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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1991

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL AUDIT REPORT - BUSH-QUAYLE '88
AND GEORGE BUSH FOR PRESIDENT, INC./
COMPLIANCE COMMITTEE

Attached for your information is a copy of the subject audit report.

The changes requested by the Commission at the October 24, 1991 meeting are at page 21, with conforming adjustments at pages 23, 25 and 27. These adjustments require no changes to any conclusions, recommendations or repayment amounts.

Should you have any questions, please contact Joe Stoltz at 219-3720.

Attachment:

Revised Final Audit Report on Bush-Quayle '88 and George Bush for President, Inc./Compliance Committee

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1991

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICER

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
BUSH-QUAYLE 88 AND GEORGE BUSH FOR PRESIDENT
INC./COMPLIANCE COMMITTEE

Attached please find a copy of the Final Audit Report on Bush-Quayle 88 and George Bush for President Inc./Compliance Committee which was approved by the Commission on October 24, 1991.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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REPORT OF THE AUDIT DIVISION
ON THE
BUSH-QUAYLE 88 AND GEORGE BUSH FOR PRESIDENT, INC./
COMPLIANCE COMMITTEE

I. Background

A. Overview

This report is based on an audit of Bush-Quayle 88 ("the GEC") and the George Bush for President, Inc./ Compliance Committee ("the Compliance Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended and the Presidential Election Campaign Fund Act. The audit was conducted pursuant to 26 U.S.C. §9007(a), which states that after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

In addition, 26 U.S.C. §9009(b) states, in part, 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 GEC registered with the Commission on April 22, 1988, and the Compliance Committee registered with the Commission on April 17, 1987. The Committees maintain their headquarters in Alexandria, Virginia.

The GEC audit covered the period from the GEC's inception through March 31, 1990. In addition, certain financial activity was reviewed through April 19, 1990. The GEC reported an opening cash balance of \$-0-; total receipts of \$52,720,402.23; total expenditures of \$52,703,321.85; and a closing cash balance of \$15,660.90.

The audit of the Compliance Committee covered the period from its inception through December 31, 1989. The Compliance Committee reported an opening cash balance of \$-0-; total receipts of \$5,944,811.78; total expenditures of \$4,998,841.83; and a closing cash balance of \$945,970.05. Under 11 C.F.R. §§9007.1(b)(3) and 9007.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

The Treasurer of the GEC and the Compliance Committee is J. Stanley Huckaby.

C. Scope

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

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

A. George Bush for President, Inc./Compliance Committee

1. Individual Contributions in Excess of Limitation

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.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors

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provide the treasurer with a written reattribution of the contribution, which is signed by each contributor and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. §110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contribution in violation of any limitation on contributions.

During the review of contributions from individuals, the Audit staff determined that the Compliance Committee had accepted 29 contributions from individuals which were in excess of the 2 U.S.C. §441a(a)(1)(A) limit and had not been refunded, reattributed or redesignated within the time specified at 11 C.F.R. §110.1(k). The excessive portions of these contributions totaled \$23,025.00. Twenty-four of the 29 contributions, for which the excessive amounts totaled \$19,525, were not refunded in a timely manner. The average number of days from the Committee's date of deposit to the date of refund was 113.

The remaining 5 contributions from individuals, for which the excessive amounts totaled \$3,500, did not appear to have been resolved at the time of the exit conference.

The Audit staff provided the Compliance Committee with a schedule of the excessive contributions at the exit conference.

Subsequent to the exit conference, the Compliance Committee indicated that 3 of the 5 contributions, for which no Committee action had been taken, were refunded on July 2, 1990,

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and they were searching their files for reattribution letters for the other two.

Although the Compliance Committee did not establish a separate account for the deposit of contributions which were possibly excessive or prohibited, there was sufficient cash on hand in the Committee's regular accounts at all times to make any necessary refunds.

In the Interim Audit Report, the Audit staff recommended that the Compliance Committee provide the following: (1) evidence that the contributions discussed above were refunded in a timely manner; (2) copies of the front and back of the negotiated refund checks for the 3 contributions refunded on July 2, 1990; and, (3) evidence that the other 2 contributions determined to be excessive were properly reattributed, or if they were refunded, copies of the front and back of the negotiated refund checks.

In its response to the Interim Audit Report, the Compliance Committee provided the requested contribution refund check copies for 2 of the 3 contributions refunded on July 2, 1990 and they provided the requested reattribution letters for the other two contributions. The one remaining contribution refund check, in the amount of \$500, was still outstanding at the time of the response.

Based on the above, the Audit staff concludes that the Committee has materially complied with the Interim Audit Report recommendations. However, it should be noted that \$500 is repayable to the United States Treasury pursuant to 11 C.F.R. §9007.6 as a result of the contribution refund check which was still outstanding at the time the response was made (See Finding III.D., Stale-Dated Committee Checks).

Recommendation #1

The Audit staff recommends no further action with regard to this matter.

2. Request for Additional Records

Sections 9003.1 (b)(4) and (5) of Title 11 of the Code of Federal Regulations provides, in part, that to become eligible to receive payments from the Presidential Election Campaign Fund, the Presidential and Vice Presidential candidates of a political party shall agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements, and other information the Commission may request. In addition, they shall agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 C.F.R. Part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person

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authorized to make expenditures on behalf of the candidate or committee(s).

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that each political committee or other person required to file any report or statement under this subchapter shall maintain all records relevant to such reports or statements, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide, in sufficient detail, the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

During the fieldwork, the Compliance Committee provided worksheets to the Audit staff which contained the Compliance Committee's allocations to the GEC of the non-exempt portion of payroll, payroll taxes, overhead, and other costs which relate to the operations of the accounting office. The Compliance Committee apparently selected the Alternative Allocation of National Campaign Headquarters Payroll and Payroll Taxes in the June 1988 edition of the Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing which provides for 85% of these costs to be allocated as exempt compliance. The worksheets provided indicate a 15% allocation of these costs to the GEC and cover the period May 1988 through December 1988. However, no information was provided to show the derivation of the totals contained on the worksheets. Absent such information, the Audit staff was unable to verify the accuracy of the allocations.

At the time the worksheets were presented and again at the exit conference, the Audit staff requested that documentation in support of the worksheet figures be provided.

In the Interim Audit Report, the Audit staff recommended that the Compliance Committee provide workpapers, worksheets containing calculations, and any other documentation related to the allocations of payroll, overhead and other expenses to the GEC. It was further noted that after the review of this information, the Audit staff could make additional adjustments to the GEC expenditures subject to the spending limitation, if warranted.

In the GEC's response to the Interim Audit Report, they submitted the requested documentation. The documentation consisted of supporting schedules which demonstrated the derivation of the totals to which the allocation percentages were applied. These schedules were prepared by FEC reporting period. The Audit staff verified these totals and compared them to the worksheets which the Compliance Committee had provided during the fieldwork.

Based on this review, the Audit staff concludes that this documentation materially agrees with the allocation worksheets provided by the Compliance Committee. No further adjustments to the GEC expenditures subject to the spending limitation are warranted.

Recommendation #2

The Audit staff recommends no further action with regard to this matter.

B. Bush-Quayle 88 Committee

1. Press Plane

Sections 9004.6(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that if an authorized committee incurs expenditures for transportation, ground services and facilities made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitation at 11 C.F.R. §9003.2(a)(1) and (b)(1). Further, if reimbursement for such expenditures is received by a committee, the amount shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Section 9004.6(d)(1) of Title 11 of the Code of Federal Regulations states, in part, that the committee may deduct from the amount of expenditures subject to the overall expenditure limitation at 11 C.F.R. §9003.2(a)(1) and (b)(1), the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursement received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee

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for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section shall be repaid to the Treasury.

Also, the Explanation and Justification for the above regulations (Federal Register, Volume 52, No. 106, Page 20866) states, that "committees may deduct an additional 3% of the direct cost of providing services to the Media if reimbursements in that amount are received. The additional 3% is intended to cover the administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the committee uses its own staff to perform these tasks or hires a travel consultant and collection agency." Further, when discussing the 3% administrative cost allowance, the Explanation and Justification states that the new provision would continue to limit the amount billed to 110% of the direct cost of services. It does not increase the amount a campaign may bill for providing services. It only increases the size of the offset if reimbursements exceed 100% of direct cost to the campaign.

Beginning in August 1988 through November 9, 1988, the GEC provided a plane for members of the Press to accompany Air Force II. In addition to media personnel this aircraft generally carried two Secret Service agents, four GEC staff assigned to the Press travel program and on some occasions a small number of other GEC staff. Also, a separate aircraft was used by Vice President Quayle and his traveling party. This aircraft generally carried Vice President Quayle, GEC staff (usually including four persons assigned to the Press travel program), media personnel and a number of Secret Service agents.

The GEC determined the cost of each leg of each trip and then billed members of the Press for air transportation. In a separate calculation the GEC billed the Press for ground transportation and services.

When preparing the billings for air transportation the GEC made the following calculations. For GEC staff, other than those assigned to the Press travel program, the cost of the flight was divided by the number of persons on the flight to determine a pro rata cost. This cost was then multiplied by the number of GEC passengers on the flight, again excluding the staff assigned to the Press travel program, to determine the GEC share of the aircraft cost. The remainder of the aircraft cost was divided by the number of Press on the flight to determine the amount to be billed to the Press. As a result, both the cost attributable to the GEC staff assigned to the Press travel program and the Secret Service was billed to the Press. Even

though the cost of providing air transportation to the Secret Service was billed to the Press as described above, the Secret Service was also billed.

The Audit staff reviewed documentation for each leg of each trip to determine the billable amount for the Press. The pro rata cost was determined by dividing the cost of each flight by the number of passengers on the flight. This amount was multiplied by the number of Press on the flight and then accumulated for all flights. The accumulated amount was then multiplied by 110%, resulting in a billable amount for Press air transportation of \$2,852,818.30. The GEC billed the Press a total of \$3,117,905.00 for air transportation.

The GEC also billed the Press for local ground costs on various trips. As a line item on these bills the GEC included "Daily Staff Expenses." Though no records were located to allow the Audit staff to calculate the costs covered by this item, it appears to be the expenses of the GEC personnel that traveled with the Press. The total amount billed to the Press for Daily Staff Expenses during the campaign was \$20,211.

In addition, the Press was billed for the total cost of telephone filing centers. The GEC did not take into account the refunds of \$7,974.86 they received from the telephone companies.

The Audit staff determined that if the GEC had billed the Press 110% of the cost for air fare, local bus transportation and other ground services, total billings would have been \$3,177,130.35. The GEC billed the Press \$3,440,920.00 and received reimbursements of \$3,536,029.63. For purposes of this analysis, neither the correct billable amount for the Secret Service, nor the amount received by the GEC from the Secret Service is included.

As a result of the billing practice described above, the Audit staff concluded in the Interim Audit Report that the GEC has received \$358,899.28 (\$3,536,029.63 - \$3,177,130.35) in excess of the maximum billable amount (which is 110% of actual cost).

Since all amounts received from the Press were reported as offsets to operating expenditures and expenditures subject to the spending limitation, the Interim Audit Report further stated that the GEC's reported total for expenditures subject to the spending limitation was understated by \$358,899.28 due to this practice. This amount was added to the GEC expenditures subject to the limitation. Also, the Audit staff included the \$358,899.28 on the Statement of Net Outstanding Qualified Campaign Expenses (NOQCE) as a payable to the various Press organizations the GEC over billed during the campaign.

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Though the GEC is permitted to receive from the Press an amount equal to 110% of the actual cost of transportation services provided, only an amount equal to 103% of the actual costs may be offset against the spending limitation absent a showing of administrative costs in excess of three percent.

In the Interim Audit Report, a total amount of \$202,181.02 was noted as the GEC's receipts in excess of 103%, but less than 110%, of GEC's cost of providing transportation and other services to the Press. This amount was repayable to the U.S. Treasury, unless the GEC was able to document administrative costs equal to 10% of the direct cost of providing transportation and services to the Press. This amount was also included with the GEC's expenditures subject to the spending limitation since the receipts from the Press were treated as offsets to such expenditures.

A schedule detailing the above calculations was provided to the GEC at the exit conference.

