of the game, that is making  
5 a mockery of the whole enforcement of public financing.

6 REICHE: I have trouble, legal, with the position you take on  
7 this because it seems to me that if you have someone from  
8 national headquarters traveling around with national press, fine,  
9 that should be allocated to the national campaign very clearly.  
10 If on the other hand you have an advance man, an advance woman  
11 who is in the state, by definition, ministering to the needs of  
12 the National Press is part of what they do in that state, is part  
13 of the campaign, why should it make any difference whether you as  
14 an advance person are ministering to the needs of, let's say in  
15 New Hampshire, a New Hampshire reporter as opposed to a  
16 Massachusetts reporter or someone from Washington, D.C. You  
17 start trying to draw that type of distinction, and I think we are  
18 in worse trouble than we are in right now. And I'm not  
19 suggesting that this is perfect, but I do think that this is  
20 perhaps a valid distinction to be drawn and one way in which we  
21 can break it down.

22 HARRIS: I'd like the comments of legal and accounting on  
23 Commissioner Reiche's suggestion.

24 STEELE: The only reason I did not comment was, we covered it  
25 before. You have, it seems to me you have a question here of  
26 what you're going to, clearly under your regulations it seems to  
27 me that you've made a distinction between things that relate to  
28 your national campaign and things that relate to the state  
29 campaign.  
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1 STEELE (continuing): So the question becomes what are you going  
2 to force the committees to allocate to the state-by-state  
3 limitations. It seems to me that you have difficult problems  
4 there to begin with, you have here what it would seem to me to be  
5 a not encompassed, I agree by the letter sent out before but it  
6 seems to me that the necessity in that letter for trying to  
7 phrase in a general statement what the Commission was where the  
8 Commission was drawing the line, suggested that you didn't have  
9 to allocate those things that relate to your national campaign.  
10 So you have in my mind a question of whether you are going to say  
11 to the campaigns, "look servicing the National Press coming into  
12 a particular state to cover the campaign in a particular state is  
13 something that we feel is not at all attributable to national  
14 campaign, it's attributable to your local campaign; and we're  
15 going to enforce the state-by-state allocations, we are going to  
16 enforce it to the extent of saying that any servicing of the  
17 National Press is allocable to the state in which you are doing  
18 that servicing." It seems to me that that really is a policy  
19 question. It seems to me that I would come out on the other side  
20 first of all saying that the state-by-state allocations have  
21 caused tremendous difficulty anyway, that you have drawn this  
22 distinction and that yes, obviously, if your campaign is in that  
23 state you have somethings, you agree that there are some things  
24 that are allocable. People who are there don't necessarily  
25 relate to the state-by-state campaign so you have a question as  
26 to whether you want to say okay all of your servicing of the  
27 National Press, that comes out of your, that comes out of your  
28 limit, that comes out of the state limit that you've got and if  
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1 STEELE (continuing): you are going to service the National Press  
2 in New Hampshire or Iowa or wherever it is, you've got to use  
3 that and you've got to have known that you had to use that ahead  
4 of time, you had to look at these regulations before the  
5 selection started and said, "Yah, we got to service the National  
6 Press and it goes against our limitations there." I don't think  
7 it's anything that you, I mean it's going to be terribly  
8 difficult to enforce anyway. I mean the idea that we are going  
9 to be able to enforce these state-by-state allocations by  
10 repayment is going to be one I think the courts are going to have  
11 difficulty with. So I suppose in convecting that is some of the  
12 census of the difficulties overall about this, but it does seem  
13 to me that you have here a question here whether that goes to the  
14 national campaign, or goes to the state that they are there to  
15 cover on. And I, the only reason that I didn't say anything in  
16 response because I think I said more or less what I just said I  
17 said before, and I think that's the decision you have to make.  
18 But I don't know that there is a further elaboration of that.

19 MCGARRY: Joe Stoltz.

20 STOLTZ: Our position comes out of a more literal reading of the  
21 regulation in 106.2 that says "expenditures which directly relate  
22 to national campaign headquarters need not be allocated, while  
23 goods and services used in a campaign in a state shall be  
24 attributed to that state." It was our feeling that the letter  
25 that went on 2nd of July, the possible easing of that but was  
26 contained therein related to people who are normally assigned to  
27 national campaign headquarters and do travel to a state for a  
28 limited purpose but still relating to the national campaign  
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1 STOLTZ (continuing): headquarters operation and we couldn't make  
2 advance people who are setting up events and services for the  
3 press in a given state fit into that very limited, what we  
4 consider a very limited exception, and so we did not feel we  
5 could accept that particular theory that the Committee put forth.

6 HARRIS: We're off in Never-never Land here anyway because there  
7 is no real distinction between the campaign in Iowa and New  
8 Hampshire and the national campaign. They have tremendous impact  
9 on the national campaign and the National Press goes out and  
10 covers them as part of the national campaign. So we are trying  
11 to draw a line where there isn't one. But I do think the  
12 regulations support Joe more than Charlie. "Expenditures for  
13 staff, media, printing, and other goods and services used in a  
14 campaign in a specific state should be attributed to that state."

15 STEELE: I agree that you are in Never-never Land and it does  
16 seem to me an area to take the very strict constructionist view  
17 about it's clear that you should have to allocate this to the  
18 states is one that the Commission should consider. The question  
19 is used in a campaign, I think in my mind, you're saying in  
20 effect that the costs of handling these, you know Walter Cronkite  
21 Lands, and out of your state limit comes, you know, the bus that  
22 you rent to take him to the hotel. But I do think that is the  
23 question - salary. Forget the, well, but Joe was saying earlier,  
24 something that I had not had thought that it certainly not been  
25 raised at least in my mind but that he was saying that it's  
26 expenses as well. The question that was raised to us was the  
27 question of salary.

28 AIKENS: I, we, are we talking only salary here?  
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1 STEELE: We - the paper only said salary, Joe.

2 STOLTZ: There are expenses, per diems, which appear to have been  
3 done the same way now. They don't make that statement, but the  
4 percentages work out that way.

5 STEELE: Anyway certainly on the paper the only thing you are  
6 dealing with is salary.

7 MCGARRY: Yes, Mr. Reiche.

8 REICHE: Mr. Chairman, I would for the purposes of seeing if we  
9 can't agree I would move that with respect to this alleged  
10 national press exemption, that is alleged in the sense that it  
11 relates to the national campaign, as opposed to being an expense  
12 which is allocable to a given state, I would move that

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1 PARTIAL TRANSCRIPT, EXECUTIVE SESSION OF THE FEDERAL ELECTION  
2 COMMISSION, SEPTEMBER 15, 1981

3 BEGINNING OF TAPE X-3

4 MCGARRY: Yes, Mr. Reiche.

5 REICHE: Mr. Chairman, I would, for the purposes of seeing if we  
6 can't agree, I would move that with respect to this alleged  
7 national press exemption--that is alleged in the sense that it  
8 relates to the national campaign, as opposed to being an expense  
9 which is allocable to a given state, I would move--and I am  
10 confining myself to salaries, that the salaries of personnel who  
11 are advance people and who are assigned to the states and  
12 physically in those states should be allocated to those specific  
13 states and that salaries--and people ministering to the needs of  
14 the national press, whereas the salaries of campaign staffers  
15 ministering to the needs of the national press who are traveling  
16 around with the national press should not be so allocated to any  
17 particular state.

18 THOMSON: Mr. Chairman.

19 MCGARRY: Yes, Governor Thomson.

20 THOMSON: Mr. Chairman, what is the relevance of that motion to  
21 the recommendation on page 17?

22 REICHE: The relevance is that if the motion were adopted,  
23 Governor Thomson, we would not then be considering "C" at the  
24 bottom of page 17 and "D" at the top of page 18. We have to  
25 reach that decision before we can decide--well that will  
26 determine whether we go on to "C" and "D".

27 STEELE: I must admit that as I understood.

28 MCGARRY: Mr. Steele.

29 STEELE: The motion it seemed to me that it made "C" and "D"  
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1 STEELE (continuing): relevant. I gather from your statement  
2 that you think the opposite. I must have misheard the motion,  
3 but I think that-

4 MCGARRY: Well, let's see if we can recap Mr. Reiche's motion.  
5 As I understand it, before I attempt to formally state it, Mr.  
6 Reiche, we are talking about salaries--

7 REICHE: That's correct.

8 MCGARRY: And with reference to those salaries we are talking  
9 about the salaries of advance personnel and campaign staff  
10 personnel who are within a state and their activity is confined  
11 to that state even though it is dealing with the national press,  
12 would be allocated to that state.

13 REICHE: That's correct.

14 MCGARRY: And, on the other hand, national staff personnel who  
15 were traveling with the press, national press-

16 REICHE: The salaries of any members of the campaign staff who  
17 are traveling with the national press even though they render  
18 services ministering to the needs of the national press within a  
19 given state their salaries would not be allocated to that state.

20 MCGARRY: What's the last part of it? That even though--

21 REICHE: That even though they actually render services in trying  
22 to minister to the needs of the national press in a given state,  
23 their salaries would not be allocated to that state.

24 MCGARRY: So Commissioner Reiche moves that the salaries of  
25 advance personnel and campaign staff personnel who are in a state  
26 even though they are ministering to the needs and requirements of  
27 the national press in relation to the campaign will be---those  
28 salaries will be allocated to that particular state. And--Mr.

1 MCGARRY (continuing): Harris.

2 HARRIS: I take it this is somewhat like the test that Audit  
3 would use. But their test is whether the person who is  
4 ministering to the national press is in the state for more than  
5 twenty eight hours--twenty-four hours. If he is there for more  
6 than 24-hours he gets charged to the state.

7 STOLTZ: That's the rule of thumb we have applied.

8 HARRIS: This would require you to ascertain whether the national  
9 headquarters personnel is on a permanent basis assigned to the  
10 national press.

11 STOLTZ: And I am not certain that that is going to be possible.

12 HARRIS: How many people are we talking about? Do you have even  
13 a rough notion?

14 STOLTZ: Ray may have some numbers.

15 LISI: I don't have the total number of advance staff,  
16 individuals with me, here.

17 MCGARRY: To finish that motion off, Madam Secretary, that the  
18 last part of it is that the salaries of campaign staff traveling  
19 with the national press even though their work may involve being  
20 present in a particular state, that they are part of the traveling  
21 entourage of the national press, their salaries will be  
22 allocated--

23 REICHE: Will not be allocated.

24 MCGARRY: Will not be allocated to the state.

25 TIERNAN: Mr. Chairman.

26 MCGARRY: Yes, Mr. Tiernan.

27 TIERNAN: Even if that person is in New Hampshire for five days?

28 REICHE: Yes, it would not be because--  
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1 TIERNAN: But that's not the way you have been doing it, is it?

2 REICHE: No.

3 LISI: We have not made a distinction because we don't know which  
4 advance staff people were traveling with the candidate or those  
5 that were in the state. Our indications were that these advance  
6 staff people, this is from the Committee now, were in the state  
7 prior to the candidate getting there; so it would indicate to us  
8 that they did not travel with the national press. And those are  
9 the individuals that we used, or whose salaries that we allocated  
10 and they were based on the Committee's payroll registers and they  
11 were designated as Advance Staff Personnel.

12 MCGARRY: It would appear that the Audit Division was having a  
13 great deal of difficulty in trying to sort this whole business  
14 out. I can just see more problems being created for the Audit  
15 Division and for the Commission, it will certainly be confounding  
16 and perplexing to the campaign, I just see it as really a  
17 problem, Mr. Reiche. I realize the spirit of your motion. I am  
18 just trying to analyze the practical application of it, and I  
19 just see problems all the way through for everybody. Mr. Stoltz.

20 STOLTZ: The distinction I think that we are trying to draw is  
21 not unrelated to the July 2nd letter that went out. And it may  
22 be important to keep in mind that these allocations that the  
23 Committee did were done prior to the issuance of that letter; so  
24 it may be better to allow the Committee, if they wish to do so,  
25 to give us a list of people that we may have allocated who they  
26 feel would fall under that July 2nd exemption. The one  
27 complication that we have here is that everybody in the campaign,  
28 regardless of whether they ever saw Washington Headquarters were  
29 paid from

1 STOLTZ (continuing): national headquarters, for ease of payroll  
2 processing; so that distinction doesn't even give us any  
3 assistance here.

4 MCGARRY: Thank you, Joe. Mr. Reiche.

5 REICHE: The problem as I see it and the reason why I made my  
6 motion was the fact that on the one hand you are confronted with  
7 what I think may have been somewhat workable, Joe, a solution to  
8 everything, the twenty-four hour rule, if you want to call it  
9 that, I think the motion I made contains greater equity, but what  
10 you are saying is practically speaking it's exceedingly difficult  
11 to administer. And, well, we are between a rock and a hard place  
12 on this one. If it is too difficult to administer, fine, I will  
13 withdraw my motion, but I was trying to reach some sort of  
14 accommodation because I do not believe that you can proceed using  
15 the allocation method suggested by the Committee. I just don't  
16 think that's fair. The question is what one shall we use? Yours  
17 has one virtue above all others and that is it has been applied,  
18 apparently to other committees; so in terms of consistency that  
19 would commend it, but if there is not support for going the other  
20 direction, Mr. Chairman, I will withdraw my motion.

21 MCGARRY: I just see the practical application, oh I realize the  
22 spirit of it, I just see it would be getting into checking out  
23 what time they checked out, whether they slept in the room, and  
24 we may get into scandalous matters, I don't know--

25 HARRIS: Oh, not with the Kennedy Campaign!

26 AIKENS: Mr. Chairman.

27 MCGARRY: Mrs. Aikens.

28 AIKENS: Perhaps the difficult part of this motion is the second  
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1 AIKENS (continuing): part saying that staff traveling with the  
2 press should not be allocated and if we only approved the first  
3 part saying that we would not accept allocation of advance  
4 personnel assigned to and physically in particular states and we  
5 would say that that must be allocated to those states. We would  
6 then be saying to the Committee, "If you can prove that any of  
7 these people should not be allocated, go ahead and prove it,"  
8 which is what we have done in every other audit that I can  
9 remember, the burden of proof to override the auditor's position  
10 has been put on the Committee, not on the Commission and I think  
11 that since this is the way we have proceeded that this might be  
12 the way we should continue to proceed. We seem in this Audit to  
13 be reversing that in other instances and I would hope that in  
14 this case we might go back to that policy. I will, therefore,  
15 offer a substitute to Commissioner Reiche's motion in that the  
16 salaries of the advance personnel assigned to and physically in a  
17 particular state must be allocated to that state.

18 MCGARRY: Commissioner Aikens moves as a substitute motion to the  
19 Reiche motion that the salaries of advance personnel and campaign  
20 personnel assigned to and physically in, present, in the state in  
21 question will be allocated to that state. Commissioner Harris.

22 HARRIS: What is meant by assigned to? Is it permanently  
23 assigned to, or assigned for how-for what length or period.

24 AIKENS: Assigned to at any time. Providing goods and services  
25 within that state. That language was what was in the  
26 Commissioner Reiche's original motion.

27 HARRIS: I don't know what it means. Well, you have got to have  
28 some definition of assigned to. Audit has one if you are there  
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1 HARRIS (continuing): for more than 24-hours, you would be  
2 assigned to.

3 AIKENS: That would suffice as far as I am concerned. That would  
4 suffice for my definition.

5 MCGARRY: Does that satisfy you, Mr. Harris, that same definition  
6 will apply and be a part of that necessary inference with the  
7 consent of the author, Mrs. Aikens.