In the Interim Audit Report the Audit staff recommended that the GEC provide documentation showing that they have not over billed the Press by \$358,899.28 and that they should submit documentation to demonstrate that the \$202,181.02 in receipts from the Press are not in excess of costs incurred to provide transportation and services to the Press.

It was further recommended that in the absence of such documentation, the GEC should submit evidence that \$358,899.28 had been refunded to the Press. This evidence was to include the calculation of the amount paid to each Press organization and copies of the front and back of the negotiated refund checks.

In response to the Interim Audit Report, the Treasurer states that "... at no time did Bush-Quayle bill the Press more than 100% of the cost of the services provided to the Press despite the fact that it legally could have billed for up to 110% of the cost." The Treasurer states that:

[t]he issue with regard to the Press Plane revolves solely around the fact that the pro rata press travel expenses included the travel expenses of four campaign individuals who travelled: 1) at the request of the press; 2) with the explicit understanding that they would be paid for by the press; and 3) to provide certain services requested by the press, which, had the press not requested these services, would not have been provided. Thus, these individuals would not have been on the press plane were it not for the request of the press.

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The GEC provided five affidavits, including one from a member of the Press who traveled on the Press plane, which supports the above stated points made by the GEC (see Attachment 1). The other four affidavits were from GEC staff and outlined their duties as follows: "... to organize arrangements for ground and air transportation, respond to special requests of the press (such as additional press seats), arrange for proper and acceptable food and supplies of beverages requested by the press, and provide additional information regarding the schedule, all in addition to creating and maintaining passenger manifests and credit cards payment facilities for the press."

The Treasurer takes exception to the Audit staff's treatment of these individuals as "passengers" on the Press plane. He contends that "these individuals were not 'passengers' any more than the pilot or navigator were passengers" and that they were on the plane for the purpose of facilitating travel by the Press and their costs were borne by the Press with the full concurrence of the Press. He adds that "... the Commission's own regulations acknowledge that there is no distinction between the Committee's staffers and independent contractors for the purposes of determining cost," (11 C.F.R. §9004.6(d)(2)) and that "... this issue would never have arisen had the Committee contracted with the air carrier for it to provide these services to the press using airline employees (as commercial airlines do for most of these services as a matter of course)." The Treasurer concludes that the GEC does not owe the Press \$358,899.28 in reimbursements because "... the press was charged the exact costs of travel on the press plane, nothing more, nothing less."

The Audit staff disagrees with the GEC's contention that this issue never would have been raised if the GEC had contracted directly with the air carrier to provide services to the Press using airline employees. As the Treasurer notes, Commission regulations make no distinction between having campaign personnel or third party personnel perform these services. The Audit staff concluded that in neither case can the costs be included in the direct costs for purposes of billing persons traveling with the campaign.

The Treasurer's argument that the GEC staff who administered the Press travel program should not be considered as "passengers" is not relevant. The regulations at 11 C.F.R. § 9004.6 specify that an individual's pro rata cost shall be determined by dividing the total number of individuals to whom such transportation was made available into the total cost of the transportation. All GEC staff are covered by the term "individual" regardless of their duties.

The Audit staff does not dispute that the GEC staff persons travelled at the request of the Press, nor does the Audit staff dispute the Treasurer's statement that these

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campaign staff persons were on the plane for the purpose of facilitating travel for the Press. The Audit staff concluded that these facts did not establish that costs associated with these staff persons' travel were direct costs for providing transportation and services to the Press.

The proposed Final Audit Report stated that it was the opinion of the Audit staff that the services provided by the GEC staff were administrative costs as defined in the Explanation and Justification (Federal Register, Volume 52, No. 106 Page 20866) for 11 C.F.R. §§ 9004.6(a) and (b) and 9004.6(d)(1). The Audit staff concurred with the Treasurer's reference to 11 C.F.R. §9004.6(d)(2) which states that administrative costs shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

The Committee provided affidavits from four GEC staff members assigned to the Press travel program which documented their duties (See Attachment 1). Based on the Audit staff's review of the affidavits, the proposed Final Audit Report concluded that their duties had been administrative in nature. These staff person's duties, their salary, transportation and subsistence costs were calculated and compared to 10% of the total direct cost of providing transportation and services to the Press. This analysis indicated that the GEC had incurred administrative expenses in excess of 10% of the direct costs of the transportation and services provided. Therefore, no repayment to the U.S. Treasury was recommended.

The Final Audit Report concluded that the GEC received \$358,899.28 in excess of the maximum billable amount from the Press (110% of actual cost). This amount was included in the GEC expenditures subject to the spending limitation (Finding II.B.3.) and on the NOQCE Statement as a payable to the various Press organizations which the GEC over billed during the campaign (Finding III.B.).

On October 3, 1991, the Commission determined that the services provided by the GEC staff who administered the Press travel program could be considered the direct costs of the transportation and services provided to the Press.

The Audit staff made revisions to the above calculations for air travel and services provided to the Press based on the Commissions determination.

The results of these revisions are addressed separately for each aircraft.

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a. George Bush Press Plane

The Audit staff determined that the billable cost for air transportation and services for the Press was \$2,167,245.51. Expenses incurred by the GEC staff who administered the Press travel program, for travel, salary and subsistence included in this amount totaled \$172,705.81. This billable cost was then multiplied by 110%, resulting in the maximum billable amount of \$2,383,970.06. The GEC received from the Press a total of \$2,255,178.73 for transportation and services. Since this amount is less than the maximum amount that the GEC could have billed the Press for air transportation and other services, no refund is due the Press.

Though the GEC is permitted to receive from the Press an amount equal to 110% of the actual cost of transportation services provided, only an amount equal to 103% of the actual costs may be offset against the spending limitation.^{1/} Any amount received that is greater than the direct plus administrative cost but less than the maximum billable cost is repayable to the U.S. Treasury. Further, this amount is included in the GEC expenditures subject to the spending limitation since the reimbursements from the Press were treated as offsets to such expenditures. The amount in excess of the 103% is \$22,915.85.

b. Dan Quayle Charter

A similar analysis was done to determine the maximum amount the GEC could bill the Press for air transportation and services for the Quayle Charter. The Audit staff determined that the billable cost was \$1,042,756.61. This amount included expenses for travel, salaries and subsistence of the GEC staff who administered the Press travel program which totaled \$148,995.99. The \$1,042,756.61 was multiplied by 110% resulting in a maximum billable amount of \$1,147,032.27 for air transportation and services to the Press.

The GEC received reimbursements from the Press of \$1,280,850.90 which is \$133,818.63 in excess of the maximum billable amount (\$1,280,850.90 - 1,147,032.27). The \$133,818.63 has been added to the GEC expenditures subject to the spending limitation (Finding II.B.3.) and has been included on the NOQCE Statement as a payable to the various Press organizations the GEC over billed during the campaign (Finding III.B.).

^{1/} If the GEC incurred administrative costs in excess of 3%, they may document the larger amount and adjustments will be made.

As noted above, the GEC is permitted to receive from the Press an amount equal to 110% of the actual cost of transportation services provided, however, only an amount equal to 103% of the actual costs may be offset against the spending limitation.^{2/} The GEC has received payments from the Press totaling \$72,992.96 in excess of 103% but less than 110%, of GEC's cost of providing transportation and other services to the Press. This amount is repayable to the U.S. Treasury and has been included in the GEC's expenditures subject to the spending limitation since the receipts from the Press were treated as offsets to such expenditures.

c. Recap

In summary, the GEC has received \$133,818.63 in excess of the maximum billable amount from the Press (110% of actual cost). In addition, amounts which represent the receipts in excess of 103%, but less than 110% of the GEC's cost of providing transportation and other services to the Press, is repayable to the U.S. Treasury. This totals \$95,908.81 (\$72,992.96 + \$22,915.85). Both amounts have been included in the GEC expenditures subject to the spending limitation (Finding II.B.3.) and included on the NOQCE Statement as a payable to the Press organizations (Finding III.B.).

A schedule detailing the above calculations is provided at Attachment 2.

Finally, the GEC's disclosure reports contain credits due various Press organizations totaling \$106,012.67. Records provided to the Audit staff indicate that \$61,557.67 of this amount relate to prepayments received by the GEC that have not been applied to any billing. Therefore, these prepayments should be refunded and the amount has been included as a payable on the NOQCE Statement (Finding III.B.) and since the receipts were considered offsets to operating expenditures, the \$61,557.67 has also been added to the GEC expenditures subject to the spending limitation (Finding II.B.3.).

Recommendation #3

The Audit staff recommends that the GEC refund to the Press organizations \$61,557.67 in unused prepayments and \$133,818.63 in amounts received in excess of the maximum billable amount for Press travel on the Quayle Charter. The GEC should submit evidence of these refunds, including the resolution of all credits, the calculation of the amount paid to each Press

^{2/} If the GEC incurred administrative costs in excess of 3%, they may document the larger amount and adjustments will be made.

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organization and photocopies of the front and back of the negotiated refund checks. See Finding III.A. for an explanation of the \$95,908.81 repayment related to collections in excess of 103% of billable cost.

2. Air Force II

Section 9004.7 (b)(2) of Title 11 of the Code of Federal Regulations states, in part, that for a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop to the point of origin.

Section 9004.7(b)(3) of Title 11 of the Code of Federal Regulations states that for each trip, an itinerary shall be made available for Commission inspection.

Section 9004.7(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that for trips by government conveyance a list of all passengers, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

Section 9004.7(b)(5) of Title 11 of the Code of Federal Regulations states that if any individual uses government conveyance for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the first class commercial air fare plus the cost of other services or the commercial charter rate plus the cost of other services.

The candidate used Air Force II for campaign travel. The Office of the Vice President billed the GEC for the campaign-related portion of the trip at first class air fare plus one dollar. Each billing included a manifest showing the people that traveled on Air Force II and whether they were traveling on official or unofficial business. The Audit staff noted persons who traveled on Air Force II for unofficial reasons but whose air fare was not billed to the GEC by the Office of the Vice President. The GEC was not billed for these air fares, though the people involved appeared to be traveling for political reasons. Many of the individuals on the manifests were political figures. According to GEC records, the costs for people traveling on Air Force II for unofficial reasons between September 13 and October 31, 1988, totaled \$14,937.00. The GEC paid none of these costs.

In the Interim Audit Report, the Audit staff recommended that the GEC provide additional information about individuals that traveled on Air Force II for unofficial reasons

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but whose air fare was not billed to or paid for by the GEC, including the reason why the travel was not related to the general election campaign; the name of the organization that paid for the trip; and, the amount paid by the other organization for each trip.

In the GEC's response to the Interim Audit Report, the Treasurer states that "the Campaign served as a clearinghouse for 'political' travel on Air Force II (including non-campaign related political travel)." Also included is the following explanation by David Nummy, Comptroller of Bush-Quayle:

the Campaign would receive requests from candidates, committees, and federal, state, and local officeholders requesting the opportunity to travel on Air Force II.... Such requests for political travel on Air Force II were accommodated by the campaign for the benefit of such other candidates, committees, of federal, state and local officeholders whenever possible, to the extent that there were seats available once the campaign's own travel requirements were met. The travel of these individuals was always contingent, however, on the approval of the Office of the Vice President.... In the instances of non-Bush Campaign travel by officeholders and others, the cost of these segments was billed directly by the Office of the Vice President to these individuals because their travel was not related to the Bush-Quayle 88 Committee.

The Treasurer adds that "even if an individual on the plane was a 'politician,' there is no reason to assume that that individual was not on the plane to further his or her own political objectives, as opposed to the Bush-Quayle campaign's" and:

even if an individual were on the plane for 'unofficial' (non-governmental) business, this does not mean that he or she was necessarily on the plane for 'Bush campaign' business. Members of the Vice President's family, and personal friends, may well travel on Air Force II for reasons related to neither government nor campaign business. If the Vice President had travelled by commercial plane, such costs would have been paid by other non-public sources. However, the Vice President of the United States travels as a matter of course on Air Force II, so all personal guests are billed through

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the United States Government. Since the billing was handled through the U.S. Government, Bush-Quayle is unable to provide information as to what entity actually paid for the transportation of the individuals in question, unless that information is publicly available.