8 AIKENS: Yes.

9 MCGARRY: So, if there is no further discussion, there appearing  
10 to be none, and the Chair is--doesn't want it to apply without  
11 Mr. Harris being involved in it, if there is no further  
12 discussion, then the vote will occur on the Aikens' substitute  
13 motion to the Reiche main motion, and the vote will occur on the  
14 motion. All in favor say aye. (A voice vote was heard.) All  
15 opposed?

16 HARRIS: I'll abstain.

17 MCGARRY: It appears to the Chair, Commissioner Tiernan.

18 TIERNAN: I voted for it.

19 MCGARRY: Yes. It appears to the Chair that the vote is five to  
20 zero with Commissioner Harris abstaining.

21 THOMSON: Mr. Chairman.

22 MCGARRY: Yes, Governor. Governor Thomson.

23 THOMSON: I have a question on the third paragraph on page 17.

24 11 C.F.R. §106.2, "Expenditures for administrative staff and  
25 overhead costs directly related to the national campaign  
26 headquarters need not be allocated to states, while expenditures  
27 for staff, media, printing, and other services used in a campaign  
28 in a specific state shall be attributed to that state." Isn't  
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1 THOMSON (continuing): that exactly what the motion was that you  
2 just voted on?

3 MCGARRY: The substitute motion?

4 THOMSON: The substitute motion, that's right.

5 AIKENS: Yes, that's right. The Audit position on this one.

6 THOMSON: So we are agreeing with 11 C.F.R. §106.2?

7 MCGARRY: Mr. Steele.

8 STEELE: I would say that you're agreeing with the Auditor's  
9 interpretation of that. I think that the question is whether you  
10 consider the salaries of people who are dealing with that to fall  
11 within it.

12 MCGARRY: Well, then the vote will now occur on the main motion.

13 HARRIS: What main motion? I think Mr. Reiche withdrew it.

14 MCGARRY: As amended.

15 REICHE: It has been withdrawn.

16 STEELE: It should have been a substitute.

17 MCGARRY: I want to be certainly clear because we never formally  
18 withdrew it. I know the proffer was made by Mr. Reiche, but the  
19 Chair, Mr. Reiche was posing it in the form of a question not  
20 really a definitive specific proffer to withdraw his motion and  
21 it was not followed through. I think perhaps we can clarify the  
22 record better and have a vote on--and Mrs. Aikens offered it as a  
23 substitute and the Chair presented it as a substitute. I am just  
24 thinking of our record which is recorded, Madam Secretary, and I  
25 was reinforced by the wrinkling of your brow and was ready to  
26 pass on because you have the same concern that I did.

27 REICHE: Mr. Chairman.

28 MCGARRY: Mr. Reiche.  
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1 REICHE: In checking the record I think you'll find that the  
2 first time it was a proffer when I made it, but the second time I  
3 did say, "will withdraw." And so that I really did withdraw it  
4 on that second occasion. Whatever the Chairman says is fine with  
5 me.

6 MCGARRY: The General Counsel is going to clarify it for us.

7 STEELE: It seems to - I was raising with the Chairman the  
8 question you have then to vote overall on recommendation. It  
9 seems to me the effect of what the Commission has done just now is  
10 to say that Recommendations "C" and "D" are irrelevant. You are  
11 not going to need that material because you have decided it  
12 doesn't matter and whatever they show, it is not going to be  
13 relevant. It seems to me also you need to have a final vote on  
14 the recommendation as (inaudible).

15 MCGARRY: So if there is no objection, the General Counsel is in  
16 effect, and correct me if I am wrong, stating that that makes it  
17 clear whether when we are voting on the main motion, I mean which  
18 is now going to be the appropriate--

19 STEELE: I always hesitate to say anything is clear, but I think  
20 we should clarify the fact that "C" and "D" are therefore  
21 (inaudible).

22 MCGARRY: So if there is no further--

23 THOMSON: Do the Auditors, excuse me--

24 MCGARRY: Yes, Governor.

25 THOMSON: Do the Auditors agree with the General Counsel that "C"  
26 and "D" are irrelevant?

27 MCGARRY: Joe Stoltz.

28 STOLTZ: That the expenses for these people that were charged off  
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1 STOLTZ (continuing): at the same percentage would then be  
2 covered under "B" and some indication of how they arrived at  
3 that. Would come under that and then I think we are fine.

4 MCGARRY: Yes, thank you, for that clarification and supporting  
5 statement, Joe. If there is no further discussion, then the vote  
6 will occur on that motion. All in favor say--yes, Madam  
7 Secretary?

8 EMMONS: Mr. Chairman, I do not believe you have a motion on the  
9 Recommendation. All you have is a motion to--that Commissioner  
10 Aikens presented which has been adopted, but in fact, you do not  
11 have a motion on the floor.

12 MCGARRY: Mr. Harris.

13 HARRIS: I don't think we have ever passed Recommendation "A".

14 STEELE: No, you have not. "A" nor "B". I think the motion  
15 affects "B", but you have not voted on "A" which raises the issue  
16 we have discussed before and that Commissioner Thomson was  
17 addressing earlier; so I think you have to have a motion on the  
18 Recommendations now. I just thought the effect of the last  
19 motion would be that "C" and "D" there was no longer needed a  
20 vote on those perhaps you would just vote them down. The effect  
21 of the last motion was to make "C" and "D" unnecessary because  
22 that documentation was irrelevant and I understand Joe to agree?

23 MCGARRY: Yes, Commissioner Aikens is reserving recognition.  
24 Commissioner Aikens.

25 AIKENS: Thank you, Mr. Chairman. I want to just clarify what  
26 Joe has just said. In Section "B", would you be asking for  
27 expenses relating to these field people or not? They would-if  
28 they were provided, we would exclude them, is that correct?  
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1 STOLTZ: If they were included among the supposing reimbursed  
2 amounts that they received from the press we would have to then  
3 look at that and decide whether or not there is some relationship  
4 involved that would support those being included among items  
5 reimbursed.

6 AIKENS: On the percentage.

7 STOLTZ: On the percentage or some basis for which they- As it  
8 stands now, it appears to us that the justification for including  
9 the expenses in a lot of these cases was the salary and that--

10 AIKENS: So unless they can provide some other justification for  
11 the exclusion---

12 STOLTZ: We would have to exclude them.

13 AIKENS: You would have to exclude them? Thank you, I just  
14 wished to make that clear.

15 MCGARRY: Thank you, Commissioner Aikens. Do you want to offer,  
16 Mr. Harris?

17 HARRIS: Are we left--well, you are saying that we would need to  
18 keep "B" then?

19 STOLTZ: Yes.

20 HARRIS: Do we want to keep this bit about whether the national  
21 press were in the area?

22 STOLTZ: Well, there had been some discussion earlier about  
23 trying to limit that, narrow it somewhat, to say, "were at the  
24 time in the area covering the campaign," I believe, was  
25 Commissioner Reiche's suggestion.

26 MCGARRY: Marsha Gentner.

27 GENTNER: I think that to clear up the confusion here a little  
28 bit, we are now left with the first issue we talked about which  
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1 GENTNER (continuing) is not the exempt category issue, but the  
2 question of whether we have used this reimbursement theory based  
3 on the air fare received and with respect to that, "A" and "B"  
4 are directed towards that to get the information that the  
5 Auditors seek on that point, the two remaining issues being  
6 whether you want to do it on a per trip basis or whether you will  
7 accept an aggregate basis. The other issue is whether the  
8 documentation requested in "B" is a minimum or whether that will  
9 suffice.

10 MCGARRY: So in light of that, what would be appropriate by way  
11 of a motion now?

12 GENTNER: Well, we would recommend that you adopt the  
13 recommendation as stated except to amend it to comport with the  
14 language previously adopted and to delete the words "by trip" in  
15 recommendation "A", and in "B" delete the words, "at a minimum."

16 STEELE: That being the question. That's what we are  
17 recommending to you. When you ask procedurally, it seems to me  
18 that you have to have a motion to approve or to approve as we  
19 would suggest "A" and/or "B" so you have both of those questions  
20 involved. Marsha didn't want to say that she thought you should  
21 move these today, because we think you should look at the per-trip  
22 issue but that's the question it seems to me.

23 MCGARRY: Mr. Harris.

24 HARRIS: Well, if you eliminated the per trip you presumably  
25 would do it on a national basis. That seems to me to get you  
26 into all kinds of complicated computations, and I don't see the  
27 basis of it anyway. It seems to me that it ought to be done by  
28 state. The only areas we are concerned with are Iowa and New  
29 Hampshire, and I don't see--it seems to me if we are going to  
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1 HARRIS (continuing): allow any excess over-billings to go in as  
2 a deduction then it goes in as a deduction for Iowa and New  
3 Hampshire and that it ought to be an excess realized in those  
4 states. If they got an excess in some other state, I don't see  
5 what it has got to do with it. Why shouldn't it be by state  
6 instead of by trip?

7 STOLTZ: It can be done by state. It was our feeling that the  
8 more specific it got, then the more concrete the numbers. And it  
9 could be done by trip and it could be done by state, or as  
10 Counsel said it could be done by campaign wide. But we feel the  
11 more specific we get the more solid the figures you have.

12 MCGARRY: Commissioner Aikens.

13 AIKENS: Could the recommendation be "billed to the national  
14 press by trip or by state?"

15 STOLTZ: You could do it that way.

16 AIKENS: Or state by state?

17 STOLTZ: It could be done that way, very easily. Regardless of  
18 which way they do it, it seems like they are going to have to  
19 start with the trips and work up from there.

20 AIKENS: I would think so, and they must have the records from  
21 the trips. I mean they have got to have them somewhere unless  
22 they have thrown them away. I would think they have them  
23 somewhere.

24 MCGARRY: Governor Thomson.

25 AIKENS: We could ask for them by trip and then if they can't  
26 provide it, say, well do you have them by state.

27 THOMSON: Mr. Chairman. I'll move approval of recommendations  
28 "A" and "B" on page 17.

1 MCGARRY: Governor Thomson moves approval of sections "A" and "B"  
2 contained in the Audit staff recommendation contained at the  
3 bottom of page 17. Mr. Tiernan.

4 TIERNAN: Joe, earlier you said that you had some indication that  
5 the campaign had chartered a plane and used that for the  
6 candidate. Did they also used it for the press?

7 STOLTZ: The charter arrangements varied as the campaign  
8 progressed and apparently in relationship to the financial  
9 condition they found themselves in. Originally they had  
10 chartered a plane which was constantly at their disposal. Later  
11 on, they started chartering planes for specific periods of time  
12 for individual trips and then they tried to get away from using  
13 charter aircraft altogether later--much later in the campaign so  
14 we don't know exactly what the cut-off dates were.

15 TIERNAN: Could it be possible that they billed AP, say, on the  
16 basis of what they charged--that whenever the candidate went out,  
17 they could fly with the candidate on the plane for a monthly  
18 charge?

19 STOLTZ: I don't recall seeing any theory like that. We do not  
20 have any indication of that. That is not to say that it couldn't  
21 have been done, however. We had--

22 TIERNAN: Is there any indication that they would bill AP,  
23 whoever, the New York Times or--

24 STOLTZ: Oh, they did bill folks for a trip. As best we know,  
25 there was some information submitted as part of a compliance  
26 action awhile back and we did get a pretty good breakdown on  
27 about four of the trips and they seemed to be indicating billing  
28 by trip and they had some figures on--at least for those four  
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1 STOLTZ (continuing): how much they had recovered and what the  
2 costs were and so forth.

3 MCGARRY: Mr. Tiernan.

4 TIERNAN: Mr. Chairman, I would offer an amendment to  
5 Commissioner Thomson's motion that in "B" second sentence, to  
6 strike "at a minimum." Just to say that "this documentation  
7 should indicate" with the rest of the sentence in it.

8 MCGARRY: Would you restate that?

9 TIERNAN: Just strike the three words "at a minimum."

10 MCGARRY: The recommendation at the bottom of page 17 and we are  
11 talking about "B", paragraph "B" as in boy, and the second  
12 sentence

13 TIERNAN: Yes, beginning "at a minimum," my motion is to strike  
14 "at a minimum," those three words.

15 MCGARRY: Is that sufficiently clear, Madam Secretary, paragraph  
16 "B" that the recommendation contained at the bottom of page 17,  
17 Commissioner Tiernan is moving that the three words beginning at  
18 the second sentence be deleted. If there is--and that is a  
19 substitute motion--

20 THOMSON: Mr. Chairman. Doesn't that change the whole meaning of  
21 the statement? The statement says, "at a minimum" which implies  
22 that there ought to be a lot more, but under the substitute, all  
23 we are asking is that the expenses charged, that they were in the  
24 area. It is a little motion that he hopes we will be big enough  
25 to vote for, but I think it changes the whole meaning of the--

26 MCGARRY: Well, this is on the, the vote will occur now on the  
27 Tiernan substitute to the Thomson motion.

28 TIERNAN: Well, I didn't make it in the form of a substitute.  
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1 MCGARRY: You did not. You offered an amendment?

2 TIERNAN: I made a motion in the form of an amendment to the  
3 Thomson motion--to strike out three words.

4 MCGARRY: And Mr. Tiernan's amendment, Madam Secretary, is  
5 sufficiently clear, paragraph two, the first three words of the  
6 second sentence would be deleted. If there is no further  
7 discussion, the vote will occur on the motion. All in favor say  
8 aye. (A voice vote was heard.) All opposed say no. (A voice  
9 voice was heard.) It appears to the Chair that the vote fails to  
10 carry by a vote of two to three with Commissioners Harris and  
11 Tiernan voting for and Commissioners Reiche, Aikens and Thomson  
12 voting against and Commissioner McGarry abstaining. Mr. Harris.

13 HARRIS: I would move to amend the motion as respects paragraph  
14 "A" by changing the word "trip" to "states." Now, it seems to me  
15 that if the Kennedy campaign clearly didn't make money out of the  
16 press in New Hampshire or Iowa but did not make money out of them  
17 in some later date in other states that that shouldn't go to  
18 reduce their expenditures in Iowa or New Hampshire. I don't  
19 understand any theory on which it would reduce their expenditures  
20 in those two states. It seems to me that those are the only two  
21 states that we need be concerned with.

22 MCGARRY: Mr. Reiche.

23 REICHE: The concern I have is not limited just to this Audit  
24 Report because anybody can pick up an Audit Report at any time  
25 and use it as precedent for you know, some other Audit Report.  
26 But over and above that, I have some confusion as to what you  
27 mean when you say "by state." I mean I realize that you are  
28 getting at the allocated to the individual states, but how?

1 REICHE (continuing): Whereas if you say "by trip," I think that  
2 just will break down into a state-by-state allocation. I'm not  
3 suggesting--I don't think either word is perfect, but I would  
4 favor "trip" as opposed to "state." I think the state is a  
5 little ambiguous.

6 HARRIS: Well, maybe we can, maybe Joe can tell us how he would  
7 do it under the two words.

8 MCGARRY: Yeah. Joe Stoltz.

9 STOLTZ: Well, under the "per state" set up, I think what you  
10 would do is you would take all of the charters or whatever form  
11 of transportation the Committee may pay for, for trips to Iowa or  
12 New Hampshire, add up their costs, look at the billings they sent  
13 out to the press for all of those trips combined. Find out what  
14 they received as reimbursements, determine if for all the trips  
15 to that state they received a greater reimbursement than the  
16 share of the costs that is attributable to the press and if there  
17 is a surplus, then start off-setting what is commonly termed as  
18 "ground costs" off against that surplus state-wide. Regardless  
19 of whether they made money on one trip and lost on another. But  
20 at least within the state and that, therefore, no activity in  
21 another state would impact on the limitations in either one of  
22 the two states that are a problem.