The GEC researched the Federal Election Commission disclosure reports and identified 14 individuals who were members of or candidates for Congress, whose air travel between September 13 and October 31, 1988, was paid for by their own committees. This included a candidate's spouse who traveled on Air Force II for unofficial reasons. In addition, based on the Audit staff's review of FEC disclosure reports, it was determined that the air fare for a U.S. Senate candidate, and spouse, was paid for by his committee. The total cost involved was \$5,305.00. The Audit staff notes that one of the individuals identified by the GEC was retiring U.S. Senator Daniel Evans - WA (cost of travel was \$794.00) and another was U.S. Senator Phil Gramm - TX who was not up for re-election until 1990 (cost of travel was \$182.00). No adjustment has been made for the costs of these two trips (\$976.00).

It should also be noted that letters from two additional individuals who traveled on Air Force II, who were not included in the Interim Audit Report finding, stated that they were invited by the GEC and therefore should not be billed for the air travel. These two individuals were apparently billed at the direction of the GEC. It appears that as a result of receiving these letters, the GEC paid for these air fare costs.

The GEC states in its response that several individuals identified as Bush-Quayle staff persons are not staff persons and that "[e]very Bush-Quayle staffer or individual authorized to travel on behalf of Bush-Quayle was paid for by Bush-Quayle." The Audit staff notes that the names and titles of individuals reflect how they appeared on the Air Force II travel manifests. Absent further information, no adjustment to the Interim Audit Report conclusion has been made with respect to these individuals.

The GEC failed to provide the requested information for the remaining 18 individuals who traveled on Air Force II. Air fare for these individuals totaled \$9,632.00. In addition, the Audit staff did not adjust for the trips involving Senators Evans and Gramm in the amount of \$976.00 as discussed above. Costs totaling \$10,608.00 (\$9,632.00 + \$976.00) are still questioned as possible campaign travel related to the GEC.

In summary, it appears that 14 individuals traveled in an unofficial capacity not related to Bush-Quayle 88. The remaining individuals (20, involving \$10,608.00) may

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have been traveling on behalf of Bush-Quayle. However, due to the relatively small amount involved the Commission determined that no further action is warranted.

Recommendation #4

Based on the Commission's determination, no further action is necessary with regard to this matter.

3. Expenditure Limitation

Section 441a(b)(1)(B) and (C) of Title 2 of the United States code states that no candidate for the office of President of the United States who is eligible under section 9003 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$20,000,000 as adjusted for increases in the Consumer Price Index.

The expenditure limitation for the 1988 general election for the office of President is \$46,100,000.

The GEC reported operating expenditures of \$51,308,321.85 and offsets to these expenditures totaling \$5,225,402.23. The Audit staff reviewed the reported amounts and made the following adjustments.

a. Offsets to Operating Expenditures

As noted above, the GEC reported offsets to operating expenditures of \$5,225,402.23. However, a reimbursement from the Secret Service for air transportation in the amount of \$94,209.24 was not included. In addition, receipts from the sale of assets totaling \$10,403.00 were not included in the reported figure. The Audit staff also made miscellaneous adjustments totaling (\$775.99). Finally, an unexplained difference of \$7,080.52 remains between reported refunds and those identified in the GEC bank records. Adjusted offsets to operating expenditures was \$5,336,319.00.

In the response to the Interim Audit Report, the Treasurer states that the GEC agrees with the adjusted offsets to operating expenditures total of \$5,336,319.00 (but disagrees with the Audit staff's explanation of the GEC's failure to include receipts from the sale of assets in the reported figure).

In addition to the above, the Audit staff reviewed the FEC disclosure reports filed by the GEC which covered the period April 1, 1990 through June 30, 1991, and as a result has included as an offset to operating expenditures a refund reported by the GEC in the amount of \$429.25. The adjusted total is \$5,336,748.25 (\$5,336,319.00 + \$429.25) and is subject to audit verification.

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b. Amount Due Bush-Quayle 88 from George Bush for President, Inc. (Primary Committee)

The Audit staff has included, as a receivable to the GEC, \$42,519.00 from the Primary Committee.

This amount includes \$4,140 for equipment purchased by the GEC from the Primary Committee. The GEC paid for some items which the Primary Committee had previously sold to the Sununu Committee, but failed to remove the items from the Primary Committee's equipment inventory. Therefore, the GEC paid a total of \$4,140 for equipment that was not in the possession of the Primary Committee.

The Treasurer states, in the response to the Interim Audit Report, that the Audit staff had erroneously relied on an inventory list found in the GEC's records in making the finding and stated that the GEC appropriately paid the value of the equipment which it received. The Treasurer explained that the GEC initially did maintain a list of equipment based on serial numbers, but the Committee ceased to update this list with additions or deletions. Equipment bought and sold by the Committee was accounted for, but not exclusively by serial number after the early days of the campaign because it became impractical to do so. Bush-Quayle did buy equipment from the Primary Committee accounting for the full purchase price of that equipment. The apparent administrative discrepancy in the clerical recording of the serial numbers does not affect the amount paid by Bush-Quayle for the equipment it did in fact buy from the Primary Committee. Finally, an affidavit of a former GEC staff member was submitted in support of the treasurer's explanation.

The Audit staff notes that the GEC did not provide in its response to the Interim Audit Report any documentation to demonstrate which equipment was transferred to the GEC from the primary committee or the value of that equipment. The inventory list found in GEC records was, at the time of the audit, unverifiable. It is noted however, that the inventory list was the basis on which the amount of the payment from the GEC to the primary committee for transferred equipment was determined. Absent the submission of more specific information no change to the Interim Audit Report conclusion is warranted.

Also, the Primary Committee purchased several insurance policies during the Campaign. The coverage dates of the policies carried over into the General Election period. The GEC reimbursed the Primary Committee in September, 1988 for their share of the insurance. However, an analysis of the allocation indicated that the GEC over reimbursed the Primary Committee by \$14,859.

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In response to the Interim Audit Report, the Treasurer states that upon review of committee records, Bush-Quayle is willing to accept the Audit staff's calculations with regard to this matter, and has accepted an appropriate refund.

Finally, in response to the Interim Audit Report on the George Bush For President Committee, Inc. (Primary Committee) a copy of a check from the Primary Committee to the GEC in the amount of \$23,520 was provided. It was explained that as a result of a recommendation made in that interim report the GEC had reviewed their records and determined that a charge for an aircraft charter for a flight to the nominating convention on August 16, 1988 had been mistakenly paid by the GEC.

c. Reporting Errors

An addition of \$82,903.76 is made to operating expenditures. This amount includes payroll checks totaling \$10,342.66 that GEC failed to report and miscellaneous adjustments made by the Audit staff in the amount of \$1,572.57. An unexplained difference of \$70,988.53 remains between what the GEC reported and the correct reportable amount determined by the Audit staff through bank reconciliations. It should be noted that beginning cash is \$-0- and ending cash is materially in agreement (ending cash as presented in the GEC's NOQCE statement and the bank reconciliation) and the differences in receipts have been materially identified, therefore, the difference in disbursements appears to be the result of a reporting error(s) by the GEC.

The Treasurer explains in the response to the Interim Audit Report that "offsetting income and expenditure transactions created minor discrepancies. Thus, Bush-Quayle does not dispute this finding and will amend its reports accordingly."

d. Accounts Payable

An accounts payable total of \$15,652.98 is added to operating expenditures. This amount includes payables as of March 31, 1990, totaling \$9,777.82, documented by the GEC, and the inclusion by the Audit staff of other disbursements made by the GEC after March 31, 1990, totaling \$5,875.16.

In response to the Interim Audit Report the Treasurer acknowledges that the Audit staff's total for accounts payables includes disbursements documented through March 31, 1990 plus disbursements made after March 31, 1990. However, the Treasurer states that the Committee's total as of March 15, 1991 is \$9,777.82. The GEC's accounts payable figure apparently

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fails to consider the reported payments after March 31, 1990 not included in the balance shown on the GEC's NOQCE.

In addition to the above, the Audit staff has included \$3,290.98 as a payable noted during a review of FEC disclosure reports filed by the GEC covering the period April 1, 1990 through June 30, 1991. This amount results in a revised accounts payable total of \$18,943.96. This revised amount is subject to audit verification.

e. Reimbursements Due Compliance Committee from GEC

The GEC allocated 5% of its national overhead to exempt compliance pursuant to alternative 2 - Allocation of National Campaign Office Payroll, Payroll Taxes and Overhead Expenses contained in the June 1988 edition of the Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing.

During the review of the GEC's allocations of payroll and overhead expenses, it was determined that transactions were coded with two similar but not identical codes. One was apparently used to generate the purpose of the disbursement on the disclosure report schedules B-P while the other was a general ledger code which determined items to be included in the payroll and overhead categories. An example of the difference in the two codes is a payment to a telephone company for a press filing center. The disclosure report would describe the payment as a telephone expense, generally an overhead item. However, for general ledger purposes, this expense would be charged to a national press category and subsequently billed to the media and not included in overhead.

When the GEC was calculating the compliance exemption on payroll and overhead expenses, the report description code, rather than the general ledger code, was used to identify costs eligible for the exemption. The Audit staff corrected this error and determined that an additional \$85,066.62 should be charged to the spending limitation.

In addition, it was noted that payments to certain vendors were considered consulting and included in payroll. The Audit staff deleted these payments from the payroll category and therefore, from the pool of expenses eligible for a 5% compliance exemption. This adjustment results in a \$40,201.41 increase in expenditures subject to the spending limitation. (See Attachment 3 for a listing of the vendors.)

The total increase in expenditures subject to the limitation for the two categories discussed above is \$125,268.03.

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In the response to the Interim Audit Report, the Treasurer states that since the \$85,066.62 over-allocation of administrative costs will have no net effect on either the Committee's expenditure limits or cash flow, the Committee has not expended resources to verify the accuracy or inaccuracy of said amount. The Treasurer states further that this amount has been appropriately reflected on the Reconciliation of Expenditures Subject to the Spending Limitation.

However, in response to the vendors not considered payroll and not eligible for the 5% compliance exemption, which resulted in an addition of \$40,201.41 to the spending limitation, the Treasurer states that the Audit staff chose to consider the payments at issue as payments to vendors rather than as payments in the payroll category eligible for the 5% compliance exemption. He also states that the payments were for the personal services of individuals and therefore appropriately considered payroll. The Treasurer acknowledged that in some cases the payments were paid to the individual's corporate entity. The response also contains portions of contracts and a telephone listing to demonstrate that in some cases the services provided were performed in GEC offices.

The Final Audit Report submitted for Commission consideration stated that, in the opinion of the Audit staff, the entities included in the Interim Audit Report finding are clearly businesses independent from the GEC. The fact that a business performs services at a customer's offices does not cause payments to that business to become payroll of the customer. Though the Audit staff did not propose any change to the Interim Audit Report conclusion, it was noted that the GEC could establish that some portion of the work of these businesses was related to compliance with the Federal Election Campaign Act and therefore, eligible for a compliance exemption.

On October 24, 1991, the Commission considered this matter and concluded that these consulting fees were for the personal services of individuals and were therefore includable in payroll costs for the purpose of calculating the 5% compliance exemption.

f. Expenditures that may be Reimbursed by The Compliance Committee

The GEC identified expenditures in their database that were paid by the GEC but could have been paid by the Compliance Committee. A review was done by the Audit staff of these expenditures and it was determined that the total amount of expenditures that may be paid by the Compliance Committee is \$651,762.73.

In the response to the Interim Audit Report, the Treasurer states that "Bush-Quayle does not dispute this finding, and in fact believes that there was approximately

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\$750,000 in expenditures which were paid by Bush-Quayle which could have been paid by the Compliance Committee."

Included with the GEC's response to the Interim Audit Report is a calculation similar to that shown below. However that calculation includes only those adjustments that the GEC accepts. The GEC concluded that in order to avoid exceeding the expenditure limitation a transfer in the amount of \$34,892.05 was required. A copy of the transfer check was included in the materials submitted.

Shown below is a summary of the GEC's reported expenditures subject to the limitation.

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**Bush-Quayle 88, Inc.
Expenditures Subject to the Spending Limitation
at March 31, 1990
Audit Analysis**

1. Reported Operating Expenditures Subject to Limitation from Inception through March 31, 1990 \$51,308,321.85

Adjustments to Reported Totals

2. Less: Offsets to Operating Expenditures (See Finding II.B.3.a.) (5,336,748.25)

3. Less: Amount Due the GEC from the Primary Committee (See Finding II.B.3.b.) (42,519.00)

4. Less: Voided Outstanding Checks For Which No Obligation Exist (See Finding III.D.) (23,657.24)

5. Less: Non-qualified Campaign Expenses (See Finding III.C.) (30,101.26)

6. Add: Reporting Errors (See Finding II.B.3.c.) 82,903.76

7. Add: Accounts Payable (See Finding II.B.3.d.) 18,943.96

8. Add: Reimbursements Due the Compliance Committee from the GEC (See Finding II.B.3.e.) 85,066.62

9. Add: Prepayments Made by the Press Not Used or Refunded (See Finding II.B.1.) 61,557.67

10. Add: Refunds Due Press (See Finding II.B.1.) 133,818.63

11. Add: Press Profit Due U.S. Treasury (See Finding III.A.) 95,908.81

12. Less: Amount Reimbursed To The GEC From The Compliance Committee In Response To The Interim Audit Report (34,892.05)

SUBTOTAL 46,318,603.50

13. Less: Expenditures Which May be Reimbursed by the Compliance Committee at GEC's Option (See Finding II.B.3.f.) (218,603.50)

14. Total Expenditures Subject to Limit \$46,100,000.00

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**Footnotes to
Expenditures Subject to the Spending Limitation**

- a/ The GEC accepts \$14,859.00 related to insurance expenses and in response to the Interim Audit Report submitted a copy of a check received from the primary committee. Also, as explained earlier a check for \$23,520.00 to reimburse the GEC for a primary committee aircraft charter mistakenly paid by the GEC was provided.
- b/ The GEC accepts this adjustment.
- c/ The Audit Staff verified expenditures totaling \$651,762.73 which may be reimbursed by the Compliance Committee.

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Based on the above analysis, the GEC has exceeded the limitation at 2 U.S.C. §441a(b)(1)(B) in the amount of \$218,603.50 (\$46,100,000.00 - \$46,318,603.50). However, this excessive amount may be resolved by a Compliance Committee reimbursement to the GEC for expenditures which could have been paid by the Compliance Committee. It should be noted that the Compliance Committee is due a \$85,066.62 reimbursement from the GEC (see #8 on page 23). Therefore, the Compliance Committee may reimburse the GEC a net amount of \$133,536.88 (\$218,603.50 - \$85,066.62) to offset the excessive amount noted above.

Recommendation #5

The Audit staff recommends that the Compliance Committee reimburse the GEC \$133,536.88 for expenditures that may be paid by the Compliance Committee in order to reduce GEC expenditures subject to the expenditure limitation. It is further recommended that a copy of the negotiated check used to effect the reimbursement be submitted to document the transaction.

C. Matter Referred to the Office of General Counsel

Another matter noted during the audit has been referred to the Commission's Office of General Counsel.

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

A. Reimbursements for Transportation and Services Made Available to Media Personnel

Section 9004.6(d)(1) of Title 11 of the Code of Federal Regulations states that a committee may deduct from expenditures subject to the spending limitation reimbursements received for the direct cost of providing air transportation and ground services to the media plus an additional 3% of direct costs representing administrative expenses associated with providing such services. If the committee wishes to deduct more than 3% for administrative expenses the committee must document the total cost incurred for such expenses. Reimbursements received in excess of the direct and administrative costs are repayable to the U.S. Treasury.

As noted above in Finding II.B.1., the GEC received reimbursements from the media for air transportation and ground services that exceeded the maximum billable amount for such expenses (110% of direct costs of providing the services) and as a result, it is recommended that the excessive amounts be refunded to the appropriate media organizations. It is also noted that the difference between the reimbursements equal to 110% of cost (maximum billable amount) and 103% of cost (cost plus a 3% allowance for administrative expenses) is repayable to the U.S. Treasury. That amount is \$95,908.81.

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Recommendation #6

The Audit staff recommends that the Commission make an initial determination that, absent a showing of administrative costs in excess of 3%, the GEC repay \$95,908.81 to the United States Treasury.

B. Determination of Net Outstanding Qualified Campaign Expenses

Section 9004.9(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that each candidate shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The candidate's net outstanding qualified campaign expenses equal the difference between (1) The total of: (i) All outstanding obligations for qualified campaign expenses; plus (ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus (iii) An estimate of necessary winding down costs; LESS (2) The total of: (i) Cash on hand; (ii) The fair market value of capital assets and other assets on hand; and (iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns receivables or rebates.

In April 1990, the GEC presented a statement of Net Outstanding Qualified Campaign Expenses ("NOQCE") to the Audit staff depicting its financial position at April 19, 1990. The Audit staff reviewed the available books and records to verify the totals on the NOQCE and developed the statement shown below.

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ANALYSIS OF BUSH-QUAYLE 88 INC.
STATEMENT OF NET OUTSTANDING QUALIFIED
CAMPAIGN EXPENSES AS OF APRIL 19, 1990

<u>ASSETS</u>	<u>AUDIT</u>	<u>GEC</u>	<u>AUDIT</u>	<u>GEC</u>
Cash on Hand	\$ 65,817.27 <u>a/</u>	41,696.77		
Accounts Receivable	42,948.25 <u>b/</u>	-0-		
Due from the Compliance Committee	253,495.55 <u>c/</u>			
Capital Assets	-0-	-0-		
Other Assets	-0-	-0-		
Total Assets			\$362,261.07	\$ 41,697.0
 <u>LIABILITIES</u>				
Accounts Payable	16,010.60 <u>d/</u>	9,782.00		
Estimated Wind Down	-0- <u>e/</u>	33,549.00 <u>f/</u>		
Reimbursement due Compliance Fund from GEC	85,066.62 <u>g/</u>	-0-		
Travel Prepayments Not Used Due Press	61,557.67	-0-		
Refunds Due Press	133,818.63 <u>h/</u>	-0-		
Press Profit Due U.S. Treasury	95,908.81	-0-		
Total Liabilities			392,362.33	43,330.00
 Net Outstanding Qualified Campaign Expenses (Deficit)			 <u>(\$ 30,101.26) <u>i/</u></u>	 <u>(\$ 1,633.00)</u>

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Footnotes to NOQCE

- a/ Cash on hand has been revised from \$42,160.03 to \$65,817.27 due to the addition of \$23,657.24 in voided outstanding checks for which no obligations exist. (See Finding III.D.)
- b/ This amount includes a \$42,519.00 receivable from the Primary Committee. The receivable from the Primary Committee includes \$4,140.00 for equipment, plus \$14,859 for over allocation of insurance to the Primary Committee, plus \$23,520 submitted by the Primary Committee to reimburse the GEC for an aircraft charter incurred for travel to the convention on 8/16/88 mistakenly paid for by the GEC. The GEC accepted the Audit staff adjustment for insurance premiums and in response to the interim audit report submitted a copy of a check from the primary committee in the amount of \$14,859 (See Finding II.B.3.b.). Also included is a \$429.25 refund reported by the GEC in its year-end 1990 FEC disclosure report.
- c/ This amount is a receivable due from the Compliance Committee to reimburse the GEC for expenditures that could have been paid by the Compliance Committee. This amount includes \$34,892.05 reimbursed in response to the interim audit report based on the GEC's calculation using only those adjustments accepted by the GEC. (See Finding II.B.3.)
- d/ This amount includes payables of \$9,777.82, checks written after 4/19/90 which total \$2,941.80, and a \$3,290.98 disbursement reported by the GEC in its second quarter 1991 FEC disclosure report.
- e/ During the period 4/1/90 through 6/30/91 the GEC reported apparent wind down expenses totaling \$110,630.26. The Audit staff does not recognize these expenditures since their inclusion will result in the GEC exceeding the expenditure limitation. Wind down incurred by the GEC may be paid by the Compliance Committee.
- f/ Given that absent a reimbursement from the Compliance Committee the GEC will exceed the spending limitation, it is assumed that additional winding down expenses will be paid by the Compliance Committee.
- g/ This amount represents an over allocation by the Compliance Committee for payroll, payroll taxes, and overhead associated with the National Campaign Headquarters. (See Finding II.B.3.e.)
- h/ Represents amount over billed the Press by the GEC for travel. (See Finding II.B.1.)
- i/ This amount represents non-qualified campaign expenses repayable to the U.S. Treasury pursuant to 11 C.F.R. §9007.2(b)(2). (See Finding III.C.)

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Conclusion

As adjusted by the Audit staff, the GEC's NOQCE statement shows a deficit in the amount of \$30,101.26 which represents non-qualified campaign expenses repayable to the United States Treasury pursuant to 11 C.F.R. §9007.2(b)(2). (See Finding III.C.)

C. Non-Qualified Campaign Expense

Section 9003.4(a)(1) of Title 11 of the Code of Federal Regulations states that a candidate may incur expenditures before the beginning of the expenditure report period if such expenditures are for property, services or facilities which are to be used in connection with his general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems expenditures for organizational planning and expenditures for polling.

Section 9002.12(a) of Title 11 of the Code of Federal Regulations states that in the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen whichever is earlier; and the period ends 30 days after the Presidential election.

In the Interim Audit Report the Audit staff included a receivable from George Bush for President, Inc. (Primary Committee) of \$30,101.26. This amount was for travel and White House communication costs incurred prior to the party's convention (August 2, 1988 through August 9, 1988) and paid by the GEC. These expenses do not meet the requirements of 11 C.F.R. §9003.4(a)(1) for pre-nomination expenses the GEC could incur, and therefore were considered a primary election expense.

In response to the Interim Audit Report, the Treasurer states "the President's travel in the week of August 2 through 9 were appropriately charged to the GEC." The Treasurer reasons that "by the summer of 1988 all of the presidential primaries had been completed, and Vice President Bush was assured of his party's nomination. Thus, the campaign properly undertook to determine whether Vice President Bush's travel during this post-primary period was nomination or general election related. Expenses were paid by either George Bush for President or Bush-Quayle 88 in accordance with this determination." The Treasurer states further, that "the Commission has previously permitted general election committees to pay expenses attributable to the general election which are incurred prior to the general election period", and the Treasurer refers to Reagan-Bush Audit of 1984 as support for this statement.

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The Treasurer's reference to the audit report on the Reagan-Bush '84 committee does not support his contention. In that case there were two groups of expenses that were discussed. The first group included expenses paid by the primary committee and subsequently reimbursed by the general election committee. After the submission of documentation, it was determined that these expenses were for goods or services that met the requirements of 11 C.F.R. § 9003.4. The second group of expenses included get-out-the-vote and voter registration expenses incurred in states where the primary election had past but prior to the date of the nominating convention. These expenses had been paid by the primary committee although they arguably benefited the general election effort. The Commission determined that these expenses were properly paid by the primary committee.

The Audit staff does not dispute that by August of 1988 all primaries were over or that the Candidate appeared to be assured the nomination. In addition, the Audit staff concurs with the Treasurer that the travel expenses should not be considered a primary election expense. However, 11 C.F.R. § 9003.4(a)(1) states that only expenses for property, services, or facilities to be used in connection with the candidate's general election campaign during the expenditure report period may be incurred before the expenditure report period. Examples of such expenses are expenditures for establishing financial accounting systems, expenditures for organizational planning, and expenditures for polling. In the opinion of the Audit staff, the travel costs discussed above do not meet the definition of permissible pre-expenditure report period expenses and therefore should be considered a non-qualified campaign expense.

Recommendation #7

The Audit staff recommends that the Commission make an initial determination that \$30,101.26 in non-qualified campaign expenses is repayable to the United States Treasury pursuant to 11 C.F.R. §9007.2(b)(2).

D. Stale Dated Committee Checks

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary and its efforts to encourage the payees to cash the outstanding checks. The Committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff performed bank reconciliations through March 31, 1990 and determined that the total amount of outstanding checks was \$70,284.19. Of this amount, \$43,349.88 were for checks dated between August, 1988 and June, 1989^{3/}.