23 HARRIS: And what would you do on that "by trip basis"?

24 STOLTZ: By trip you would look at it for each trip. You would  
25 see the ground costs for a given trip as best they could identify  
26 them, the cost that the campaign incurred for a given trip, what  
27 they were reimbursed for that trip. If a surplus was received  
28 for that trip alone and if so, then that could be off-set against  
29 ground costs relating to only that trip and to no other. So if  
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1 STOLTZ (continuing): they lost on one trip and made a profit on  
2 another, they couldn't net the two.

3 HARRIS: I think I have made the motion I intended to.

4 MCGARRY: Yes, Madam Secretary, do you have the motion or would  
5 you like it restated?

6 EMMONS: Yes, sir, Commissioner Harris has moved to amend the  
7 motion before the Commission so that in Recommendation, Part A of  
8 the Recommendation, the word "trip" would be changed to "state."

9 MCGARRY: Thank you very much. If there is no further  
10 discussion, the vote will occur on the Harris motion and there  
11 appearing to be none, the vote will occur on the motion. All in  
12 favor say aye. (A voice vote was heard.) All opposed? (A voice  
13 vote was heard). It appears to the Chair that the vote failed to  
14 carry by a vote of three to two with Commissioners Harris and  
15 Tiernan voting for and Commissioners Reiche, Aikens and Thomson  
16 voting against; Mr. McGarry abstaining.

17 MCGARRY: Commissioner.

18 AIKENS: Now do we vote the Thomson motion?

19 MCGARRY: Yes. If there is no further discussion, the vote will  
20 now occur on the Thomson motion. All in favor say aye. (A voice  
21 vote was heard.) All opposed? (A voice vote was heard.) It  
22 appears to the Chair that the vote fails to carry by a vote of  
23 three to two with Commissioners Reiche, Aikens, Thomson voting  
24 for, and Commissioners Harris and Tiernan voting against.

25 Commissioner McGarry abstaining. Commissioner Tiernan.

26 TIERNAN: I was not seeking recognition, I just had an itch.  
27 Sorry about that.

28 MCGARRY: Ray, why don't you recommend the direction we should  
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1 MCGARRY (continuing): take from here?

2 LISI: Well, I think we still have to have a vote on this  
3 Recommendation. Would you want to go on to another finding. The  
4 next finding, unfortunately, refers right back to this finding  
5 and the repayment section.

6 TIERNAN: So we have to come up with some conclusion of this. I  
7 mean that something has to be worked out.

8 MCGARRY: It would appear that that would be highly desirable in  
9 view of what we have remaining--Mr. Reiche.

10 REICHE: Mr. Chairman. I would like to move that we reconsider  
11 the vote that we just, now wait a minute I'm not sure whether or  
12 not I can make the motion. This is one of those situations. Yes,  
13 yes, I am. That we reconsider the vote that we just took. And I  
14 refer specifically to--not to the vote on Governor Thomson's  
15 motion, but rather the vote on the motion by Commissioner Harris.

16 TIERNAN: Now wait a minute, I don't think you can on that.

17 REICHE: Now wait on that, I'm not on the right--O.K. Well, I'm  
18 sorry, I'm on the wrong side to make that motion with respect to  
19 Governor Harris'--Commissioner Harris'.

20 MCGARRY: The vote to reconsider would be appropriate if you are  
21 on the right side of the motion you are seeking to--

22 REICHE: Yes.

23 MCGARRY: To reconsider. Specifically, in this case, the Harris  
24 Amendment which you voted against.

25 HARRIS: You voted against it.

26 REICHE: I was on the prevailing side.

27 HARRIS: Except it wasn't prevailing.

28 MCGARRY: Mr. Harris could move.  
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1 TIERNAN: You mean make the motion again?

2 MCGARRY: No.

3 TIERNAN: Mr. Chairman.

4 MCGARRY: Commissioner Tiernan.

5 TIERNAN: In order to extricate ourselves from this parliamentary  
6 quagmire, I would move that we approve the Audit staff  
7 recommendation, A, the first paragraph A, with the amendment that  
8 "trip" be changed to "state," and the balance of B. Is that,  
9 Commissioner Reiche, what you were seeking to do?

10 REICHE: Yes, it is.

11 MCGARRY: What you are saying is--

12 TIERNAN: I make a motion that we approve the recommendation of  
13 the staff, by the Audit Staff, with the substitution of the word  
14 "state" for "trip" in A. I understood that's what Commissioner  
15 Reiche wanted to do.

16 MCGARRY: So, Commissioner Tiernan moves approval of the Audit  
17 staff recommendation with the one amendment to paragraph A and  
18 that is specifically on the first line in paragraph A that the  
19 word "trip" be substituted for the word "state." If there is no  
20 further discussion, the vote will occur on that motion. All in  
21 favor say aye. (A voice vote was heard.) All opposed? It  
22 appears to the Chair that the vote is six to zero, Madam  
23 Secretary, and we go now to Ray Lisi.

24 LISI: The next finding appears on page 25, and we are going into  
25 the Title 26 Section of the report.

26 TIERNAN: I'm sorry, Mr. Chairman.

27 MCGARRY: Yes, Mr. Tiernan.

28 TIERNAN: Might it not be best for the record that we not adopt  
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1 TIERNAN (continuing): Recommendation C and D by the Audit Staff?

2 MCGARRY: I think it would help clarify matters completely, and I  
3 think there is nothing to be lost.

4 TIERNAN: I would move that the Commission not adopt--

5 MCGARRY: It would be very helpful. Commissioner Tiernan, and we  
6 are talking about paragraphs C and D--

7 TIERNAN: C and D, page 17 and page 18.

8 MCGARRY: Commissioner Tiernan moves with reference to the  
9 Recommendation on the bottom of page 17 that we not adopt  
10 paragraphs C and D, Madam Secretary, as in Charles and David. If  
11 there is no further discussion, the vote will occur on that  
12 motion. All in favor say aye. (A voice vote was heard.) All  
13 opposed? It appears to the Chair that the vote is six to zero.  
14 Ray Lisi, thank you, Mr. Tiernan.

15 LISI: Beginning on the page of, oh, I'm sorry the bottom of--the  
16 middle of page 25, this is "Apparent Non-Qualified Campaign  
17 Expenses" at the bottom of the page, "Expenditures in Excess of  
18 State Limitations." This finding relates specifically right back  
19 to the finding that we just discussed concerning the expenditures  
20 in excess of the state limitations in New Hampshire and Iowa.  
21 The middle of page 26 is a recap of the expenditures as allocated  
22 by the Audit staff based on the review of the documentation as it  
23 was presented by the Committee, and we are showing an amount in  
24 excess of the limitation of \$91,451.07 in New Hampshire and  
25 \$146,575.32 in Iowa. The recommendation in this finding is that  
26 we are recommending these expenditures totalling \$238,026.39 be  
27 considered non-qualified campaign expenses and the value be  
28 repaid in full to the U.S. Treasury within 90 days of the receipt  
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1 LISI (continuing): of this report. I might point out that the  
2 second part of this finding has already been approved by the  
3 Commission concerning the parking tickets and at the bottom of  
4 page 27, we do recite the regulations 9038.2 noting that the  
5 Committee still has the 30-day period within which to supply us  
6 information which would cause us to change this figure.

7 MCGARRY: Thank you very much, Mr. Reiche.

8 REICHE: I would like to ask what is the purport of the  
9 recommendation that the Commission approved, I understand by a  
10 five-nothing vote, which now appears on page 25 in light of the  
11 paper prepared by Counsel and which also appears on today's  
12 Agenda because the recommendation here says that until such time  
13 as the Commission approves, or proposes permissible alternatives  
14 as to the disposition or liquidation of the artwork, no further  
15 action can be taken. Fine, I understand that. But I also  
16 understand the paper which has been prepared by Counsel to be at  
17 least partially in response to the need for the Commission to  
18 take some action in that area. So if Counsel can enlighten me, I  
19 would appreciate it.

20 MCGARRY: Mr. Steele.

21 STEELE: I think it does affect it in the sense that that issue  
22 affects your NOCO statement, but perhaps I'm wrong that if  
23 (inaudible) that you're left with the NOCO being undecided  
24 because you still have yet to decide what you are going to do.

25 REICHE: Yes. That's right.

26 STOLTZ: Depending upon the valuation applied to that artwork,  
27 there could be a determination that the Committee had received  
28 matching fund payments in excess of their entitlement. But until  
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1 STOLTZ (continuing): we have a valuation and until the  
2 permissibility of various methods of disposition are considered,  
3 we noted that we were not in a position to draw the conclusion.

4 REICHE: But the reason, Mr. Chairman, that I raise it, instead  
5 of going lickety-clip ahead to the end here, I think we should  
6 discuss that first. Because it does appear to me that the  
7 memorandum prepared by our General Counsel dated August 25, 1981  
8 and to which two Commissioners objected, that we should consider  
9 that first and its potential impact. It may have none at all, but  
10 at least a potential impact on the Commission's prior action with  
11 respect to the recommendation appearing in the middle of page 25.

12 STEELE: You'd certainly have to caveat all of the stuff on 26  
13 and 27.

14 REICHE: You sure would, Charlie. No question.

15 MCGARRY: Well, so your recommendation, Commissioner, would be  
16 specifically--

17 REICHE: I would like to see us take that up first, which means  
18 taking up the memoranda prepared for us by Counsel. .

19 MCGARRY: Well, then if there is no objection to the Reiche  
20 recommendation and proposal, and the Chair hearing none, we will  
21 proceed in that fashion. Is that sufficiently clear, Ray Lisi?

22 LISI: Yes.

23 MCGARRY: That would be the sense of the Commission at this time.  
24 Mr. Steele, are you going to--?

25 STEELE: Well, I don't quite know what the pleasure of the  
26 Commission is. I would be glad to go back to the memorandum which  
27 has been around. There are objections to it. I think that the  
28 bottom line of the memorandum is that in valuing these artworks,  
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1 STEELE (continuing): we went through this two weeks ago, but in  
2 valuing these artworks that we think the position the Commission  
3 has taken is such that you have to consider them, any sale of  
4 them as subject to the contribution limitations. You would  
5 therefore have to deal with them as individual works and  
6 therefore, under your own regulation the definition of a capital  
7 asset says anything over \$500, if it's--if the individual artwork  
8 is valued over \$500 it should be included in the capital assets,  
9 if it's not, it should not. And that is the basic recommendation  
10 of the memorandum. That relates, of course, to the question of  
11 how--much-how you value that for the NOCO purposes?

12 MCGARRY: Well, Mr. Josefiak.

13 JOSEFIAK: Charlie. Instead of the individual piece of art being  
14 considered separately, wouldn't it be more logical to consider  
15 the series? Like if you have a series of Wyeth prints, I'm  
16 making the analogy of typewriters--if you had nine typewriters,  
17 would you consider the value of the nine typewriters versus one  
18 typewriter. And would you consider the series of prints as the  
19 asset rather than the individual print?

20 STEELE: Well, I , I, you know--

21 JOSEFIAK: If it is considered a capital asset to begin with.

22 STEELE: I'm--

23 MCGARRY: Mr. Steele.

24 STEELE: There is that preliminary question, certainly. It seems  
25 to me that you are in a situation where in any evaluation of  
26 this, the number of prints is very relevant and that in effect  
27 that you have a valuation of these on a print-by-print basis in  
28 any series the print-by-print basis, is dependent upon the  
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1 STEELE (continuing): individual sale, that really is the  
2 question, you have a series of prints, each of one, which one is  
3 distinguishable, an individual item, now, which you know in  
4 artwork transactions, you are not going to sell fifty of them,  
5 you are going to sell one of them.

6 JOSEFIAR: But isn't it the value of the print dependent upon how  
7 many are in the series?

8 STEELE: The valuation is of the individual prints.

9 JOSEFIAR: Versus--if you have a thousand prints versus two  
10 fifty.

11 STEELE: It undoubtedly affects value, but it's not--you don't,  
12 therefore, in my mind where you have to sell them individually,  
13 say that--that's a decision that's made when you print them  
14 perhaps--the the limitation that an artist can put on them.

15 JOSEFIAR: But what would you do in the case of the typewriters?  
16 If you had nine typewriters and they were one hundred dollars  
17 apiece, would you look at them as below the \$500 level, or since  
18 say we had nine of them at \$100 apiece, that's \$900 and  
19 therefore, you do have a capital asset.

20 STEELE: I would think that you would not. You know, I mean, you  
21 know one typewriter might be broken, the other one might be in  
22 perfect working condition, you would--you might value them in a  
23 lot, but basically I think that, you know if you start selling  
24 things you are going to sell them individually.

25 JOSEFIAR: I thought in the past the Commission has, in fact,  
26 treated them as, the nine together, as one, rather than  
27 individual typewriters.

28 STEELE: I think the Commission has taken the opposite tack, but  
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1 STEELE (continuing): I could be corrected on that. I would  
2 certainly urge it, however.

3 STOLTZ: That's correct. We have done it by item. And the by  
4 item evaluation was done that way to avoid having to aggregate  
5 possibly hundreds of small valued items to try to come up with  
6 this type of valuation. You know, if the Committee has 200 in-  
7 boxes at \$2.50 apiece, we don't have to go around counting 200  
8 in-boxes. I guess the problem as we see it, is that we don't  
9 really have an asset category that these fit neatly into. There  
10 are capital assets that are usually considered operating  
11 equipment of the campaign and then there is cash, or cash  
12 equivalent and these don't seem to fit neatly into either one.  
13 So we are going to have to decide how we are going to handle  
14 them.

15 MCGARRY: Mr. Reiche.

16 REICHE: Well, I think the basic question is , how can you  
17 dispose of them? If you can dispose of them only if sold  
18 together with something else, then fine, I think you consider  
19 them as part of a series. But if you can dispose of them by sale  
20 on an individual basis, then I think you have to value them that  
21 way.

22 MCGARRY: Mr. Harris.

23 HARRIS: Well, if we go on the appraisal that they put out, there  
24 aren't very many of these paintings that are going to be over  
25 \$500 even accepting their appraisal. It might make the  
26 difference, though, if the prints had been run off from the  
27 original. If the original is all that is extant, it would  
28 probably come to over \$500. I guess we don't know very much  
29 about what they have in the inventory. The three is--needs a  
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1 HARRIS (continuing): little grammatical work. Maybe the  
2 confusion was put in to make it obscure whether we are talking  
3 about individual pieces or not. But if you adopt Charlie's  
4 statement, it ought to be determined that each individual piece  
5 of artwork valued in excess of \$500 was a capital asset.

6 MCGARRY: Mr. Reiche.

7 REICHE: Do we actually have a run-down in terms of a total on  
8 what the value would be if you go with the series theory as  
9 opposed to the item-by-item theory?

10 STOLTZ: Well, I guess that depends on at what date you want to  
11 make the determination. The number remaining on hand at any  
12 given time tends to vary and for example, at the present time, we  
13 are not sure what is on hand. They used an inventory awhile  
14 back---

15 REICHE: Well, all right, I realize that, but I think there are  
16 two relative dates. The first of these is the date on which they  
17 made the appraisal and the second is the, I think it is December  
18 4th, 1980, if I recall correctly--

19 STOLTZ: No. Then you're--that would be for the General  
20 Election. For the Primary, we are talking August 13th.

21 REICHE: August 13th, that's right, the date of ineligibility,  
22 this is true. But those would be the two dates and--do you have  
23 any run down on either of those dates?