In the Interim Audit Report, the Audit staff recommended that the GEC present evidence that:

- a) the checks are not outstanding (i.e., copies of the front and back of the negotiated checks) ; or
- b) the outstanding checks are void (copies of the voided checks with evidence that no GEC obligation exists, or copies of negotiated replacement checks) ; or
- c) the GEC attempted to locate the payees to encourage to cash the outstanding checks or provide evidence documenting the GEC's efforts to resolve these items.

The Audit staff added that they would review any information provided and would recommend that the Commission make an initial determination that any amounts which remain outstanding are payable to the United States Treasury.

In the GEC's response to the Interim Audit Report, they submitted documentation illustrating the disposition of \$23,657.24 of these checks which had been considered stale dated. A check made payable to the United States Treasury in the amount of the remaining \$19,692.64 (\$43,349.88 - \$23,657.24) was included with the response.

In addition, it should be noted that one remaining contribution refund check, in the amount of \$500.00, was still outstanding at the time of the response (See Finding II.A.1.).

In summary, the Audit staff has determined that the revised total amount of stale dated outstanding checks is \$500.00.

Recommendation #8

The Audit staff recommends that the Commission make an initial determination that \$500.00 be paid to the United States Treasury pursuant to 11 C.F.R. §9007.6.

^{3/} The remaining \$26,934.31 in outstanding checks cleared the GEC's accounts after March 31, 1990.

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E. Recap - Amounts Repayable to the United States Treasury

Presented below is a recap of the amounts recommended by the Audit staff as subject to the repayment provisions of 11 C.F.R. §§9004.6(d)(1), 9007.2(b)(2) and 9007.6.

Profit from Press Travel	95,908.81
Non-qualified Campaign Expenses	30,101.26
Outstanding Check	<u>500.00</u>
Total Recommended Repayment	<u>\$126,510.07</u>

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Vendor Payments Charged to Payroll

Name	Amount of Consulting Payments Received
Ailes Communications	\$ 539,554.16
Coldwater Corporation	115,000.00
Market Opinion Research	72,500.00
Margaret Noonan Rahn	50,000.00
Thompson Business Services	17,424.00
Doug Gamble	<u>9,550.00</u>
TOTAL PAYMENTS	<u>\$ 804,028.16</u>

13 1996

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
) Audit of Bush-Quayle 88
District of Columbia)

AFFIDAVIT OF DAVID BECKWITH

DAVID BECKWITH, first being duly sworn, deposes and says:

1. I am David Beckwith. I was the White House correspondent for Time magazine and was assigned to travel with the Bush Campaign from the start of the campaign in the fall of 1987 through the end of the 1988 election.

2. For the early months of the primary campaign, there was no press plane. However, as the primaries grew closer, the press demands on Air Force II became too heavy because Air Force II can only carry approximately six reporters at a time. The campaign responded to this pressure by chartering a plane for the press.

3. In the early phase of this chartered press plane, there were few reporters and corresponding very high costs for press travel. The press was greatly concerned about the cost of this travel because no press organization had an unlimited budget for campaign travel. We were, therefore, all very aware (even those who traveled periodically, and not regularly) of the costs of travel on the press charter. Virtually everyone kept an eye on the costs and was

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interested in them because we had to justify these costs to our organizations.

4. When the press plane began, the travelling press made the decision to have support persons from the Bush campaign staff (billing, advance, baggage, press) travel on the press charter with us at our expense. It was the consensus of the press that it was extremely important to have these campaign support personnel on the press plane to service the press. There was no formal decision-making process for this conclusion but it was the overwhelming consensus of the traveling press. The travelling press held a series of informal meetings and informed the campaign that this was our decision. Whenever new press travelers joined us, they were informed of the fact that these support personnel were traveling with us at our expense and they overwhelming had no objection. In fact, the press was eager to have these people aboard the plane, and was therefore willing to absorb any costs associated with their travel.

5. Campaign travel for the press is always chaotic. Anything that can smooth the process is financially worth it to members of the press. Our plane was seldom completely full and occupancy went up and down considerably depending on the travel itinerary, the events, the day of the week, etc. It was our press plane, it was going anyway, and we were going to be paying for it anyway. We saw no additional cost

to us, and we regarded the benefit of these press support personnel as invaluable.

6. The reasons these support personnel were so important to us members of the traveling press were as follows:

1) We wanted somebody who could tell us why we were going to one place and not another. It was extremely important for us to be kept up to date on possible changes in campaign schedules, or other plans. It was useful for us to have direct access to the campaign for this purpose.

2) We needed somebody tuned into the advance office who could tell us the nature of the events at the day's stops. Would there be telephones on the ground? Would there be a filing office? What was the schedule -- would there be enough time between events to call in our stories and, for the broadcast press, to file? These nuts and bolts of campaign logistics were tremendously important to members of the press because most of us were on deadline. We needed someone who could answer these questions promptly, and who could convey our concerns and needs to the campaign.

3) The baggage function performed by these support personnel was also essential. The belly of the plane was filled with tape machines, spare videos, and tripods, as well as all of our personal luggage and equipment. Some of this stayed in the baggage hold until the end of the day but, some

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of it had to be off-loaded at each stop. This was a very complicated process and we needed somebody from the campaign who knew the equipment, and who knew us, to distinguish between what was to be off-loaded at a stop and what remained in the hold. This was particularly important because time was often so short at a stop, and we ourselves could not have done it.

4) The billing and attendance function was also particularly important to us. The traveling press is a very unstructured group, with people running on and off the plane at each leg. Someone needed to take attendance during each leg to ensure that all members of the press traveling on the plane paid for the leg. There were jokes about people hiding in the lavatory while attendance was taken, but in fact, it was important to ensure that all members of the press paid their fair share. This was not a simple function because some people would jump on at the last minute unexpectedly and others who had planned to travel would be left at an event because of their deadlines or a change in timing. The billing support person also planned ahead for us, obtaining estimates of expected occupancy of the plane on future days and using those estimates to plan for the size of the plane that needed to be chartered. Since the traveling press is not a organized group, the campaign support person's job was

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to take our temperature and do this long-range planning for us.

5) Finally, we needed accurate bills submitted promptly and broken down by person, leg, and daily costs, so that we could know for our own budgetary purposes how much was being spent on travel on a day-to-day basis. This enabled us to determine how much future travel we could afford, and for broadcasters, whether to send a crew on the plane or just use local personnel.

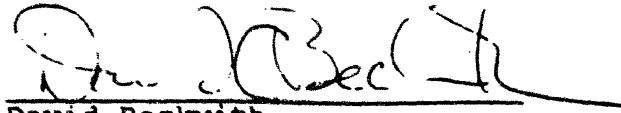
7. For all these reasons, it was very important to us to have these campaign support personnel on our press plane. It gave us access to them during the down period in our coverage which was the most efficient way to do it. This down time was often our only opportunity to discuss our logistical concerns with support personnel. It also ensured control over who was on the plane, and who got billed. Opportunities for abuse would have been very high without someone there performing this function. Accordingly, the press eagerly supported travel by these support personnel on the press plane at the press' expense.

8. Only some of these functions, such as billing, could have been performed by campaign staff had they not actually travelled on the press charter. In the opinion of the press on the plane, even this function was performed in a

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way more convenient to us by personnel actually travelling
with us.

The above information is true and correct to the best of
my knowledge.


David Beckwith

Washington, D.C.

Subscribed to and sworn before me this 15th day of
March, 1991.


Notary Public

My Commission Expires: 1-31-93

23070190572

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
District of Columbia) Audit of Bush-Quayle 88

AFFIDAVIT OF WILBER CLINTON FISHER, III

WILBER CLINTON FISHER, III, first being duly sworn,
deposes and says:

1. I am Wilber Clinton Fisher, III. I served as a Press Support Staff Person for the Bush-Quayle 88 Committee (hereinafter "the Committee") during the 1988 General Election Campaign.

2. During the general campaign, I flew on an airplane chartered by the Committee to transport the press who covered the campaign. My primary duties were to provide travel assistance to the press entourage that traveled with the Bush-Quayle general election campaign and to handle the physical logistics involved with their presence. One other press support staff person also travelled on the same flights as myself and shared these responsibilities.

3. I was responsible for the transfer of press baggage and equipment on and off the plane. Baggage calls began most mornings during the campaign between 4:30 a.m. and 5:30 a.m., and I ensured that all press baggage was collected

23 / 01903 / 3

and transported by van from the hotel and was loaded on the plane. Each evening, it was my responsibility to have luggage transferred from the plane to the hotel rooms of the press. When porters or bellhops were not available, I personally delivered the luggage. The press also contacted me in the case of lost luggage, and I would track down the misplaced baggage and deliver it to their rooms.

4. I also served as a liaison between the press and the in-flight crew of the chartered air service. On occasion, I negotiated with the air carrier to arrange for upgrades in meals, delivery of carry-out food (such as pizza, tacos, fastfood, etc.) and a variety in the menu items for the press plane, when the press requested it.

5. Lastly, I was responsible for creating a manifest (list of passengers) for the plane, calculating the proportional shares of expenses for the air travel of the press who travelled with the campaign, and charging members of the press for their share of expenses. My duties in this regard also included collecting and returning credit cards to the press, making credit card imprints for payment, and supervising the physical logistics for the press which accompanied the campaign.

6. Because I travelled on the press plane for the purpose of servicing the press, my airplane expenses were

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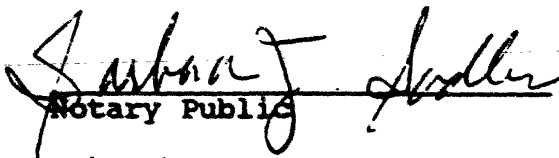
divided proportionally among and paid for by the press
persons whom I served on each trip.

The above information is true and correct to the best of
my knowledge.


Wilber Clinton Fisher, III

Washington, D.C.

Subscribed to and sworn before me this 14th day of
March, 1991.


Notary Public

My Commission Expires: 9/30/94

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BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
)
District of Columbia) Audit of Bush-Quayle 88

AFFIDAVIT OF DANIEL RANDOLPH D'ARMOND

DANIEL RANDOLPH D'ARMOND, first being duly sworn,
deposes and says:

1. I am Daniel Randolph D'Armond. I served as the Manager of Press Accounts Receivable for the Bush-Quayle 88 Committee (hereinafter "the Committee") during the 1988 General Election Campaign.

2. In connection with the 1988 general election campaign, the Committee chartered an airplane solely for the purpose of transporting the members of the press entourage that traveled with the Bush-Quayle general election campaign. I flew on the airplane chartered by the Committee for the press entourage from August until October, 1988, when I returned to the campaign headquarters to concentrate on other accounts-receivable responsibilities for air travel.

3. There were always four members of the Committee staff that flew on the press plane for the purpose of providing service to the press. Two staff persons were designated "press" and two "accounting." The Committee staff

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- 2 -

would not have traveled with the press nor provided support services to the press but for the press' request that the Committee provide these services.

4. The press staffers serviced the press by maintaining an advance reservations list for each flight so that members of the press planning to travel with the Vice President could be assured of a seat on the plane. Other responsibilities included, making hotel reservations, performing clerical tasks for the press (such as copying and distributing press pool reports), and providing logistical support to the press entourage. These staffers kept the press informed of travel arrangements, hotel and meal plans, and served as an escort to the press to and from public appearances and photo opportunities.

5. As one of the two accounting support personnel, my primary duties were to provide travel assistance to the press entourage that traveled with the Bush-Quayle general election campaign and to handle the financial and physical logistics involved with their presence. Additionally, I was responsible for computing the Committee's costs for the airplane providing transport to the press who covered the campaign.

6. I was also responsible for the transfer of press baggage and equipment on and off the plane. Baggage calls began most mornings during the campaign between 4:30 a.m.

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and 5:30 a.m., and I ensured that all press baggage was collected and transported by van from the hotel and was loaded onto the plane. Each evening, it was my responsibility to have luggage transferred from the plane to the hotel rooms of the press. When porters or flight crews were not available, I personally loaded or delivered the luggage. The press also contacted me in the case of lost luggage, and I would track down the misplaced baggage and deliver it to their rooms.