24 LISI: We do have a total amount that the Committee stated they  
25 had on hand on August 13th, 1980.

26 REICHE: Is that the sixty-nine-o-four-or five, something like  
27 that?

28 LISI: Three million, it comes to \$3,008,825, that's in total.  
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1 LISI (continuing): Not based on those--

2 REICHE: Yes, but if you break it down, it makes a tremendous  
3 difference here. You are talking about anything worth under \$500  
4 not counting on the capital asset theory; whereas anything above  
5 does count. Do you have figures on that?

6 MCGARRY: Ray Lisi.

7 LISI: There would be eight prints, or eight series, (inaudible).

8 REICHE: Excuse me, I couldn't hear you.

9 LISI: There would be eight series of prints.

10 REICHE: Yes.

11 LISI: Where the prints would be valued in excess of \$500. And  
12 the total amount on that as of August 13th, was \$928,050. Now  
13 that is the appraised value on those artworks and it's based--  
14 these are not audited figures--it's based on the figures the  
15 Committee gave to us which we have not been able to verify.

16 REICHE: When you say there are eight series, are you assuming  
17 that it would be--or were they assuming that it would be sold on  
18 a series-by-series basis?

19 LISI: I'm assuming that they are selling them on a piece-by-  
20 piece basis. One at a time. That's how they would sell them.

21 REICHE: And yet they acknowledge that the value is \$928,000?

22 LISI: Well, they are giving us a total--this is what their  
23 column a total appraised value remains of that artwork and they  
24 gave us a total number remaining in the appraised value--

25 REICHE: Yes. They give you the basis for arriving at that  
26 conclusion.

27 LISI: At the appraised value? The appraised value would be  
28 based on the brochure.

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1 REICHE: No, no, not the appraised value, at the \$928,000,  
2 because that's considerably under the appraised value.

3 LISI: No, that \$928,000 are figures that we have come up with.

4 REICHE: No.

5 LISI: At least if I understand you.

6 REICHE: No, I'm sorry. All right. They made an appraisal, or  
7 had an appraisal done back at the time of the loans.

8 LISI: That's correct.

9 REICHE: And what was the value of that, I've seen it, but I just  
10 don't have it in front of me now.

11 LISI: Are you referring to one specific work of art or?

12 REICHE: The total value for appraisal purposes where a formal  
13 appraisal was made for the purpose of securing bank loans, what,  
14 do you have a value there, Ray, or not?

15 LISI: Well, it would depend on the loans now, exactly what  
16 amount--

17 REICHE: Well, I am assuming that you could use a piece of  
18 artwork only one at a time to secure a loan and therefore, all I  
19 was asking is that to the extent that appraisals were made in  
20 connection with bank loans, what would the total value of those  
21 appraisals for all bank loans that you know of?

22 LISI: Oh, I see. O.K. that figure--do we have it? I don't  
23 believe we have that figure for total bank loans at this point.

24 REICHE: Do you have any notion of what we are talking about?

25 LISI: Well, we are talking in the millions.

26 REICHE: Yeah, you are talking--

27 LISI: As far as the appraised value.

28 REICHE: But I am still trying to get at the difference between  
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1 REICHE (continuing): going on a series basis as opposed to going  
2 on an individual basis because if, indeed, the individual basis  
3 works out so that, I mean I know they said the bulk of it was  
4 under \$500 per but if you have relatively little value there,  
5 then just in terms of equity it wouldn't make sense to go with  
6 the item-by-item basis you would have to go with something which  
7 was more reflective of the total value.

8 MCGARRY: The Chair calls on Joe Stoltz to answer Mr. Reiche's  
9 question.

10 STOLTZ: Maybe I can shed a little light. Ray, correct me if I  
11 am wrong. But from what we can see, the appraisal used for the  
12 bank loans on any given print or series of prints matches what is  
13 contained on that brochure.

14 LISI: That's correct.

15 STOLTZ: So we are dealing with the same appraisals for the loans  
16 as we have on the brochures. The \$928,000 figure Ray gave you is  
17 the total value of all prints on hand at August 13th with an  
18 individual value of \$500 or greater. Over \$500 per print. Now,  
19 on a series basis, I think any series listed would have a total  
20 value over \$500.

21 REICHE: All right. If that \$928,000 were therefore deemed to be  
22 an asset at that time have you run that through in terms of  
23 calculating the impact it would have had upon any public funds  
24 distributed to the campaign?

25 LISI: That would require us going back into the Committee  
26 records to verify their cash position on August 13th.

27 REICHE: And on subsequent payment dates.

28 LISI: And on subsequent--well, I believe the total amount that  
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1 LISI (continuing): the Committee has received in matching funds  
2 since August 13th is \$513,000 in matching funds have been  
3 certified to the Committee since that date.

4 REICHE: Of course, if I may say so, Mr. Chairman, this is why  
5 for many months now, I have not voted in favor of certifying any  
6 additional funds to them because I did not feel that we knew  
7 where we stood with respect to the valuation of the artwork and  
8 now, I mean, this the morass we are in at the moment. And I know  
9 it's difficult, nigh impossible perhaps to--not impossible, but  
10 it is difficult to ascribe a value as of given dates, but the  
11 basic inequity that disturbs me on this whole matter is that when  
12 it was to the advantage of the campaign that a value be ascribed  
13 to the pieces of artwork, they were first in line to do so, and I  
14 don't blame them, I would have done the same thing were I in  
15 their position, and that's when they needed the bank loans. But  
16 now, what's happening is that we are being told for NOCO purposes  
17 that it is valueless that all sorts of restrictions and so forth.  
18 And I'm sorry, but if you are going to traffic in such things as  
19 pieces of art as a way of underwriting a campaign you must take  
20 the bitter with the sweet and there must be some consistency here  
21 and that's why, and I would appreciate it if it would be included  
22 in the Minutes of today's meeting because I realize at this point  
23 that I cannot be recorded as voting the other way in a meeting  
24 where I was taken sick and couldn't continue but I would  
25 appreciate it if you would record the fact that I express my  
26 strong disagreement with the position apparently adopted by the  
27 Commission on August 26th with respect to this item. I think we  
28 have got to ascribe a value to it and in my view, the only  
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1 REICHE (continuing): question is how do you go about it?

2 MCGARRY: Yes, Mr. Tiernan.

3 TIERNAN: Mr. Chairman, on that point, I think that you cannot  
4 lose sight of the fact that the Committee did request an Advisory  
5 Opinion and the Commission failed to issue one on December 18th,  
6 1980.

7 MCGARRY: I know, Commissioner, so the other--Commissioner  
8 Reiche, so the other Commissioners will understand that if anyone  
9 disagreed I would certainly want to hear it, but you raise this  
10 point about your desire to be recorded as having voted against  
11 this matter at a prior meeting and I pointed out to you that the  
12 Commission adopted a Directive which stated, "Whenever any member  
13 of the Commission who was absent when a vote was taken  
14 subsequently requests consent to be recorded as having voted on  
15 the matter, he or she shall place the reason for his or her  
16 absence on the record and any such request shall be in order only  
17 on the same day on which the vote was taken." I only mention  
18 that because this is the very first time that that was ever--I  
19 know there were very unfortunate circumstances that arose and  
20 required you to leave abruptly, but this is something - this is  
21 the first time it came up since I have been a member of the  
22 Commission and you were gracious enough to accept that and not  
23 bring it up or raise the point, but I point it out to other  
24 Commissioners that I was unaware of it and had to look it up  
25 and--

26 REICHE: That makes two of us.

27 MCGARRY: O.K. Thank you very much. Ray, where are we?

28 LISI: We were discussing the recommendation on the bottom of  
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1 LISI (continuing): page 26 before we went into the artwork  
2 discussion.

3 MCGARRY: Mr. Reiche.

4 REICHE: Yes, but shouldn't we take up the memorandum prepared  
5 for us by General Counsel and there are three recommendations  
6 contained at the end of it and dispose of that because I think  
7 you have to do that before we can get to the items on page 26.

8 MCGARRY: That was certainly the direction we agreed on,  
9 Commissioner and I think it is appropriate. There were  
10 objections. Would you care to hear the objections, Mr. Steele?

11 STEELE: Yes, all I would say is that of course that memorandum  
12 came forward under separate cover but was intended to be part of  
13 the Audit Report and was the analysis underlying the  
14 recommendation over on page 25. I agree, as I said earlier, that  
15 I think that the question of how you arrive at the NOCO does  
16 affect your repayment recommendation so that your 26 and 27  
17 assume a result that that, page 25, but it does seem to me that  
18 you dealt with that in both which is to say in terms of the  
19 memorandum, that a memorandum generated as part of the audit  
20 process, in effect, it's not an Advisory Opinion Request or  
21 anything else. In other words, the purpose of that memorandum  
22 was to put forward an evaluation for purposes of the Audit  
23 Report.

24 MCGARRY: Now, we are talking specifically for the Record of a  
25 memorandum from the General Counsel to the Commission, subject:  
26 "Final Audit Report of the Kennedy for President Committee," is  
27 that correct?

28 STEELE: Yeah. I think that Commissioner Reiche had referenced  
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1 STEELE (continuing): the August 25th and the August 26th  
2 memorandum, "Disposition and Evaluation of Artwork Donated to the  
3 Kennedy for President Committee."

4 MCGARRY: Did we give that an Agenda Document number? It was not  
5 an Agenda number?

6 EMMONS: Yes sir.

7 STEELE: It was given one by Marge when it was objected to.

8 EMMONS: It is labeled.

9 MCGARRY: The title of it is "Disposition and Evaluation of  
10 Artwork Donated to the Kennedy for President Committee." It is  
11 dated August 25, 1981.

12 EMMONS: And it is noted on the Agenda as Document Number  
13 X-81-067.

14 MCGARRY: Thank you, Madam Secretary.

15 STEELE: What I meant to say was that it didn't have an  
16 independent existence, and it was not a self-generated matter.  
17 It doesn't have an independent existence from the consideration,  
18 from the Commission's consideration of the Audit; so I don't  
19 know, the Commission obviously can decide what it wants to do,  
20 but I don't think that it has a reason to be adopted or rejected  
21 except as it affects the Audit.

22 MCGARRY: Well, perhaps at a minimum we should hear from people  
23 who objected to it. Mr. Reiche, do you have a comment?

24 REICHE:  
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You have three recommendations here. The first is that the sale or exchange of each individual piece of artwork by the Committee results in a contribution by the purchaser and is subject to all the prohibitions and limitations of the Act. For reasons which are well known to everybody, I would disagree with that. I do not believe that it is a contribution by the purchaser. I think that we made not just a mistake, but an eggregious mistake when we refused to agree to the Advisory Opinion Request of the Kennedy people on debt settlement. Because even those of you who have, over a period of time disagreed with me on that point, here was a case where there was a valid distinction and to say that a

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1 REICHE (continuing): creditor, who is interested only in getting  
2 his money where a debt is involved, to say that a creditor is  
3 thereby making a contribution to a campaign, to me is pure  
4 nonsense.

5 Number two, determine that the value of the artwork may  
6 be effected by any restrictions on its disposition. I think that  
7 the value of the artwork, I think in this connection, you start  
8 with the Kennedy people's appraisal which they submitted to  
9 various banks in connection with the loan. You start with that  
10 and then you move down to the August 13th, 1980, the date of  
11 ineligibility and you determine if there, and the burden of proof  
12 would be on them, is there any evidence to the effect that the  
13 value has changed between their original appraisal and a value, a  
14 fair market value on the date of ineligibility. Finally with  
15 respect to the third recommendation, that's the one that we have  
16 been talking about all that individual pieces valued in excess of  
17 \$500 would be capital assets, and would thereby reduce the  
18 Committee's NOCO. If you are talking about, and check me, Ray,  
19 but if you are talking reducing the value here, to a point where  
20 it is negligible, then I could not go along with that. \$928,000  
21 is certainly not negligible. That I would like to consider  
22 somewhat. I leaned in the direction of the item-by-item, but I  
23 cannot, if the application of that theory would mean that you are  
24 talking about relatively little value here; then I could not go  
25 along with an item-by-item appraisal. We have to take it by lot.  
26 Because it just would not be fair where they have utilized the  
27 property to advantage in obtaining bank loans it would not be  
28 fair for NOCO purposes to permit them to ascribe no value at all.  
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1 REICHE (continuing): And I think the public reverberations to  
2 something like this would be significant. But that's the basis  
3 of my objection, Mr. Chairman.

4 MCGARRY: Thank you Commissioner. Mr. Steele, anything further?

5 STEELE: No, the only thing that I would say is that eleven  
6 ninety-five shows, at least with regard to one of the loans and  
7 certainly, from my understanding, with regard to all of the  
8 loans, they were individual pieces. I mean they pledged lots of  
9 individual pieces to get the loans, but they were valued as  
10 individual pieces. Our recommendation is that, and I think that  
11 that would be the conclusion I would urge you to reach even if it  
12 were not for the restrictions that you placed on it, but in  
13 effect, I think that the net results of the Commission's AO's and  
14 the non-AO is that they can't dispose of that in any way other  
15 than individually and even there, they have some difficulty. But  
16 it seems to me that--the recommendation that we made is  
17 consistent with the way they are valued for the loan purposes.  
18 They pledged a lot of pieces, but they're valued as individual  
19 pieces. But as I say, again, it seems to me that comes to a  
20 question of your valuation for your NOCO purposes and I think  
21 that in effect that comes down to what that sums out to, but that  
22 you have to go on to the question of the repayment while  
23 caveating that you have that potential for the NOCO being  
24 readjusted after the evaluation is made. I do think you have to  
25 give Auditors some direction, the Commissioners give the Auditors  
26 some direction as to how they wish to proceed.

27 And that comes down to the last item in our September  
28 14th memo, that it seems to us that for purposes of directing the  
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1 STEELE (continuing): Auditors that you should adopt the  
2 recommendations in the August 25th memo, to value that on the  
3 basis of the individual items, but I think without that, I don't-  
4 -Joe would have to speak to it--but without some direction like  
5 that they can't--(inaudible).

6 MCGARRY: Joe Stoltz.

7 STOLTZ: We are at this point unable to determine which pieces  
8 are in and which pieces are out and in absence of a date, how  
9 many there are.

10 MCGARRY: Yes, Madam Secretary, I will eliminate the sign  
11 language and we will talk directly. How many objections?

12 EMMONS: There were two objections and one affirmative vote.

13 MCGARRY: Who was the other objection?

14 EMMONS: Commissioner Aikens filed an objection along with Mr.  
15 Reiche.

16 MCGARRY: Mr. Reiche.

17 REICHE: Mr. Chairman, in view of this fact and also in view of  
18 the fact that we will be meeting tomorrow on Reagan-Bush and that  
19 Commissioner Aikens is gone, you know, for reasons which she could  
20 not control this afternoon, I would ask if we might delay the  
21 decision on this until tomorrow. I don't think a one day delay  
22 is going to cause any great harm or consternation to people, but  
23 she indicated before she left to me some interest in it and even  
24 though she objected, I am not at all sure in terms of the  
25 objections, I feel that she feels the same ones because we  
26 haven't always agreed on--at least on that first point, but as a  
27 courtesy to her, I would ask the Commission delay a vote on that.