7. I also served as a liaison between the press and the in-flight crew of the chartered air service. I negotiated with the air carrier to arrange for upgrades in meals, delivery of carry-out food (such as pizza, tacos, fastfood, etc.) and a variety in the beverages and menu items for the press plane.

8. Lastly, I was responsible for creating a manifest (list of passengers) for the plane, calculating the proportional shares of expenses for the air travel of the press who traveled with the campaign, and facilitating payments for members of the press. My duties in this regard included collecting and returning credit cards to the press, making credit card imprints for payment, and forwarding the manifest and credit card imprints to the Committee's offices for processing.

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9. Because I traveled on the press plane for the purpose of servicing the press, my airplane expenses were divided proportionally among and paid for by the press persons whom I served on each trip. As the above description indicates, the services I provided were similar to those usually provided by travel agents or airline personnel in commercial travel situations.

10. I am familiar with the payment arrangements for members of the press traveling in the chartered airplane which accompanied Air Force Two during the general election campaign. The total costs of a single segment of a flight was computed and then divided by the number of all persons on the plane. Then, the per person costs for the four Committee staffers on the plane were spread among the press persons on the plane for that particular segment of the flight and added to the travel costs of each member of the press.

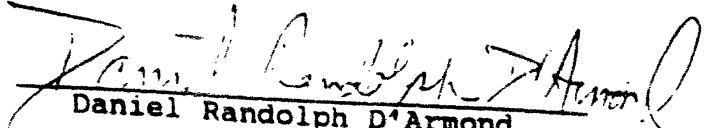
11. The members of the press who flew on the Committee-provided press plane were completely aware that they were paying for the air travel expenses of the four Committee staffers who serviced their air travel and agreed in advance that they would be paying for these services.

12. In addition, the members of the press were billed for their own ground transportation and the costs of establishing filing centers (telephone banks exclusively for the use of the press from which they could promptly file

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their reports with their news services after a campaign event).

The above information is true and correct to the best of my knowledge.


Daniel Randolph D'Armond

Washington, D.C.

Subscribed to and sworn before me this 14TH day of March, 1991.


Notary Public

My Commission Expires: APRIL 30, 1995

2379070

BEFORE THE FEDERAL ELECTION COMMISSION

City of Dallas)	
)	Audit of Bush-Quayle 88
State of Texas)	

AFFIDAVIT OF MICHAEL SCOTT SEARS

MICHAEL SCOTT SEARS, first being duly sworn, deposes and says:

1. I am Michael Scott Sears. I served as a Press Support Staff Person for the Bush-Quayle 88 Committee (hereinafter "the Committee") during the 1988 General Election Campaign.

2. During the general campaign, I flew on the airplane provided by the Committee to transport the press who covered the campaign. My primary duties were to provide travel assistance to the press entourage that traveled with the Bush-Quayle general election campaign and to assist the campaign's accounting staff so that the press organizations were billed promptly and appropriately for their representatives who traveled on the press plane. One other press support staff person also traveled on the same flights as myself and shared these responsibilities.

3. I was responsible for the transfer of press baggage and equipment on and off the plane. Baggage calls began most mornings during the campaign at 4:30 a.m., and I

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ensured that all press baggage was collected and transported by van from the hotel and was loaded on the plane. Each evening, it was my responsibility to have luggage transferred from the plane to the hotel rooms of the press. When porters or flight crews were not available, the other press support person and I personally loaded and delivered the luggage.


4. I was also responsible for creating a manifest (list of passengers) for each segment of travel on the press plane, calculating the proportionate shares of expenses for the air travel of the press who traveled with the campaign, and charging members of the press for their share of expenses. My duties in this regard included collecting and returning credit cards to the press, making credit card imprints for payment, and forwarding the manifest and credit card imprints to the campaign's office for processing.

5. Because I traveled on the press plane for the purpose of servicing the press, my airplane expenses were divided proportionally among and paid for by the press persons whom I served on each trip. I remember on one occasion during the general campaign, one reporter balked because his company was being charged for the flight expenses of myself and the other press-assisting staff who traveled on the press plane. At that point, the campaign informed him that our only role was to assist the press on the plane and that if he didn't wish to pay for this service, he could make

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his own arrangements for his luggage and equipment. Instead, he requested that we provide the service, and agreed to share the cost of my travel expenses along with the other members of the press.

The above information is true and correct to the best of my knowledge.



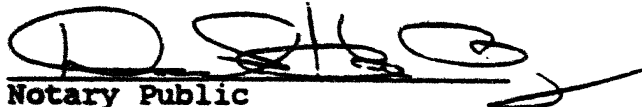
Michael Scott Sears

Dallas, Texas

Subscribed to and sworn before me this 13 day of March, 1991.



DONNA S. HOLLAWAY
Notary Public
STATE OF TEXAS
My Comm. Exp. Apr. 10, 1993



Notary Public

My Commission Expires: 4/19/93

23270190323

BEFORE THE FEDERAL ELECTION COMMISSION

~~City of Dallas~~

~~State of Texas~~

Audit of Bush-Quayle 88

NEW ORLEANS
LOUISIANA

AFFIDAVIT OF MELISSA COMPTON ALLISON

MELISSA COMPTON ALLISON, first being duly sworn, deposes and says:

1. I am Melissa Compton Allison. I served as the Press Travel Coordinator for the Bush-Quayle 88 Committee (hereinafter "the Committee") during the 1988 General Election Campaign.

2. In connection with the 1988 general election campaign, the Committee chartered an airplane solely for the purpose of transporting the members of the press entourage that traveled with the Bush-Quayle general election campaign. As part of my job responsibilities, I flew on the airplane chartered by the Committee for the press entourage.

3. As the Press Travel Coordinator, my job responsibilities included creating a list of the press representatives that anticipated flying on each segment of air travel by the press plane to insure that the plane was not overbooked. This manifest was for purposes of advance planning, as opposed to the final manifest of members of the press on any given flight which was constructed once a flight

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began by actually walking the aisles of the plane and recording names.

4. Based on these advance manifests and the reservations for air travel provided to me by the press, I also made hotel reservations for overnight accommodations for those members of the press on the plane at the end of each day. The press representatives desiring this service gave me their credit card numbers which I would telecopy to the hotels to confirm these reservations and to facilitate their charging the press accordingly. Because the reporters and photographers constantly joined on and dropped off the press plane, it was impossible to make these hotel arrangements without being on the plane and readjusting the reservations on each segment of travel.

5. In addition, I performed clerical functions for the press during their air travel, like copying, collating, and stapling daily itineraries and other materials. For instance, when Vice President Bush made a campaign appearance in which all traveling members of the press were not permitted to attend, a press pool was created of representatives to cover the event and provide a pool report. My job was to copy and distribute these reports so that the remaining press members could file news accounts with their own media organizations. These reports were not

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materials prepared by the campaign, but rather reports written by the designated members of the press pool.

6. Once the press plane landed, I was assigned to one of the buses (or other ground transportation vehicles) as a press escort to the Vice President's campaign event. This entailed answering the press' questions about meals, the nature and timing of the event, the facilities provided to the press for filing their reports, overnight accommodations, etc.

7. I was also responsible for logistics and general assistance to the press. For instance, whenever a press representative lost a briefcase, a coat, an umbrella, etc., it was my job to retrace the campaign trail to various restaurants, hotels, or vehicles for the purpose of retrieving it.

8. I did not purport to act as a spokesperson for the campaign or the Vice President on any issue of substance in the campaign, and that fact was uniformly understood by the press. My role was to accommodate the press' needs in connection with their travel arrangements and provide assistance with the logistics of that travel.

9. Because I traveled on the press plane for the purpose of servicing the press, my airplane expenses were

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divided proportionally among and paid for by the press
persons whom I served on each trip.

The above information is true and correct to the best of
my knowledge.

Melissa Compton Allison
Melissa Compton Allison

NEW ORLEANS, Louisiana
Dallas, Texas

Subscribed to and sworn before me this 14th day of
March, 1991.

Scott
Notary Public

My Commission Expires: Life

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Calculation of Refunds Due the Press
and Repayments Due the U.S. Treasury

BUSH PRESS PLANE

Calculation of the Amount Due the Press

Air Transportation and Ground Costs	\$1,994,539.70	
Add:		
Travel Expense-Support	124,680.84	
Salary Expense-Support	35,306.97	
Daily Staff Expense-Support	<u>12,718.00</u>	
Total Additions	<u>172,705.81</u>	
Billable Costs Per Audit		2,167,245.51
Add: 10% Administrative Costs		<u>216,724.55</u>
Maximum Billable Amount		2,383,970.06
Amount Received From Press		<u>2,255,178.73</u>
Excessive Amount Received		<u>-0-</u>

Calculation of Amount Repayable to U.S. Treasury

Billable Costs	\$2,167,245.51	
Add: 3% Administrative Costs	<u>65,017.37</u>	
Billable Cost Plus 3%		2,232,262.88
Less: Amount Received From the Press		<u>2,255,178.73</u>
Amount Repayable to U.S. Treasury		<u>\$ 22,915.85</u>

QUAYLE CHARTER

Calculation of Amount Due the Press

Air Transportation and Ground Costs \$ 893,760.62

Add:

Travel Expense-Support	113,334.73	
Salary Expense-Support	28,168.26	
Daily Staff Expense-Support	<u>7,493.00</u>	

Total Additions 148,995.99

Billable Costs Per Audit 1,042,756.61

Add: 10% Mark-up 104,275.66

Maximum Billable Amount 1,147,032.27

Amount Received From Press 1,280,850.90

Excessive Amount Received \$ 133,818.63

Calculation of Amount Repayable to U.S. Treasury

Billable Costs \$1,042,756.61

Add: 3% Administrative Costs 31,282.70

Billable Cost Plus 3% 1,074,039.31

Less: Maximum Billable Amount 1,147,032.27

Amount Repayable to U.S. Treasury \$ 72,992.96



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

JUN 17 1992

June 17, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Mary Tabor
Attorney

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MT

SUBJECT: Revised Final Repayment Determination and Revised Statement of Reasons for President George W. Bush, Vice President Dan Quayle, Bush-Quayle '88 and George Bush, Inc. Compliance Committee (LRA# 360)

On June 11, 1992, the Commission considered the Office of General Counsel's recommendations that the Commission make a final determination that President George W. Bush, Vice President Dan Quayle, Bush-Quayle '88 and George Bush, Inc. Compliance Committee (the "Committee") repay \$126,510.07 to the United States Treasury and approve the proposed Statement of Reasons supporting this determination. Agenda Document #92-75. The repayment amount was based on (1) \$30,101.26 in nonqualified campaign expenses; (2) \$95,908.81 in media reimbursements; and (3) a \$500 stale-dated committee check.

At the meeting, the Commission directed the Office of General Counsel to reduce the amount of nonqualified campaign expenses by \$11,368 in travel and White House Communication Agency costs incurred by President Bush in connection with an August 8, 1988, speech to the Republican Platform Committee. The Committee had argued that all \$30,101.26 in travel and communication costs incurred from August 2, 1988, through August 9, 1988, should be considered permissible pre-expenditure period expenses for organizational planning. However, the Commission concluded that only the expenses incurred on the day

Memorandum to the Commission
Revised Final Repayment Determination
Bush-Quayle '88 and George Bush, Inc. Compliance Committee
(LRA #360)
Page 2

of the platform committee speech were permissible expenses under 11 C.F.R. § 9003.4(a)(1). The Audit staff had previously calculated the separate costs associated with the candidate's August 8, 1988, trip. See Attachment 5 at 5.

The Office of General Counsel has made the revisions to comport with the Commission's determinations and included the adjusted repayment amount in the proposed Statement of Reasons. Revisions occur on pages 1, 7, 8 and 18. It should be noted that the only attachment being recirculated is Attachment 5 (Memorandum from the Audit Division dated March 5, 1992).

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that President George W. Bush, Vice President Dan Quayle, Bush-Quayle '88 and George Bush, Inc. Compliance Committee must repay \$115,142.07 to the United States Treasury; and
2. Approve the attached Statement of Reasons in support of the final repayment determination.