28 MCGARRY: Let me add that she was distressed that she had to  
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1 MCGARRY (continuing): leave. She is attending at the moment a  
2 dedication in honor of former Senator Hugh Scott of Pennsylvania  
3 at the Senate and is only for such an important occasion that she  
4 would have left in the first instance; so, speaking to myself, I  
5 can't speak for the others, I know she indicated to me that she  
6 was intensely interested and regretted very much having to leave  
7 and did tell me that as she went out the door that she would not  
8 be back today, but she will be available all day tomorrow if the  
9 matter comes back in any way, shape, or form. Mr. Harris.

10 HARRIS: On the August 25 memo. I didn't vote. It didn't seem  
11 to me that it was something that was appropriate for circulation  
12 and voting on in that fashion and when I inquired, I believe that  
13 Charlie said it wasn't meant to have been circulated for vote. A  
14 voice sheet was not meant to be attached.

15 MCGARRY: And no vote was, in fact, taken is that correct? Mr.  
16 Steele.

17 STEELE: Well, it was objected to and no vote was taken. That's  
18 what I meant to say at the beginning. Again, this was an issue  
19 raised in the Audit Report and this memorandum was not--there  
20 were further issues and so we prepared it. It was meant to be  
21 part of the Audit Report, and I think it was not properly  
22 something that should be voted on. As we said in our September  
23 14th memorandum, it does seem that you have to resolve those  
24 issues and give direction to the Auditors as to what they should  
25 do, but I think it is true that it is not properly something that  
26 there should be a separate vote on. It does seem that you have  
27 to resolve those issues in order to give the Auditors a statement  
28 as to what they should do. The Auditors have raised that issue  
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1 STEELE (continuing): and they are saying, in effect, "we can't  
2 go out and decide what the final NOCO is unless we know whether  
3 this is to be valued and how this is to be valued, rather than if  
4 this is to be valued, because it clearly has a value, is it to be  
5 valued as a capital asset and if so, is it to be valued on a  
6 piece-by-piece basis?

7 MCGARRY: Well, yes, Mr. Reiche.

8 REICHE: The part that was confusing to me, Commissioner Harris,  
9 was the recommendation which appears on page 31 of the August  
10 18th Final Audit Report where it says, "The Audit staff  
11 recommends that until such time that the Commission approves or  
12 proposes permissible alternatives as to the disposition or  
13 liquidation of the artwork, no further action can be taken on  
14 this matter." Now, it seems to me that the memo of August 25th  
15 at least suggests some possibilities. I mean, for example, it  
16 goes into the valuation. We are not trying to tell them how to  
17 dispose of it because that's not our province, but I think it is  
18 somewhat responsive. Maybe not directly so, but I think it is  
19 somewhat responsive and that was the way I interpreted it. Now  
20 if it wasn't intended that way, then, you know that may be a  
21 different story, but I was, as one who wasn't here, I was trying  
22 to interpret it and that's the way it appears to read.

23 MCGARRY: Thank you, Commissioner.

24 TIERNAN:  
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TIERNAN: Can we go back to the Audit Report and finish that up,

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1 TIERNAN (continuing): and wait for the conclusion with regards  
2 to the artworks tomorrow?

3 MCGARRY: Yes, yes.

4 TIERNAN: You have no objection to that?

5 REICHE: No, no, fine.

6 MCGARRY: Thank you very much. Mr. Ray Lisi.

7 LISI: All right. It is my understanding now then that you, the  
8 vote is going to be deferred then on the recommendations on the  
9 bottom of page 26 until the discussion of the artwork is  
10 concluded?

11 TIERNAN: Or is it on 25?

12 HARRIS: Is there anything else?

13 STEELE: The recommendation on 26 and 27 that I think Ray was  
14 speaking to. As to whether you had approved---

15 LISI: There is a recommendation on page 26 which relates to the  
16 considering the expenditures in excess of the state limits being  
17 non-qualified.

18 TIERNAN: If, in fact, the vote on the Audit staff  
19 recommendation--if I may, Mr. Chairman, I'm sorry.

20 MCGARRY: Mr. Tiernan.

21 TIERNAN: If, in fact, the Audit Staff recommendation on page 26  
22 was changed to incorporate what the General Counsel's Office has  
23 set forth as their recommendation in the memorandum of August  
24 25th, would that have an impact on the recommendation appearing  
25 on page 27? Or 26?

26 LISI: At this point, we would--

27 MCGARRY: Ray Lisi.

28 LISI: We would have to go back in and look at the Committee's  
29 financial position on August 13th as it relates to the value  
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1 LISI (continuing): placed on the artwork. Now it may affect  
2 this repayment. Not specifically this portion of the finding,  
3 but of repayment.

4 TIERNAN: So, even if tomorrow we were to resolve one way or the  
5 other the question of the value of the artwork, you would not be  
6 able--we would not be able tomorrow to vote on the  
7 recommendation, because then, if, in fact, we were to adopt the  
8 General Counsel's recommendation, you would have to go in and  
9 establish the value, and then you would have to come back to us  
10 with the recommendation on page 26.

11 LISI: Right. The only suggestion I would have and Joe could  
12 correct me if I am wrong on this, is we could caveat this finding  
13 and state that it is subject to change based on that and then you  
14 could vote on that.

15 TIERNAN: That would be, I think that would be more helpful,  
16 because we could get the Audit Report out, couldn't we?

17 LISI: That's right. We could still issue the Audit Report.

18 STEELE: That's what I was meaning to say earlier. I'm not too  
19 sure that it came through too clearly, but that you just caveat  
20 this.

21 TIERNAN: Yeah. And that's what I would say. We can wait then  
22 until tomorrow, and include page 26 and 27 and the outcome of  
23 that with the caveat.

24 MCGARRY: So assuming that scenario, why don't you just repeat  
25 for the record what the game plan would be? So that we can  
26 accomplish precisely what Commissioner Tiernan was nice enough to  
27 bring out here this afternoon.

28 LISI: It is my understanding that the recommendation on page 26,  
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1 LISI (continuing): that the vote on that recommendation will be  
2 deferred until the discussion of the artwork is completed and at  
3 the conclusion of the discussion based on the Commission's  
4 determination in that matter, the recommendation will be, a  
5 statement will be included in that recommendation to state that  
6 possibly the figure may be subject to adjustment based on the  
7 Committee's determination on that matter.

8 MCGARRY: And what further action and timetable would that follow  
9 on?

10 LISI: Well, depending on, if the Commission should decide, it  
11 seems to me that there is some value placed on that artwork and  
12 as I say we would have to go back out and look at the Committee's  
13 cash position as of that date. It would depend, it seems to me  
14 upon the ability of the Committee to allow (inaudible) records to  
15 make that determination. And I couldn't put a timeframe on it.

16 MCGARRY: Could we put an inside and an outside time that would  
17 be reasonable?

18 LISI: I would think that the actual work itself, depending on  
19 the condition of the Committee's records, it probably should not  
20 take more than a week.

21 MCGARRY: And then what would the action and the timetable be?

22 LISI: I think--

23 MCGARRY: Joe Stoltz.

24 STOLTZ: I would think that it would be possible regardless of  
25 what is decided tomorrow on the artwork to go ahead and release  
26 the Audit Report with the repayment figures in it. If necessary,  
27 caveat the artwork section and if a further repayment based on  
28 the results of any additional work on that issue is necessary it

1 STOLTZ (continuing): could be handled in an Addendum to the  
2 Audit Report which would go out later. The amount contained on  
3 the recommendation on page 26, is not going to change. And the  
4 \$141.50 parking ticket is not going to change. The total on page  
5 27 could change depending on what happens to the artwork. So we  
6 could do it that way. We could go ahead and process this report,  
7 put the caveat in, if necessary after tomorrow's meeting, and  
8 then deal with any further repayment in an Addendum.

9 MCGARRY: Yes, Mr. Harris.

10 HARRIS: What's this caveat going to say?

11 MCGARRY: Joe Stoltz.

12 STOLTZ: That pending the results of additional work concerning  
13 the valuation of Committee artwork, additional repayment  
14 determinations may be made at a future date. Some words to that  
15 effect. The repayment that we are looking at now would be for  
16 non-qualified campaign expenses. Any other repayments would be  
17 as a result of having determined the Committee received matching  
18 funds in excess of their entitlement so it would be a different  
19 reason for repayment.

20 MCGARRY: Thank you very much, Joe. Governor Thomson.

21 THOMSON: I still don't understand why we can't approve, or at  
22 least consider the recommendation on page 26 relating to the  
23 allocations to the states of New Hampshire and Iowa. I don't see  
24 how the artwork is going to have any effect on that at all.

25 STOLTZ: I think you are correct. The only place that it will  
26 have an impact will be on the total on page 27. If it should be  
27 determined later that some additional repayment--but the amount  
28 on 26 in the recommendation and the amount in the recommendation  
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1 matter what happens to the artwork.

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3 THOMSON: We have already approved the recommendation on 27,  
4 that's for the \$141.00. Mr. Chairman. I'll move the approval of  
5 the recommendation on page 26.

6 MCGARRY: Commissioner Thomson moves approval of the Audit staff  
7 recommendation contained on page 26. If there is no further  
8 discussion, the vote will occur on that motion. All in favor,  
9 say aye. (A voice vote was heard.) All opposed? It appears to  
10 the Chair that the vote is five to zero. Commissioner Aikens  
11 absent. Thank you, Commissioner Thomson and Commissioner  
12 Tiernan. It has been very helpful in assisting everyone in where  
13 we stand now. It couldn't be avoided running into the problem  
14 because of Commissioner Aikens is not here. We all understand  
15 the reason she had to absent herself. Ray?

16 LISI:  
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10 HARRIS: On the art work, I think it would be helpful if Counsel  
11 or the auditors or both in conjunction could tomorrow give us a  
12 list of alternatives as to what in the world we can do to resolve  
13 the problems.

14 MCGARRY: I think that would be very important in the --

15 HARRIS: I think we may have got ourselves into a place where  
16 there is no resolution.

17 STEELE: I just don't know what more we can say then we did in  
18 the memo.

19 HARRIS: Well, there is a great deal more that could be said --  
20 for example, taking into account the failure of the Commission to  
21 give them an advisory opinion on whether they could use this to  
22 pay off creditors. The fact that in December of 1980 we gave  
23 them additional matching funds, knowing that the question as to  
24 the value of the artwork was unresolved. The questions are  
25 whether we -- two or three different alternatives -- whether we  
26 go after them on additional payments on the basis of the  
27 evaluation that they gave the artwork when they borrowed the  
28 money -- whether we now tell them that that yes, they can use it  
29 to settle with creditors.

30 STEELE: That's covered.

HARRIS: Whether we follow the recommendation set out here, which

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2 down very substantially -- if we look at each individual piece of  
3 art and count only those that are worth more than \$500.

4 STEELE: We took the position in the memo -- it's not in the  
5 recommendation, but in the paragraph above it that it seems to me  
6 that you have to -- that our position which I think

7 MCGARRY: Mr. Steele.

8 STEELE: Was what we said earlier in the discussion of the A.O.  
9 that you cannot call it a contribution if the bank levies on it.  
10 So that issue I think we've dealt with. It seems to me that the  
11 other two alternatives have been set forward -- you can -- our  
12 recommendation would be that you have to evaluate it on a piece-  
13 by-piece basis. The other seems to be the auditors feeling that  
14 you value it on the total of all artworks -- I say that only  
15 because I'm looking for -- I don't know what between now and  
16 tomorrow that we could do and maybe we could try to do it orally  
17 and set forth those things tomorrow.

18 HARRIS: I think it would be better if it were in writing. We  
19 have had some assistance from the legal department in getting  
20 into the position we're in, the position that the art, that the  
21 donation of services by the artist was not a contribution. The  
22 position that anyone buying the stuff is making a contribution.

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27 MCGARRY: Mr. Reiche.

1 REICHE: In terms of alternatives, I have an old World War II  
2 Japanese sword if you would like me to bring it in.

3 HARRIS: I wouldn't ask you to endure so painful

4 REICHE: I knew that.

5 MCGARRY: Charlie is wondering whether he is expected to have a  
6 document by 10:00 tomorrow morning, but -- anyway.

7 HARRIS: If he does, I'll move that we waive late submission.

8 MCGARRY: This is getting better as it progresses. In any event,  
9 Charlie, I am sorry to leave you up in the air, but I think it is  
10 one of those cases where you just do the best you can (inaudible)  
11 it's an impossible situation, I think everyone will understand.

12 Ken?

13 GROSS: It's impossible.

14 MCGARRY: So that would appear to do it for today. We're going  
15 to pick up at 10:00 a.m. tomorrow morning to continue on -- Mr.  
16 Tiernan?

17 TIERNAN: Could we dispose of the personnel matters?

18 MCGARRY: We certainly can, if there is no objection.  
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5 MCGARRY: Well as Bob Costa, Sue, Joe Stoltz and Ray Lisi enter  
6 the room, we rap the gavel, Madam Secretary to bring the  
7 Executive Session of the Federal Election Commission for  
8 Wednesday, September 16, 1981, to order. And we're going to  
9 continue on this morning where we left off; so Ray Lisi will  
10 recap everything for us and bring us up-to-date particularly for  
11 the benefit of Commissioner Aikens. Well, we are dealing with  
12 basically three agenda documents, X81-065, dated 9/10/81,  
13 X81-065A, dated 9/14/81, and X81-067, dated August 25, 1981. Oh,  
14 Ray why don't you, particularly if you would, be a little more  
15 expansive this morning, recap what happened since Commissioner  
16 Aikens left us yesterday, and where we are right now.

17 LISI: Fine. We completed the audit report yesterday, and all of  
18 the findings were voted on. We are currently - this morning  
19 we're going to be discussing the disposition of the artwork or  
20 the -- any limitations or whatever would be imposed on that.  
21 After the meeting yesterday, Joe, Bob, and myself sat down and  
22 came up with some alternatives that should be considered. And  
23 Joe did sit down last night with the Counsel's office and  
24 discussed these matters, and I think that Joe probably has some  
25 information to report this morning along with the Counsel.

26 MCGARRY: Joe Stoltz.

27 STOLTZ: What we did was to break the problem as we see it out  
28 into four questions. And what we saw, as the possible  
29 alternatives for each of the four as far as deciding what we're  
30 going to do about the artwork. And we've got them in a

1 STOLTZ (continuing): particular order and I don't think it is  
2 necessary that they follow that order, but the first one that we  
3 have listed is a decision on what is going to be the permissible  
4 disposition of this artwork. Is it going to result in a  
5 contribution; therefore having a limited possible disposition  
6 method? Or is it not going to result in a contribution and they  
7 can therefore sell it to any willing buyer? I think we're all  
8 very familiar with the AOs and what has gone on before as far as  
9 generating a contribution if it's not to be restricted and its  
10 method of disposition, and it would seem to fall more closely  
11 into the category that other capital assets that committees have  
12 fallen. For example, if they have a car they can certainly sell  
13 it to a corporation if that corporation wants to buy it--Ford  
14 dealer and whatever. The second issue that we have listed is the  
15 value that would be placed on it. Are we going to use the  
16 brochure value which is a committee established figure which was  
17 used when they put this material up for collateral for loans. Or  
18 is there to be a new value determined? A fair market value on  
19 the date of ineligibility? And if so, then it would seem that  
20 the decision on the first point might well affect what the value,  
21 the fair market value and the date of ineligibility is. Third,  
22 do we look at these prints one at a time as a capital asset so  
23 that any individual print that is under \$500 in value is a  
24 capital asset or is not a capital asset, those over are? Or do  
25 we look at them as a series? And, finally, on what date do we  
26 freeze the inventory? Do we freeze the inventory on date of  
27 ineligibility which is a common way that capital assets are dealt  
28 with? Or because of the problems that we have had with  
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1 STOLTZ (continuing): particular class of assets, do we use a  
2 different date? For example, the date the Commission first  
3 considered it in the matching funds situation I believe that was  
4 the 12th of December, or the 18th of December, 1980. The date  
5 that the Commission considered the AO possibly? Or even today's  
6 date? Once these questions are decided, then we can go back and  
7 take an approach in coming up with a number. As it now stands,  
8 we cannot give you a number for all the combinations and  
9 permutations that are involved. We only have an inventory on  
10 8/13. We don't have an inventory for any other date.

11 HARRIS: 8/13/88.

12 STOLTZ: We have the brochure values, but if that varies from the  
13 fair market value at any given point, we don't have that. And,  
14 of course, we can come up with a number using the brochure value  
15 on the inventory in 8/13 for either considering them individually  
16 or as a series. But beyond that we're not going to be able to  
17 give you a hard number for any of the other combinations.

18 MCGARRY: Thank you very much. So, Mr. General Counsel what  
19 would your recommendation be as to how we should proceed this  
20 morning?

21 STEELE: Well, again, I'm not sure about what sequence you want  
22 to make. The request from Commissioner Harris was that we sit  
23 down with the Auditors as we tried to do so at least, sketch out  
24 as Joe has, the various questions. There are a lot of  
25 permutations and combinations, and, so I think that it is a  
26 question of which ones you try and look at first. It seems to me  
27 that the question of, to take Joe's organization, the question of  
28 permissible distribution. It seems to me that you have the  
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1 STEELE (continuing): Connally AO in June of '80 saying in effect  
2 that a sale of that would result in contribution so that any sale  
3 of it would be a contribution. You have the discussion with  
4 regard to the Kennedy's committees own request as to whether or  
5 not they could dispose of it to contributors in which there was a  
6 deadlock of course and there was no permission given to dispose  
7 of it to contributors. The deadlock there being basically -  
8 excuse me -given to debtors; the deadlock there being basically  
9 in my mind the question of whether, if you give it to debtors  
10 that results in a contribution whether you follow the Connally AO  
11 which was the draft put up or whether you don't follow the  
12 Connally AO. In effect I think that the central question which  
13 was what tried--as we saw it, as we tried to sketch in the August  
14 25 memo and in our September 14 memo, is that you have this  
15 question that I would style as the method of valuation. Whether  
16 you, --how you have to value this for purposes of deciding what  
17 their assets are? I would say that one question is whether you  
18 can say, as Joe and I think the Auditors are saying, that you can  
19 freeze the inventory as of a particular date. It seems to me  
20 that if you value things as of a particular date, and if you have  
21 \$5,000 worth of office furniture which you auction off and it  
22 goes for \$2,500 you don't say well you're stuck with the \$5,000  
23 value. You have to have adjustments. You constantly have those  
24 kinds of adjustments, so I think one question is the question of  
25 whether you can freeze it. In effect I think that the more  
26 central question in my mind is really the method. As we have  
27 said in our memoranda, it seems to us that you have to value  
28 these as individual pieces. And I think there are several,  
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~~several things that we think bear on that~~

2 question. First of all, it seems to us that by the very fact  
3 that they are, and that goes back to the first question that we  
4 talked about, they are under the Connally AO in my mind subject  
5 to the contribution limitation if sold outside. They cannot  
6 therefore be sold as in bulk. Moreover if even without that it  
7 seems to me that you have a situation where you have individual  
8 pieces of art, they were as we know from MUR 1195 which was the  
9 question that the Commission considered back in June of '80 also  
10 at about the same time it was considering the Connally opinion.  
11 In MUR 1195 you have raised the question of whether a bank loan  
12 secured by the pledging of -I've forgotten the number of prints,  
13 but they're basically as the correspondence in the letters back  
14 and forth there show, you have 300 prints valued at \$300  
15 individual prints series set in the series. So it seems to me  
16 that you have strong arguments, in my mind, that you need to  
17 value them; that you need to allow them for purposes of valuation  
18 to be seen as individual pieces of work - that to say that I  
19 think the alternates there are that you would say, "Well the  
20 whole series is of value or all artwork ever donated to the  
21 Kennedy Committee under the individual services exemption as the  
22 Committee construed it, all must be valued as a single asset."  
23 As I say that seems to me contrary to the way the materials are  
24 generally dealt with or the way they would be offered for sale if  
25 they could be offered for sale; the way they were valued, and so  
26 forth and so on. But, it seems that is the alternate there. In  
27 effect I think that the other question is the value placed, and I  
28 think again that you have the question of how you're going to  
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1 STEELE (continuing): value that. First of all it seems to me  
2 that you have to value it in mind, within mind the limitations  
3 that you have placed on it which is one of the way we phrased one  
4 of our recommendation. That is to say their inability to sell it  
5 on the open market for matters in excess of \$1,000 seems to me to  
6 place an outer limitation on the value. Accordingly, what we  
7 have suggested is that you value it, is that you ask them to  
8 value it because effectively I think what you're asking here for,  
9 is to go back to the Kennedy Committee and say that you want a  
10 valuation placed on this and to tell them some guidelines about  
11 it. That the brochure value on the other hand, I think that one  
12 of their problems or one of their responses is likely to be,  
13 "Well, we can't use it, -- you could not decide -- the  
14 contribution question came up; so therefore that's an outer limit  
15 on it, so we certainly can't value it higher than that and the  
16 individual pieces are ranked in differing values." I suppose the  
17 underlying problem here, I don't consider it a problem really,  
18 but the underlying consideration that makes this all quite  
19 critical is the fact that the Regulation 9003.4 in terms of  
20 defining what is a capital asset - capital asset being a term  
21 that I think only comes up in this context of Title 26 stuff  
22 defines capital asset as something in excess of \$500. Below that  
23 it's not; and you don't have to include it as an asset; above  
24 that it is considered an asset. It seems to me there is a final  
25 issue which Commissioner Harris alluded to yesterday which I  
26 don't think the Commission has ever ruled on. I think however  
27 that I don't see but one answer to it really, but there obviously  
28 is a second answer; I think it would be very hard to answer the  
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1 STEELE (continuing): and of, in effect, what value you placed on  
2 it. So that, I think, is the essentially the same sort of things  
3 that Joe is saying are questions here that they need to have some  
4 form of resolution to. The other thing that you can do, and I  
5 think in doing this, that you're going back to the Kennedy  
6 Committee and you're saying that they have place a valuation on  
7 it. I think that you have to tell them, to some extent what the  
8 value how you cut through the valuation. It is impossible  
9 however that you can ask them for alternates, particularly if you  
10 were still thinking terms of dates that you can ask them for a  
11 valuation of their inventory on different dates. That is, of  
12 course, if you go to the appraisal route which is one of the  
13 things discussed as the Kennedy Committee has indicated in its  
14 papers. If you and I think that the Commission when we discussed  
15 it last, really effectively decided not to do that; you are, of  
16 course, increasing their debt because the costs of the appraisal  
17 is fairly great as they have noted.

18 MCGARRY: Thank you. Mr. Reiche.

19 REICHE: Just a point of information and this is based partially  
20 on what we discussed yesterday. If you consider these works of  
21 art to be capital assets, and if as a result of 9034.5 you are  
22 locked into a minimum value of \$500, what would be the value as  
23 of August 13, 1980, the date of ineligibility which would be the  
24 date on that; what would be the value to be included here as a  
25 capital asset? You mentioned a figure yesterday I think of  
26 \$930,000?

27 LISI: \$928,000.  
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2 - have you excluded from that computation any works of art which  
3 carry a value greater than \$1,000?

4 LISI: Excluded from there?

5 REICHE: Yes.

6 LISI: No.

7 REICHE: Because my recollection in terms of the individual  
8 values of these is a range from the low \$200's to something in  
9 \$1,200, I think, and I'm wondering if the limitations - the  
10 contribution - if this were deemed a contribution and therefore  
11 on an individual basis you had to work with a limitation of  
12 \$1,000, I'm wondering how that would affect the computation that  
13 you came up with? In other words, really Ray, if you go from  
14 \$500 to \$1,000 what would that figure be? And I'm sure you don't  
15 have that one at the moment. The only easy way I suppose would  
16 be isolate the ones over \$1,000 and exclude their value.

17 LISI: We can't do that. There's only one series of prints that  
18 remain in the inventory that was in excess of \$1,000 on August 13  
19 and the total value of that at that time was \$34,500.

20 REICHE: O.K. So that even if you exclude that, you stay within  
21 \$500 to \$1,000 range you're talking \$895,000 or something like  
22 that.

23 PASCHEN: \$96 to \$93.

24 REICHE: Yeah, thank you Mr. Chairman.

25 MCGARRY: Well Joe what question specifically do you think we  
26 should lead off with and we'll have a full and complete  
27 discussion and vote it up or done and then we will recognize the  
28 individual Commissioners and see if the General Counsel agrees  
29 with you.  
30

1 STOLTZ: Well, the first one that I have and you know, the  
2 Counsel seems to think that it's pretty much decided already. Is  
3 the -- any restrictions that will be put on disposition. May it  
4 be sold outright to any interested buyer, or must it generate a  
5 contribution? If it is everybody's opinion that that one is  
6 settled, then we can go to the next.

7 MCGARRY: I'll just call on the General Counsel to comment on  
8 that briefly if you would. Would that be an orderly way to  
9 proceed Charlie?

10 STEELE: I think the Connally AO exclusively considered that  
11 question and said that sale would be treated as a contribution.  
12 There are, of course, other AOs in the area. I think the other  
13 question there that was raised by the Kennedy Committee itself  
14 and throughout all of this, I think that the, you know, one has  
15 to keep that AOR in mind that the Kennedy Committee asked, in  
16 effect, can we settle debts with these or will we be subject to  
17 the contribution limits in the settlement of debts? And it was  
18 on that issue that the Commission separated 3-3 with the draft  
19 saying, "Yes you would be under the contribution limits." It  
20 seems to me that the net effect of those two is whatever the  
21 Commission might consider later on, that the Commission has  
22 fairly strongly taken the position that the sale of such of these  
23 kinds of materials would be subject to the contribution limits.  
24 I think that you would have difficulty if you took the opposite  
25 position now, but as Joe says, it is a position. But if you were  
26 to say now that they should have known, and, or can from now on  
27 sell them without regard to the contribution limits, I think that  
28 would be somewhat of a change.

1 McGARR: The Chair is going to recognize Mr. Harris and then we  
2 will go to Mrs. Aikens.

3 HARRIS: I tend to think that the least unsatisfactory thing we  
4 can do, and we're not we are in a situation where there isn't  
5 anything that is totally satisfactory, agree to say that the  
6 banks who lent money upon the security of this artwork can  
7 realize upon that security without its being a contribution by  
8 them. That would be a very narrow ruling. It has the advantage  
9 to us that it would not squarely conflict with any of our prior  
10 advisory opinions as we haven't dealt with this question of  
11 realizing upon a security. It also would be in accord with  
12 common sense, since obviously the banks have no interest in this  
13 world in making a contribution to the Kennedy Campaign. Now,  
14 whether that would dispose of the whole problem or whether the  
15 problems would remain hanging around, I don't know.

16 STEELE: I agree with that's the position to take. My  
17 understanding is, and the Auditors may know with more precision,  
18 but is that only a portion of the art is pledged so that you  
19 still have the problem with relation -- I mean you still have the  
20 valuation problem overall, but you also have a large amount the  
21 art, I think a large amount, 50 percent or more, that was never  
22 pledged to any of the banks. So that, though I think that could  
23 be part of what the Commission could decide, and I think that  
24 that's the position the Commission to take, in any effect, I  
25 don't think that it is also a problem that we having facing us.

26 STOLTZ: I would suspect the outstanding balance on the loans  
27 right now where the art was pledged, and correct me Ray is  
28 \$156,000?

1 LISI: That's correct.

2 STOLTZ: So the majority of the loans where the artwork was  
3 pledged have been paid off, and, therefore, if the Committee  
4 still has it, it is no longer pledged. So we do believe that we  
5 have a substantial body of this artwork which is not involved in  
6 any bank loans at the present time.

7 MCGARRY: Anything further on that Mr. Harris.

8 HARRIS: No.

9 MCGARRY: Mrs. Aikens.

10 AIKENS: Thank you Mr. Chairman. Joe following up on that. Is  
11 the artwork that was pledged valued over \$500, most of it?

12 STOLTZ: Per piece? Some yes, some no.

13 AIKENS: So we have no idea what is still pledged?

14 STOLTZ: It's my understanding that what is pledged and what  
15 loans specific loans make up the \$156,000 is a little unclear.

16 AIKENS: They just reported totals.

17 STOLTZ: It's a balance.

18 AIKENS: They also didn't report which loans? They also did not  
19 report any insurance on what they have left did they?

20 STOLTZ: They didn't report individual loans. Ray may have  
21 noted, I don't know.

22 LISI: I'm not sure on the ones that were left. As we stated,  
23 they reported these loans as of June 30th, 1981, the last report  
24 that was filed. They disclosed \$156,000 and they just stated  
25 various loans at Chemical Bank. We don't know which loans those  
26 are and whether there is still artwork pledged as collateral.  
27 There were insurance policies taken out on some of the artwork.

1 AIKENS: ~~FOR THE ARTWORK. ON THE ARTWORK. WHEN WAS THE~~

2 inventory list that they submitted to us brought up? That was  
3 the inventory as of August 13th.

4 LISI: As of August 13th.

5 AIKENS: But there were several series that were used as  
6 collateral that were not on that list? Is that correct?

7 LISI: That's correct. There were or there was some artwork that  
8 we still have in question. And this is the matter that we  
9 referred to the Counsel's Office.

10 AIKENS: Yeah. So we have no idea of what the value of that is?

11 LISI: On some of them we do, based on the loan documents. They  
12 did state on there that there was value for it; however, we don't  
13 have anything in the Committee's records that indicated that that  
14 value was the same value that Committee had put on it - the  
15 artwork.

16 AIKENS: And the \$928,000 does not include any of those pieces?

17 LISI: That does not include any of those in question.

18 AIKENS: Charlie let me ask you a procedural question if I may.  
19 We cannot overturn the Connally Advisory Opinion in a compliance  
20 matter can we? Don't we have to either go to another advisory  
21 opinion or to regulations? I don't see how we can sit here and  
22 vote in opposition to our decision in the Connally opinion in a  
23 closed compliance matter when you're changing policy.

24 STEELE: I would caution only that I don't consider this a closed  
25 compliance matter, this is an audit; but taking the two as  
26 equivalent, which I don't, I say that just because I think-

27 AIKENS: Even as an audit.  
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1 STEELE: Well, I think that you have the problem. That you --if  
2 you were to -- and think the worst of it is that you're stuck in  
3 both senses. That if you were to, you could certainly liberalize  
4 the AO and say well you could do certain things but if its seen  
5 as a detriment, if you change the AO and it is seen as a  
6 detriment, you're not going to be able to enforce that in my  
7 mind. In other words, if you were to change an AO and say, well,  
8 it seems to me you're left with the artwork.