Attachment

Proposed Statement of Reasons

13 / 0190321

In the Matter of)
)
President George W. Bush,)
Vice President Dan Quayle,)
Bush-Quayle '88, and)
George Bush, Inc.)
Compliance Committee)
)
Final Repayment Determination)

STATEMENT OF REASONS

On June 11, 1992, the Commission made a final determination that President George Bush, Vice President Dan Quayle, Bush-Quayle '88, and George Bush, Inc. Compliance Committee ("the Committee") repay \$115,142.07 to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(2), representing: (1) \$18,733.26 in nonqualified campaign expenses; (2) \$95,908.81 in excessive media reimbursements; and (3) a \$500 stale-dated committee check. Therefore, the Committee is ordered to repay this amount within 30 days of receipt of this determination pursuant to 11 C.F.R. § 9007.2(d)(2). The Committee is also ordered to refund \$133,818.63 for receipts in excess of the maximum billable amount, and \$61,557.67 for unused prepayments to the appropriate media organizations and provide evidence of such refunds to the Commission, including the calculation of the

Revised

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amount paid to each media organization and copies of the front and back of the negotiated refund checks. This Statement sets forth the legal and factual basis for the Commission's determination in accordance with 11 C.F.R. § 9007.2(c)(4).

I. OVERVIEW

Bush-Quayle '88 and George Bush for President, Inc. Compliance Committee are authorized committees of George Bush and Dan Quayle, the 1988 Republican nominees for president and vice president, respectively. On November 14, 1990, the Commission approved the Interim Audit Report on the Committee. Attachment 1. The Committee responded to the Interim Audit Report on March 15, 1991. Attachment 2. On October 24, 1991, the Commission approved the Final Audit Report containing the initial determination that the Committee repay \$126,510.07 to the United States Treasury. Attachment 3. This repayment represented \$30,101.26 in nonqualified campaign expenses, \$95,908.81 in media reimbursements, and a \$500 stale-dated outstanding committee check. The Final Audit Report also recommended that the Committee refund to media organizations \$133,818.63 for receipts in excess of the maximum billable amount, and \$61,557.67 for unused prepayments. The Committee responded to the report on February 10, 1992. Attachment 4.

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II. NONQUALIFIED CAMPAIGN EXPENSES

A. Background

Generally, a qualified campaign expense must, inter alia, be incurred within the expenditure report period, which for this election cycle ran from August 17, 1988 to December 8, 1988.^{1/} 26 U.S.C. § 9002(11)(B); 11 C.F.R. § 9002.11(a)(2). However, Commission regulations permit a candidate to incur expenses before the beginning of an expenditure report period if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. 11 C.F.R. § 9003.4(a)(1).

In the Interim Audit Report, the Commission included \$30,101.26 as a receivable owed by the Bush primary committee to the Bush-Quayle general election committee representing candidate travel and White House Communication Agency costs incurred from August 2 through August 9, 1988. The last Republican primary was June 7, 1988, but the Republican National Convention did not begin until August 15, 1988. The Interim Audit Report stated that these expenses did not meet the requirements for pre-nomination expenses under 11 C.F.R.

^{1/} The expenditure report period is defined as the period beginning on "September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the [p]residential election." 26 U.S.C. § 9002(12)(A); 11 C.F.R. § 9002.12(a).

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§ 9003.4(a)(1). See Attachment 1 at 13. Therefore, the amount was considered a primary election expense.

In its response to the Interim Audit Report, the Committee argued that the candidate's travel during the first week in August of 1988 was appropriately charged to the general election committee. Attachment 2 at 19. The Committee contended that because then Vice President Bush was assured of his party's nomination by the summer of 1988, it was the campaign's prerogative to determine whether post-primary expenses should be paid by the primary or general election committee. Id. The Committee cited the 1984 Reagan-Bush Audit for the proposition that the Commission has permitted general election committees to pay expenses attributable to the general election, incurred prior to the general election period. See Final Audit Report on Reagan-Bush '84 General Election Committee and Reagan-Bush '84 Compliance Fund, approved May 6, 1987.

In the Final Audit Report, the Commission acknowledged that by August of 1988 all the primaries were over and the candidate appeared to be assured the nomination. Attachment 3 at 31. The Commission determined, however, that the travel and communication costs in question should not be considered primary election expenses because they bear no relationship to the operation of the primary campaign. However, the Commission maintained that these expenses did not meet the definition of permissible pre-nomination expenses set forth in 11 C.F.R. § 9003.4(a)(1). Therefore,

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the Commission made an initial determination that the Committee must repay \$30,101.26 in nonqualified campaign expenses incurred for candidate travel and White House Communication Agency costs from August 2 through August 9, 1988.

B. Committee's Arguments

In response to the Final Audit Report, the Committee provides a narrative explanation of these expenditures without additional supporting documentation. The Committee asserts that the candidate's travel expenditures and the White House communications costs for August 2 through August 9, 1988 were incurred in connection with "organizational meetings to determine the Republican Party's platform with respect to issues in the upcoming general election." Attachment 4 at 3. The Committee further contends that because the party platform would be George Bush's position on issues in the general election, these travel costs qualified as pre-nomination expenditures for organizational planning under 11 C.F.R. § 9003.4(a)(1). To support its argument, the Committee compares its situation to the 1984 Mondale-Ferraro audits, in which the Commission treated travel expenses incurred by Bert Lance between May and June of 1984 as qualified campaign expenses for the general election committee, accepting the Mondale Committee's explanation that "the ultimate outcome of the trips was that [Bert Lance] assumed the role of general election campaign

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chairman." Mondale for President Committee Response to Interim Audit Report, dated November 18, 1985.

C. Legal Analysis

The Committee asserts that the Commission should consider the entire \$30,101.26 as qualified campaign expenses because "the participation of George Bush in these meetings to determine platform positions for his party in the general election would not have [been] possible without incurring these travel and White House communication costs."

Attachment 4 at 3. However, the candidate's itinerary for August 2 through August 9, 1988 shows only one appearance related to the party platform. See Attachment 5 at 5. On August 8, 1988, President Bush addressed the Republican Platform Committee, but did not stay to personally oversee the drafting process.^{2/} The rest of the President's schedule for that time period included various campaign speeches, receptions and a ribbon-cutting ceremony.

Section 9003.4(a)(1) was not intended to cover costs incurred for general campaign appearances. Rather, this provision was designed to allow a candidate to set up a basic

^{2/} According to a media account, "his speech denounced the Democrats more than it directed the platform framers, who were about to begin five days of hearings and markup. Not that the Bush campaign has neglected to guide the platform process. Dozens of Bush operatives were deployed to bird-dog every detail of the preliminaries." Bush Urges Platform Writers: Be Specific, Cong. Q., Aug. 13, 1988, at 2250. The article stated that the remainder of Bush's visit was "devoted to photo opportunities," including a tour of the Louisiana Superdome and a brown-bag lunch with the crew building the convention stage. Id.

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campaign organization before the expenditure report period begins. Explanation and Justification for 11 C.F.R. § 9003.4(a)(1), 45 Fed. Reg. 43375 (June 27, 1980). The examples provided in section 9003.4(a)(1) include property, services or facilities with a direct impact on a general election committee, such as the establishment of a financial accounting system, the planning of a campaign organization or early polling.

Revised

Other examples of qualified campaign expenses incurred before the expenditure report period include those permitted by the Commission in the 1984 Reagan-Bush Audit for telephone installation, telemarketing services and postage attributed to voter registration and get-out-the-vote expenses. See Final Audit Report on Reagan-Bush '84 General Election Committee and Reagan-Bush '84 Compliance Fund, approved May 6, 1987. [deletion]

Revised

The Committee also stated that "there is no difference between these travel costs and the travel costs of Mr. Bert Lance, incurred between May 20 and early June of 1984, . . . which were paid for by the Walter Mondale 1984 general election committee." [deletion] Mr. Lance became chairman of the Mondale Committee in mid-July of 1984 and his travel costs were incurred for the purpose of organizing the general election campaign, the Mondale Committee stated in its November 18, 1985 response to the Interim Audit Report. [deletion]

Revised

The Commission agrees with the Committee that the travel and communication costs incurred for President Bush's

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August 8, 1988, trip to New Orleans for the purpose of addressing the Republican Platform Committee can be characterized as a permissible pre-expenditure period expense under 11 C.F.R. § 9003.4(a)(1). The candidate's contribution to formulating party issue positions to be used in connection with and during the general election campaign falls under the example of organizational planning included in the regulation.

Revised

However, this regulatory provision permits only a narrow category of expenses necessary to set up a general election campaign to be incurred before the expenditure report period begins. Consequently, the Commission has determined that costs for the other seven days of campaign appearances are nonqualified campaign expenses because they do not constitute permissible pre-nomination expenditures under section 9003.4(a)(1). The Audit staff has calculated that the August 8, 1988, travel and communication costs account for \$11,368 of the total \$30,101.26 in nonqualified campaign expenses included in the initial repayment determination. See Attachment 5 at 5. Therefore, the Commission has made a final determination that the Committee must repay the United States Treasury \$18,733.26, representing nonqualified campaign expenditures incurred for candidate travel and communication costs from August 2 through August 7, 1988 and on August 9, 1988.

Revised

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III. PRESS PLANE

A. Background

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A publicly financed general election committee may incur expenditures for transportation, including air travel and ground transportation for media personnel, and such expenditures are qualified campaign expenses subject to the expenditure limitation. 11 C.F.R. § 9004.6(a). The committee may receive reimbursements for such services, but the reimbursements cannot exceed the actual cost of the transportation and services by more than 10%. 11 C.F.R. § 9004.6(b). The amount of reimbursements received for the actual cost of transportation and services may be deducted from the amount of expenditures subject to the expenditure limitation. 11 C.F.R. § 9004.6(d)(1). The committee may deduct an additional 3% for administrative costs of providing the services. Id. If the committee has incurred higher administrative costs, it must document the total costs incurred in order to deduct a higher amount of reimbursements received, up to the 10% limit. Id. Any amount reimbursed that exceeds the actual cost and administrative costs (103%) but is less than the maximum billable amount (110%) must be repaid to the United States Treasury. Id. Any amount reimbursed in excess of 110% of the actual costs of providing transportation must be refunded to the media. See Explanation and Justification of 11 C.F.R. § 9004.6(b), 45 Fed. Reg. 43,376 (June 27, 1980).

In the Interim Audit Report, the Commission determined that the Committee overbilled media organizations for air travel by factoring the expenses of Secret Service agents and campaign staff hired to assist aboard the planes into the direct costs of transportation. These direct costs were divided by the number of reporters aboard to determine their pro rata share of the actual costs of transportation and services. The Commission decided that the appropriate method of calculating the amount the press should be billed would have been to divide the flight costs by the total number of passengers. See 11 C.F.R. § 9004.6. In the Interim Audit Report, the Commission determined that the Committee should provide documentation that the campaign did not overbill media organizations in the amount of \$358,899.28. In addition, the Commission directed the Committee to show that it did not accept \$202,181.02 from media organizations in excess of 103% of the direct costs of transportation and ground services provided to the media. Attachment 1 at 11. In the absence of such documentation, the Committee was to refund \$358,899.28 to the press and repay \$202,181.02 to the United States Treasury.

In its response to the Interim Audit Report, the Committee contended that it did not charge the press in excess of the actual costs of the services provided. Among these costs were the travel expenses of four campaign staff members who, according to the Committee, traveled "(1) at the request of the press; (2) with the explicit understanding

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that they would be paid for by the press; and (3) to provide certain services requested by the press"

Attachment 2 at 7-8. Therefore, the Committee concluded that it owed neither a refund to the press nor a repayment to the United States Treasury.

In the Final Audit Report, the Commission concluded that services performed by travel managers, such as baggage handling and collecting press credit card payments on the plane, were direct costs of providing media transportation. See 11 C.F.R. § 9004.6. The Final Audit Report included separate cost determinations for the George Bush Press Plane and the Dan Quayle Charter.^{3/} Attachment 3 at 13. The actual costs for air transportation and services for reporters who traveled on the Bush Press Plane was \$2,167,245.51; the maximum billable amount, or 110% of the actual costs was \$2,383,970.06 (\$2,167,245.51 + \$216,724.55). The Committee received \$2,255,178.73 from the press for travel aboard the Bush Press Plane. Because reimbursements totaled less than the maximum billable amount, the Committee did not owe press refunds for the Bush Press Plane.