9 TIERNAN: Mr. Chairman.

10 MCGARRY: Mr. Tiernan.

11 TIERNAN: I think that we're spending an awful lot of time on  
12 things that are not relevant. What you're trying to find out in  
13 this audit report is what the NOCO statement is; isn't that what  
14 you're trying to determine?

15 STOLTZ: We need the value for on the NOCO statement.

16 TIERNAN: So what the banks do is really not a concern with  
17 regards to the final audit report. You make a determination on  
18 the capital assets, whether it is a capital asset or not, and  
19 whether the restrictions are on them. Make those determinations,  
20 find a NOCO statement, and let the banks do what they want. We  
21 can't decide that. If the banks want to sue the Kennedy  
22 Committee, and then move on the collateral, that's a separate  
23 issue. And if they do it some other way, then we can file,  
24 somebody can file a complaint on them. But here you're talking  
25 about getting out a final audit report. We're bogged down.  
26 We've been over these appraised values about three times and I  
27 think you make the decision on the basis that you've got before  
28 you, a recommendation from the General Counsel's Office--take  
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1 TIERNAN (Continuing): into account what the Audit Division

2 wants, and make our decision!

3 MCGARRY: Thank you Commissioner. Mr. Reiche.

4 REICHE: I don't see any reason in view of the fact, that when we  
5 considered the use of these for debt settlement purposes and did  
6 not reach a conclusion, we came out with a 3-3 vote. I don't see  
7 any reason why we are limited in terms of deciding if the  
8 Commission chose to do so, today, that they could be used for  
9 debt settlement purposes. And I think now that we have a problem  
10 graphically before us, it is conceivable that there may be some  
11 change of mind with respect to their use for that purpose. I  
12 don't know if there is, but I think that the problem we have in  
13 front of us illustrates that, and I also think that that Advisory  
14 Opinion proposal that came before us would have required a  
15 creditor to go to court as you were just suggesting Commissioner  
16 Tiernan, in order to perfect a claim before it would not be  
17 considered a contribution. I don't think it is fair to impose  
18 that burden. And I would like to suggest that we reconsider our  
19 position on that if we -- and not spend a lot of time on it cause  
20 just hear me out--we've done a lot of talking on it, I agree with  
21 you, but I see no reason why that can't be considered right now.

22 MCGARRY: Mr. Tiernan.

23 TIERNAN: Mr. Chairman. In response to that, I would just point  
24 out to Commissioner Reiche that what you do here is going to be  
25 looked at. And if, in fact, a presidential campaign can go into  
26 a bank and pledge artwork and the bank can make the loan, and  
27 then at some later point just say "we're not going to do  
28 anything, we'll just take that as collateral." That's making a  
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1 TIERNAN (continuing): contribution to a campaign in excess of  
2 the limits, and it is a prohibited contribution from a  
3 corporation. So you get into the situation now, what I'm saying  
4 is, why don't we decide right now, that if, in fact you're trying  
5 to get a NOCO statement to say that these matters are capital  
6 assets if they're in excess of \$500 but that we have placed  
7 limits on them on the AOs I mean and decide that. Make them--one  
8 step a a time, because we have been over this thing. Each  
9 Commissioner goes back over it in a different aspect. And you're  
10 taking in the question of whether or not the bank can accept  
11 these without any limits. And I don't think that you can decide  
12 that.

13 MCGARRY: Mr. Reiche.

14 REICHE:  
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11 MCGARRY: Mrs. Aikens.

12 AIKENS: Mr. Chairman. I agree with Commissioner Tiernan that we  
13 have talked this to death, and I was only trying to find a basis  
14 for an evaluation because I think that we have to decide that,  
15 and I think we have to decide it this morning in order to get to  
16 the NOCO statement. But in order to get things moving, I would  
17 make a motion that we approve, determine that the sale or  
18 exchange of artwork by the Committee results in a contribution by  
19 the purchaser and is subject to all the prohibitions and  
20 limitations of the Act.

21 MCGARRY: Commissioner Aikens moves that the Commission determine  
22 that the sale or exchange of each individual--

23 AIKENS: No, sir, I did not say that. The sale or exchange of  
24 the artwork by the Committee results in a contribution.

25 MCGARRY: Of the artwork. Commissioner Aikens moves Madam  
26 Secretary that the Commission determine that the sale or exchange  
27 of the artwork by the Committee results in a contribution by the  
28 purchaser and is subject to all the prohibitions and limitations  
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1 MCGARRY (continuing): of the Act. Mr. Harris.

2 HARRIS: It doesn't seem to me as a general proposition, we've  
3 already articulated that. That doesn't seem to me that  
4 rearticulating that general proposition gets us any closer to  
5 solving this particular problem.

6 MCGARRY: Any further discussion? If there is no further  
7 discussion, the vote will occur on Aikens' motion. All in favor  
8 say Aye. (AYE). All opposed? (NO).

9 HARRIS: I will abstain for the reasons stated.

10 MCGARRY: It appears to the Chair that the vote fails to carry by  
11 a vote of 3 to , Mr. Reiche you voted against it? And Mr.  
12 Harris abstained, Madam Secretary, and Commissioner Aikens,  
13 Tiernan and Thomson voted for and Commissioner McGarry voted  
14 against. So the vote Madam Secretary is three for, two against  
15 and Commissioner Harris abstained.

16 MCGARRY: Mr. Harris.

17 HARRIS: I'll try to handle one little piece of it. I will move  
18 that the Kennedy Committee be advised that they may permit the  
19 banks to loan money on the basis of the artwork as security to  
20 realize upon the security without its constituting a contribution  
21 by the banks.

22 MCGARRY: Mr. Reiche.

23 REICHE: Just a question of the auditors if I may. What is the  
24 current value of outstanding bank loans?

25 STOLTZ: \$156,000.

26 REICHE: In other words, it is just that one? That's all you are  
27 talking about.

28 STOLTZ: It's a fraction of it.  
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2 TIERNAN: It is not necessary though for us to do that.

3 AIKENS: Yes, I mean, could somebody explain we need to do this?

4 TIERNAN: Why do we have to do that?

5 HARRIS: Because they have asked us and we declined to tell them.

6 TIERNAN: Yeah. But you shouldn't do it, not if we declined to  
7 do it in an Advisory Opinion Request, why should we do it in an  
8 audit report?

9 HARRIS: Because we want to wind up the Audit.

10 TIERNAN: But that isn't necessary to wind up the audit though.

11 HARRIS: It appears to me that it is. It won't wind it up, but  
12 it will cover one piece of it. There are still other questions  
13 about the artwork that will remain.

14 THOMSON: Mr. Chairman.

15 MCGARRY: Yes. Governor Thomson.

16 THOMSON: How does that motion differ from the policy already  
17 articulated, as you say?

18 HARRIS: We have not ever permitted this. And this would be  
19 limited to permitting the creditor who lent money upon this  
20 artwork as security to realize upon the security. We have never  
21 permitted that. In Connally we told them, generally, that they  
22 could not dispose of the artwork to satisfy creditors.

23 TIERNAN: I would be tempted to go along with the motion,  
24 Commissioner Harris. I think that what we would be doing would  
25 be making an exception to what we've required as a standard, is  
26 that the lender deal in a commercially reasonable way, and we've  
27 always used that as a standard. Now you're adding something that  
28 a lender--if, in fact, the lender does not get repaid, he without  
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1 TIERNAN (continuing): benefit of taking the ordinary commercial  
2 way of going into court and moving on the collateral, can enter  
3 into agreement with the campaign, and take the collateral and  
4 just sell it at a private auction without the restrictions that  
5 you're going to say that are imposed if they sell it to  
6 individuals. And I think that's an exception that I am not---

7 HARRIS: Well, you would permit it if they sell it through a  
8 court proceeding?

9 TIERNAN: I think that that would then -- then they would be  
10 proceeding as any vendor to a campaign. In other words, you are  
11 not making any exceptions. And that's the way we've allowed it  
12 in the past, because otherwise, you get into this situation where  
13 you get a friendly relationship. And I am not saying that's the  
14 case here; but I think that you open up the door.

15 HARRIS: Well, No, I don't think we've said in the past, I don't  
16 think that we ruled out in one way or another even though a court  
17 proceeding.

18 TIERNAN: Well we've allowed -- no -- we've allowed creditors --  
19 Oh -- all right as to the excessive -- O.K., the artwork, I don't  
20 think we've ever had that, but I am sure there are court cases  
21 where someone moved on office equipment, and they were sold in  
22 the debt settlement situations.

23 HARRIS: We had a similar request for an Advisory Opinion from  
24 Michigan awhile back, I think growing out of Senator Griffin's  
25 Campaign where the Treasurer was about to be subjected to a court  
26 judgment for creditors in excess of the contribution limits. But  
27 they withdrew that and so we never answered it.

1 where there was actually a civil judgment involved.

2 MCGARRY: The Harris motion, Madam Secretary, is that the  
3 Commission advise the Committee that the banks may realize upon  
4 the security of the artwork without a contribution resulting from  
5 the bank. Is there any further discussion? Governor Thomson.

6 THOMSON: Would that discriminate against another form of  
7 creditor who didn't have any artwork pledged?

8 MCGARRY: Sure, it gives them preference.

9 HARRIS: Yes.

10 MCGARRY: The author Mr. Harris, Madam Secretary, replies in the  
11 affirmative. Mr. Reiche.

12 REICHE: But, the discrimination is merely to try and achieve  
13 consistency with the Connally AO. And were it not for that we  
14 might move in a different direction, but the effort, check me Mr.  
15 Harris, but that's the reason for it. Otherwise we wouldn't be  
16 consistent with the Connally AO with which I disagreed as you may  
17 know, Governor Thomson, but the Commission took a different view.

18 TIERNAN: O.K. So now, what you do if Mr. Connally, instead of  
19 offering to sell the artwork to corporations, he goes to the  
20 banks and says, "Look, I'm going to pledge all this artwork to  
21 you. You give me the loans and when it's all over, we can't pay  
22 you back, you just go out and sell them to the corporations."

23 MCGARRY: Mr. Harris.

24 HARRIS: The trouble is it has already happened except for the  
25 sale I mean they didn't pledge; we did not act on a complaint  
26 about it. Going back to Governor Thomson's question, perhaps it  
27 isn't correct to say that we would be discriminating because a  
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1 HARRIS (continuing): lender who gets security at the time of the  
2 loan is always in a better position than an unsecured lender.

3 MCGARRY: Thank you Commissioner. Any further discussion? There  
4 being none the vote will occur on the Harris motion. All in  
5 favor say Aye (AYE), All opposed (NO). It appears to the Chair  
6 that the vote fails to carry by a vote of 3 to 2, with  
7 Commissioners Harris and Reiche voting for, Commissioners  
8 Tiernan, Thomson, and Aikens voting against and Commissioner  
9 McGarry abstaining.

10 MCGARRY: Commissioner Aikens.

11 AIKENS: Mr. Chairman, I'll throw in one more, and I am not  
12 really in favor of it, but I'm moving it just to get it moving.  
13 I am in favor of valuing the artwork in series, but that argument  
14 was apparently made yesterday, and agreed to both by the General  
15 Counsel and the Audit Division that it should not be valued that  
16 way, it should be valued individually; so I will move that we  
17 determine that all individual pieces of artwork valued in excess  
18 of \$500 are a capital asset and reduce the Committee's net  
19 outstanding campaign obligations.

20 MCGARRY: Commissioner Aikens moves that the Commission determine  
21 that all individual pieces of artwork valued in excess of \$500  
22 are capital assets and reduces the Committee's net outstanding  
23 campaign obligations. Commissioner Tiernan.

24 HARRIS: I am correct to say is or are?

25 AIKENS: Well this says "is," but that does not seem right to me  
26 either, I said "are." It did not sound right.

27 TIERNAN: Joan your motion did not include "subject to all  
28 prohibitions and limitations of the Act."

2 TIERNAN: So that if we vote for the motion, we would say even an  
3 individual piece of art that was appraised at \$1,500 would be  
4 included by the auditors at a value of \$1,500?

5 AIKENS: For purposes of the NOCO statement.

6 TIERNAN: Well, I think that you got just in a discussion with  
7 you on it. I could support your motion, but I would have to  
8 have--I think the Committee would have trouble if we're going to  
9 require them to dispose of these as capital assets--as individual  
10 pieces to a contributor. You might get in a situation, as Tom  
11 suggested some time ago, where a couple could go in and buy a  
12 \$1,500 piece of work. But that again is a, you know, a  
13 restriction on the potential buyers even if you put it up for  
14 auction. You are not always going to get husband and wife  
15 agreeing on a piece of art for \$1,000 apiece. I think if your  
16 motion included "the limitations and prohibitions of the Act,"  
17 then I think you got a motion that can carry.

18 AIKENS: Well, I think that does. We have not overturned the  
19 Connally AO, and I think the Connally AO does prevail. So  
20 therefore, it does include the restrictions.

21 TIERNAN: Why could you would you accept an amendment to include  
22 that in your motion, if that's what you say? You know, I mean,  
23 it says "subject to all the prohibitions and limitations of the  
24 Act." If you say the Connally AO applies, that language would  
25 only re-enforce it, wouldn't it?

26 MCGARRY: Mr. Harris. I would suggest that Commissioner Aikens'  
27 motion would cover only point 3, that that would at least get us  
28 part way down the road. It would not say how the artwork was to  
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1 MCGARRY (continuing): be valued. The question would remain in  
2 question 2, whether the artwork is to be affected by any  
3 restrictions on its disposition or whether it would go along with  
4 the appraisal put on the artwork by the Kennedy people when they  
5 were trying to borrow money. But it seems to me that is a  
6 separate question and we would be more likely to get a resolution  
7 if we take it one piece at a time.

8 TIERNAN: I move the previous question.

9 MCGARRY: Yes. Thank you Commissioner. If there is no further  
10 discussion, the vote will occur on that motion. All in favor?  
11 Mr. Reiche.

12 REICHE: On what motion at this point?

13 AIKENS: That all individual pieces --

14 TIERNAN: That it's not debatable.

15 MCGARRY: As stated by Commissioner Aikens back in its original  
16 form. All in favor say Aye (AYE). All opposed? It appears to  
17 the Chair the motion carries by a vote of 6-0. Good job! Thank  
18 you Commissioner Aikens.

19 AIKENS: Now we still must resolve the issue of what valuation we  
20 place and whether we place it or ask the Committee to place it.  
21 Since the Committee has already given us a valuation on the  
22 majority of the work, can we not accept that as the valuation of  
23 each individual piece?

24 MCGARRY: Mr. Harris, you have a comment?

25 HARRIS: Well, I was going to ask a question along that line.  
26 What do we know about the valuation put on it by the Committee?  
27 When was it put on, in what form, for what purpose and does it  
28 cover all the artwork?

2 valuation that was contained in that fundraising brochure and it  
3 matches the one on the inventory tht we got as of 8/13. It was  
4 put on there and used as part of that fundraising. We have a  
5 statement from the Treasurer that suggests that that the  
6 valuation is not reflective of fair market value. But that  
7 instead it is the appraiser's estimate of what that given piece  
8 would be worth once the entire series has been sold and what the  
9 resale would bring the individual who first came into possession  
10 of it.

11 HARRIS: That would assume a resale not subject to any of the  
12 restrictions of the Act?

13 STOLTZ: True. That's the entire series was in the hands of  
14 collectors or interested individuals then if they went to resell  
15 it the appraised value according to the Treasurer is what he  
16 might expect to get for it.

17 HARRIS: Well what did they represent to the bank about the  
18 appraisal? Do we know, we do have the text of the representation  
19 sent to the banks?

20 MCGARRY: Mr. Steele.

21 STEELE: We have, with regard again to MUR 1195, Marsha has the  
22 letter that was submitted to the bank by the appraisers which --  
23 Marsha why don't you.

24 MCGARRY: Marsha Gentner.

25 GENTNER: It provides fair market value of two series of prints  
26 and a regular edition and a deluxe edition. The regular edition  
27 going first at a fair market value of \$750 per print, the deluxe  
28 \$1,500 per print. This is the Andy Warhol glitter of Edward  
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1 GENTNER (continuing): Kennedy. And this was--this obviously did  
2 not take into consideration the restrictions, the contribution  
3 limitations.

4 STOLTZ: That does match the inventory in the brochure.

5 HARRIS: Well the only inventory figure I've got is \$750 on a  
6 Warhol. It doesn't say anything about the

7 GENTNER: The deluxe has the--

8 HARRIS: Oh, there is one involved--.

9 STEELE: Those of course again brings us back to the question of  
10 the limitations. The letter here is dated February 6, 1980, and  
11 the fundraising brochures is pre-June '80.

12 HARRIS: Is what?

13 STEELE: Before the Connally Ao. Before June '80 I'm not sure  
14 that that makes any difference, but it is the Connally AO that  
15 articulates clearly what the Commission took to be its  
16 understanding of the law on that issue.

17 HARRIS: Well, hadn't we even before the Connally AO taken the  
18 position that the purchase of any of these art objects was a  
19 contribution?

20 STEELE: I think, yes you had. The only caveat on that, that I  
21 would put was that you had said that in our earlier AOs you said  
22 that liquidation of tables and chairs could be done. A very  
23 different issue in my mind, so I think that the Connally AO is  
24 consistent with what you have said before.

25 HARRIS: Well, the fair market value would be affected by quite a  
26 number of our restrictions. The stuff couldn't be bought by a  
27 corporation or a union, except possibly out of their PAC fund.  
28 That nobody, no individual could pay more than \$1,000. That in  
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2 contributed into the campaign, if it would put them over their  
3 ceiling that would not be permissible. I don't know how in the  
4 world we would ever be able to take those to arrive at a value  
5 taking into account those restrictions. I mean, point two in  
6 your recommendations were that you could do that. But how in the  
7 world would you do it?

8 STEELE: Well again it seems to me that as a proposition, the  
9 simplest example in my mind is that it seems very difficult to  
10 value them beyond what somebody, beyond the contribution limit in  
11 effect. I'm not sure, I don't know how you would do it in that  
12 sense, I think that goes to the question of whether you decide  
13 that you're going to value the art or whether you say to the  
14 Committee, we want a valuation of the art and the justification  
15 of it. It seems to me that in effect you would therefore look  
16 for a justification for any deviation from the value listed in  
17 the brochures. And if they've listed it for fundraising purposes  
18 as having a particular value, and later indicate that it does  
19 not, it seems to me that they have to show a reasonable basis for  
20 that. It does not say and again, I think that the question comes  
21 in mind as to whether what you do is to value every capital asset  
22 that a committee has. I think what you've said to them is that  
23 they have value those capital assets. This raises a whole series  
24 of problems that were not thought when we did that, but basically  
25 your underlying regulation puts upon the committees the  
26 responsibility to make a valuation and then the auditors in  
27 reviewing those records see if there is something that you can  
28 say that's not a correct valuation, but the initial  
29 responsibility is on the committee.

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AIKENS: They excluded three million of it--

MCGARRY: Mr. Josefiak.

JOSEFIAK: I was just going to make a comment. Getting back to what Commissioner Aikens is saying, if you got some that are listed at \$700 and some at \$900 and then some at \$1,200, are you--I was getting back to Commissioner Reiche, are you suggesting that you're eliminating those over \$1,000 or are you

1 JOSEFIAK (continuing): going to treat them as a \$1,000 value?

2 TIERNAN: It goes up to \$1,000.

3 REICHE: No. No. I'd eliminate them.

4 JOSEFIAK: That's what I thought. Don't you think it is more  
5 fair at this point to take their appraisal and say this is \$750,  
6 this is \$1,200 and put that into the NOCO statement as \$928,000  
7 worth of assets and let them come back in 30 days and say, no the  
8 value is less than that based on this evaluation? Let them make  
9 make that decision.

10 TIERNAN: I think that's one way you can go.

11 REICHE: Tom, you may be right on the ones that are over \$1,000,  
12 limited to \$1,000. That's all right, that doesn't bother me.

13 MCGARRY: Mr. Harris and then I'll go to Mr. Tiernan.

14 HARRIS: According to their inventory, the only thing that is  
15 over \$1,000 is the 23 Warhol items total value of \$34,500.  
16 They're \$1,500, a couple could buy them, but if you're going to  
17 buy this stuff and hang it you've better be sure your wife  
18 agrees.

19 REICHE: I would decline to comment on the grounds, well, never  
20 mind.

21 HARRIS: I will move that we compute their NOCO statement on the  
22 basis of the value they put on the artwork themselves. After all  
23 they represented to the banks that these were valuable modern art  
24 objects with a general market, and they did not suggest that they  
25 were going to be bought only by people who wanted to make a  
26 contribution to the Kennedy. They were representing these items  
27 had this commercial value. Why don't we go with that value?

28 MCGARRY: Commissioner Harris moves that the Commission compute  
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2 value of the artwork as the Kennedy Committee computed it. Mr.  
3 Tiernan did you have a?

4 TIERNAN: Well, I will support the Harris motion, because I think  
5 the Kennedy Committee has some problems where they obtained these  
6 loans as collateral at the fair market value of such and such,  
7 but if we did take into accounts on the basis of that and I  
8 misunderstood what you were inquiring, and I think Charlie  
9 misunderstood your inquiry Frank--that if you--say--you took into  
10 account some of the restrictions that the Act put on the sale of  
11 these, we're treating them as contributions --there is the  
12 restriction on them. We took that into account by reducing the  
13 appraised value of those--only those what 23 pieces of art by  
14 what, \$500?

15 HARRIS: \$34,500.

16 TIERNAN: \$34,500. And you don't give them you know, -- I think  
17 they're going to come back and say that to us anyway in the 30  
18 days. If you want to do it that way, and I think that is what  
19 Tom's point was, and I'm willing to go along that way. But I  
20 think if they don't come back, and then they go into court, I  
21 think General Counsel's Office would be in a better position that  
22 the Commissioners knew that there would be some restrictions on  
23 them disposing of these assets as capital assets, and they did  
24 take that into account by reducing the appraised value of \$1,500  
25 on those items down to a \$1,000. I think we would be  
26 misconstruing the position; otherwise you're gambling whether the  
27 Kennedy Committee is going back to come within 30 days and make  
28 that argument to us. And we would accept it then, I think. But  
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1 TIERNAN (continuing): maybe we wouldn't accept it. I am not  
2 prejudging it, but I just think from a legal standpoint, Charlie,  
3 you might want to comment on it, I just think that you'd be in a  
4 stronger position going in and saying the Commissioners had that  
5 in mind, and they knew that the Committee might have some trouble  
6 disposing of these items in sale, even though you might get a  
7 couple that would bid -- that would pay \$1,500 -- but that's a  
8 limited field.

9 MCGARRY: Mr. Steele.

10 STEELE: That was, -- I did -- I had misunderstood what  
11 Commissioner Reiche had said and I had assumed that what you  
12 would say and I think that what you would have there if you  
13 limited the value to the \$1,000 is you would have a way of saying  
14 to the court, look the Commission did take into the fact that  
15 there were restrictions, i.e. the \$1,000 restriction, if they  
16 then argue well other things, such as I was suggesting in the  
17 colloquy with Commissioner Reiche that we worry about that later,  
18 but limiting it to the \$1,000 value. The only thing I would  
19 point is that I think that off that listing there is not only the  
20 \$1,500 Warhol there is the \$1,200 Rauschenberg, but it is a very  
21 small amount.

22 REICHE: But there were none of them.

23 STEELE: Oh, then there are none. O.K. so then I think you then  
24 by a relatively small concession in monetary terms have  
25 established -- allow you to establish the principle that, yes the  
26 Commission did take into account because they said that wouldn't  
27 value at anything over a \$1,000.

28 MCGARRY: Joe Stoltz has a comment on that and I'll go to Mr.  
29 Reiche.

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2 \$11,500. It would be a reduction from \$928,000 to \$916,500.

3 MCGARRY: Mr. Reiche.

4 REICHE: I just want to point out that by far the greater way in  
5 which we would be taking these restrictions into account is by  
6 excluding as a result of the definition of capital asset anything  
7 up to \$500. -- Check me on it Ray, -- but that's a significant

8 MCGARRY: Two thirds.

9 REICHE: Yes. Two thirds, so that -- we're doing it now -- at  
10 random -- we're doing it because our regulations in a sense  
11 require it.

12 TIERNAN: Right, right, that would be the Kennedy's position that  
13 that all the Committee were able to do that. You know we are not  
14 giving them anything special.

15 REICHE: Oh no, but that we were aware of it though is all I'm  
16 trying to ensure.

17 TIERNAN: Well I don't know whether Commissioner Harris is  
18 amenable to accepting that as an amendment. If he isn't, then we  
19 just have a question on his motion. But I think.

20 HARRIS: You can offer it as an amendment.

21 TIERNAN: Yeah, but I don't want to offer it. Yeah I'm not going  
22 to lose.

23 HARRIS: I'll just ask for a vote on my motion.

24 MCGARRY: If there's no further discussion, the vote will occur  
25 on the Harris motion. All in favor say Aye (AYE), All opposed?  
26 It appears to the Chair vote is 6-0.

27 MCGARRY: Where are we now Ray?  
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1 LISI: I think we settled two of the issues, as far as the value  
2 on the capital asset of the artwork and also that the value is  
3 the appraised value is my understanding, and I think --

4 STEELE: I think that settles that.

5 STOLTZ: We have one more.

6 MCGARRY: Joe Stoltz.

7 STOLTZ: We have one more to consider and that was the question  
8 on what date do we freeze the inventory I don't mean value wise,  
9 I mean the count? We have a list there at 8/13, we can't be  
10 certain that is exactly accurate there are some discrepancies  
11 that need to be worked out yet. But there are other dates that  
12 we could consider an inventory ranging from that date to today  
13 day or the AO date. And the number of prints on hand on any one  
14 of those dates is going to vary, particularly in that it's our  
15 understanding that right around Christmastime a substantial  
16 number of the remaining prints were given out to campaign workers  
17 and such, so that listing that we have there now may be fairly  
18 accurate for 8/13, but it is most likely not accurate for the  
19 current situation.

20 MCGARRY: Thank you Joe. Any comments? Mr. Reiche.

21 REICHE: I think it has be the date of ineligibility which would  
22 be August 13th, and the regulatory definition on the capital  
23 asset refers specifically to the date of ineligibility, so I  
24 think we have to go with that?

25 TIERNAN: Which date is that? What's that date?

26 STOLTZ: 8/13/80.

27 MCGARRY: You want to offer that Commissioner?  
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2 determining how much of an inventory they had of this artwork  
3 would be the date of ineligibility and the 8/13/1980.

4 MCGARRY: The Commissioner Reiche moves that for the purposes of  
5 determining the extent of the Kennedy Committee inventory  
6 relating to the artwork that we accept the date of August 13,  
7 1980. Any further discussions? If none, the vote will occur on  
8 that motion or. All in favor say Aye (AYE), All opposed? It  
9 appears to the Chair the vote is 6-0. That would seem to -- Joe  
10 Stoltz.

11 STOLTZ: One other comment. As a result, we would have the  
12 \$916,500 figure at least to start with. The last NOCO statement  
13 that we had.

14 TIERNAN: No, no, no that was not reduced.

15 STOLTZ: No, not reduced.

16 AIKENS: \$928,000.

17 STOLTZ: Then we have \$928,000. The last NOCO statement we had  
18 from the campaign was as of 3/16/81, now that's not an audited  
19 figure it came in on the matching fund submission. It shows  
20 total outstanding debts of \$674,000. If to that statement an  
21 asset of \$928,000 gets added, we are most likely going to be in a  
22 situation where we will be seeking to recover matching fund  
23 payments that have been made after the date of ineligibility,  
24 some portion of it.

25 MCGARRY: Mr. Tiernan.

26 TIERNAN: Mr. Chairman, I will make a motion that we -- on the  
27 basis of the Harris motion carrying -- that we accept their  
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1 TIERNAN (continuing): appraised value, but that we would reduce  
2 the amount, the value of the capital assets on those two items  
3 apparently where they appraised them at \$1,500, we reduce it a  
4 \$1,000, and the other series where they--

5 STEELE: Not relevant. Because there are none.

6 TIERNAN: They are all disposed of? O.K., it's not relevant.  
7 Then just those that were on their appraisal sheet which indicate  
8 a value of \$1,500 each. We would reduce that value to \$1,000.

9 MCGARRY: Commissioner Tiernan moves as a followup to the Harris  
10 motion that wherein on the Kennedy Committee inventory there  
11 appears a value of \$1,500 that we reduce that to \$1,000,  
12 Commissioner?

13 TIERNAN: Yes.

14 MCGARRY: If there is no further discussion the vote will occur  
15 on that motion. All in favor say Aye (AYE) All opposed? (NO).  
16 The Chair is in doubt. Will all in favor please indicate by  
17 raising their right hand. And all opposed? It appears to the  
18 Chair that the vote carries by a vote 4 to 2 with Commissioners--

19 TIERNAN: No. 3 to 2 it failed.

20 MCGARRY: 3 to 2, I'm sorry.

21 TIERNAN: Oh, 2 to 3.

22 MCGARRY: All in favor indicate by please raising their right  
23 hand and all opposed? It appears to the Chair that the vote  
24 carries by a vote 4 to 2.

25 TIERNAN: No, the motion loses by 2 to 4.

26 MCGARRY: Loses, I'm sorry. It fails to carry by a vote of 4 to  
27 2, with Commissioners Tiernan and Thomson voting for, Harris,  
28 Reiche, Aikens, and McGarry voting against.

1 the audit report. Would it be satisfactory then to circulate it  
2 tally vote prior to public release?  
3

4 MCGARRY: Mr. Reiche.

5 REICHE: Well I have a question after this.

6 MCGARRY: All right, nothing with reference to that. I see no  
7 problem with that. -- Mr. General Counsel-seems to be the sense  
8 of the Commission. Without objection that will be so ordered.  
9 And thank you very much. Ray, you'll just -- go ahead Mr.  
10 Reiche.

11 REICHE: My question bears on this Audit though that's why I  
12 wanted to raise the question.  
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LISI: I think that completes all of the --

MCGARRY: There's nothing further?

LISI: There is nothing further, no.

2 STOLTZ: We will circulate the revised document for a tally vote.

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4 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

5 I, Marjorie W. Emmons, Secretary of the Federal Election  
6 Commission, certify that the foregoing 368 page transcript is  
7 a true and accurate record of the Commission's discussions of  
8 matters pertaining to the Kennedy for President Committee Final  
9 Audit Report on the dates of August 25 and 26 and September 15  
and 16, 1981, with the exception of those deletions noted in the  
index appended to the transcript.

Signed:

10  
11 January 22, 1982  
12 Date

13 Marjorie W. Emmons  
14 Marjorie W. Emmons  
15 Secretary of the Commission  
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FEDERAL ELECTION COMMISSION

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THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF  
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.



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