However, the actual costs of providing media transportation and services aboard the Quayle Charter was \$1,042,756.61; multiplied by 110%, the maximum billable cost

^{3/} The charter for Vice President Dan Quayle included a much larger contingent of Secret Service agents, who were not included in the passenger count. Therefore, the total cost of each flight was divided by a smaller number of individuals, which served to inflate the reporters' pro rata shares.

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was \$1,147,032.27 (\$1,042,756.61 + \$104,275.66). Media reimbursements received for the Quayle Charter totaled \$1,280,850.90, or \$133,818.63 (1,280,850.90 - \$1,147,032.27) in excess of the maximum billable amount. Therefore, the Commission determined that the Committee must refund \$133,818.63 to the media personnel who traveled aboard the Quayle charter. The Commission also determined that the Committee should refund to the media \$61,557.67 in unused prepayments for travel.

In addition, the Commission concluded the Committee received \$22,915.85 in excess of the permissible 103% from reporters who traveled aboard the press plane that accompanied Air Force II, and an excess of \$72,992.96 from reporters who traveled aboard the Quayle charter. Therefore, the Commission made an initial determination that the Committee must repay \$95,908.81 (\$22,915.85 + \$72,992.96) to the Treasury.

B. Committee's Arguments

In its response to the Final Audit Report, the Committee does not maintain the position it had taken in response to the Interim Audit Report that it owed neither a repayment to the United States Treasury nor a refund to the press. Rather, the Committee contends that the auditors made "an arbitrary and unsupportable distinction" in the Final Audit Report by making separate media reimbursement calculations for the George Bush Press Plane and the Dan Quayle Charter. Attachment 4 at 1. The Committee points out that the Interim

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Audit Report did not provide separate calculations for each plane. Id. The Committee further explains that the campaign maintained a single press travel billing and collection operation. Id. The Committee notes that many media organizations had reporters on each plane, but did not designate their payments for a specific plane. Id. The campaign practice was to apply such payments to the oldest outstanding invoice for that media organization without reference to one plane or the other, according to the Committee's response. Attachment 4 at 2.

Consequently, the Committee derives its total amount owed by adding the press reimbursements received from reporters on both planes and subtracting the total billable costs for both planes. This method arrived at the same total dollar amount owed as the method used by the Audit staff.^{4/} However, the Committee believes that it must refund the press only \$5,027.30 and must repay the Treasury \$224,700.15. In essence, the Committee's approach permits charges of less than the maximum 110% billable amount on the Bush plane to compensate for charges exceeding 110% on the Quayle charter. The Committee claims that "[h]ad the Audit Division calculated ~~press~~ press payments based on one operation, as it existed in reality, and as was done in the Interim Audit

^{4/} The Commission's initial determination and the Committee's calculation actually vary by one cent. The Commission determined that the Committee must repay and refund a total of \$229,727.44 (\$133,818.63 + \$95,908.81); the Committee's calculation totals \$229,727.45 (\$5,027.30 + \$224,700.15).

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Report," the Commission would have determined that the Committee owed substantially less to the press and more to the Treasury. Attachment 4 at 1.

C. Legal Analysis

The Committee erroneously suggests that the Audit Division's decision to present separate calculations for the George Bush Press Plane and the Dan Quayle Charter in the Final Audit Report was arbitrary. The reason for dividing the billings between the two planes is related to a change in the Commission's classification of the campaign's travel managers. In the Interim Audit Report, the costs of campaign travel managers were considered administrative rather than direct costs. Consequently, the Commission determined that the Committee received more than 110% of the actual costs for both planes and presented the combined total of refunds due in the Interim Audit Report. Attachment 1 at 10, 23.

The Committee's response to the Interim Audit Report argued that the costs of such travel managers should not be considered administrative. Attachment 2 at 6-13. Thus, in the Final Audit Report, the Commission determined that the costs of the travel managers were direct costs of providing transportation. As a result, the Commission found that the Committee charged reporters on the George Bush Press Plane less than the maximum billable amount and overbilled only media representatives who traveled on the Quayle Charter. Attachment 3 at 13. In the Final Audit Report, the Commission also found that the Committee received

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reimbursements in excess of the 3% administrative allowance for both planes. Therefore, the distinction between the Interim Audit Report and the Final Audit Report was not arbitrary, but rather was prompted by the Committee's own rationale.

One purpose of limiting media reimbursements to 110% of the actual cost of candidate-supplied transportation is to prevent media subsidization of presidential campaigns. See Explanation and Justification of 11 C.F.R. § 9004.6(b), 45 Fed. Reg. 43,376 (June 27, 1980). Any reimbursements received in excess of the reporters' pro rata shares are deemed income to the committee and must be refunded to the media organizations. Id. In this case, the Committee has overcharged specific media corporations whose reporters traveled with Vice President Quayle. A repayment of those overcharges to the United States Treasury would not accomplish the goal of reimbursing those specific amounts to the media firms.

Moreover, the Committee's assertion that many news organizations had representatives on each plane and "were issued one bill for all press travel with the campaign" is not persuasive. First, the affidavit of Wilber Clinton Fisher, one of the Committee's travel managers, states that he was responsible for calculating the proportional share of expenses of the reporters and collecting credit card payments on the plane. Attachment 3 at 41. Thus, it seems in most situations later billing of media organizations was not

necessary. Second, the regulations speak in terms of "an individual's pro rata share" not an average charge for representatives of a particular media outlet. 11 C.F.R. § 9004.6(b).

In regard to the Bush plane, the Committee simply did not avail itself of the entire 110% of actual costs that section 9004.6(b) allows committees to collect. However, the Committee did recover approximately 104% of its actual costs for operating the Bush plane. In its response to the Interim Report, the Committee stated its practice was not to bill in excess of actual costs: "It is important to state explicitly that at no time did Bush-Quayle bill the press more than 100% of the cost of the services provided to the press despite the fact it legally could have billed for up to 110% of the cost." Attachment 2 at 7. It is inconsistent at this stage for the Committee to argue it should be allowed to take advantage of the entire 10% allowance on the Bush Press Plane by averaging the billings of the two conveyances.

The Commission has determined that the Committee owes media organizations, which dispatched reporters to travel with Vice President Quayle, refunds totaling \$133,818.63, representing reimbursements in excess of the maximum 110% billable amount. We note that determining what is owed to each media organization may be an arduous task. Since the Committee charged travelers by customer number, it would have to reexamine each bill per customer number for every trip taken, determine the correct amount per trip, and then

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aggregate the total for each customer number. It is possible that the Committee could determine the refunds in a less burdensome manner, resulting in media organizations receiving refunds prorated on a basis equal to their payments originally made to the Committee. To figure one organization's share of the refund, the Committee would determine the amount paid by the particular customer number; divide that number by the total collected from media on the Quayle plane; and then multiply the quotient by the total amount refunded.

The Committee also must repay the United States Treasury \$95,908.81 representing receipts in excess of 103%, but less than 110% of the actual costs of providing media transportation.

IV. STALE-DATED COMMITTEE CHECK

Under 11 C.F.R. § 9007.6, a committee shall submit a check to the United States Treasury for the total amount of checks outstanding to creditors or contributors that have not been cashed. The Commission made an initial determination that the Committee must repay \$500 representing the amount of a contribution refund check still outstanding at the time of the Final Audit Report. The Committee does not contest this finding. Therefore, the Commission has made a final determination that this amount be repaid the Treasury.

V. FINAL REPAYMENT DETERMINATION

Pursuant to 26 U.S.C. § 9007(b)(2) and 11 C.F.R. § 9007.2(c)(4), the Commission has determined that, for the

foregoing reasons, President George W. Bush, Vice President Dan Quayle, Bush-Quayle '88, and George Bush for President Committee, Inc. Compliance Committee must repay to the United States Treasury \$115,142.07. The Committee is also ordered to refund \$133,818.63 to the appropriate media organizations for receipts in excess of the maximum billable amount and \$61,557.67 in unused prepayments.

Revised

Attachments

1. Interim Audit Report and letter dated November 14, 1990.
2. Bush-Quayle '88 and George Bush for President, Inc. Compliance Committee Response to Interim Audit Report, dated March 15, 1991.
3. Final Audit Report and letter, dated November 6, 1991.
4. Bush-Quayle '88 and George Bush for President, Inc. Compliance Committee Response to Final Audit Report, dated February 10, 1992.
5. Audit Division Comments on Committee's Response to Final Audit Report on Bush-Quayle '88 and George Bush for President Inc./Compliance Committee, dated March 5, 1992.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

March 5, 1992

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: AUDIT DIVISION COMMENTS ON COMMITTEES' RESPONSE
TO FINAL AUDIT REPORT ON BUSH-QUAYLE 88 AND GEORGE
BUSH FOR PRESIDENT INC./COMPLIANCE COMMITTEE

The Audit Division has reviewed the Bush-Quayle 88 (the GEC) response to the Final Audit Report (FAR). Our comments are presented below.

Press Plane Finding (II.B.1.)

The GEC states that they functioned with one press plane billing and collection operation for both the George Bush Press Plane and the Dan Quayle Charter and that the division between the two as presented in the FAR is unwarranted. They point out that no such division is made in the Interim Audit Report (IAR). The GEC explains that when the press payments are calculated under one operation, the GEC would owe the press \$5,027.30 and the United States Treasury \$224,700.15 (Combined total of \$224,700.15). The GEC agrees with the Audit staff's calculation of the total amount involved, but disagrees with the distribution of the amounts due the U.S. Treasury and the Press recommended in the FAR.

It should be noted that no distinction between the George Bush Press Plane and the Dan Quayle Charter was made in the IAR because at that time it had been determined that the GEC had overbilled the Press and received in excess of 110% of the actual cost of transportation costs for both planes and

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Memorandum to Lawrence M. Noble
Bush-Quayle Response to FAR
Page 3 of 3

However, the President's schedule for August 8, 1988 showed him traveling from Pease AFB, NH (Kennebunkport) to New Orleans, LA to address the Republican Platform Committee and to attend a Republican National Committee Volunteer Reception, a Brown Bag Lunch and an Editorial Board Meeting with the Times Picayune before returning to Andrews AFB that same day. Therefore, at least part of the travel costs for this day appear to have been related to platform building and organizational planning in connection with the general election within the definition of permissible pre-nomination general election expenses. The travel and WHCA costs paid for by the GEC for August 8th totaled \$11,368 (Travel - \$9,610 and WHCA - \$1,758).

If you have any questions, please contact Leroy Clay, Marty Favin or Joe Stoltz at 219-3720.

Attachment as stated

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ATTACHMENT 5
Page 3 5

George Bush's Schedule 8/2/88 - 8/9/88

<u>Date</u>	<u>Unofficial/Official</u>	<u>Destination</u>	<u>Events</u>	<u>Cost</u>
August 4	Unofficial	Andrews AFB, MD to Corpus Christi, TX	Address to the American G.I. Forum 40th National Con- vention	
August 4	Official	Chicago, IL	Wake f/A. Mazowski	
August 5-7	Official	Andrews AFB, MD to Pease AFB, NH (Kennebunkport)		\$ 361 (AFII)
August 8	Unofficial	Pease AFB, NH to New Orleans, LA New Orleans, LA to Andrews AFB, MD	Address to Republican Platform Committee Republican National Com. Volunteer Reception	\$9,610 (AFII) \$1,758 (WHCA)
			Brown Bag Lunch	
			Editorial Board Mtg. w/Times Picayune	
August 9	Unofficial	Andrews AFB, MD to Erie, PA	Address 30th Annual Conf. of FOP	\$ 808 (AFII)
	Unofficial	Erie, PA to Pittsburgh, PA	Victory 88 Luncheon	
	Unofficial	Pittsburgh, PA to Phila., PA Phila.. PA, to Andrews AFB, MD	Polish Amer. Ribbon Cutting Ceremony VIP Victory 88 FR Reception Victory 88 Gen FR Reception	
			TOTAL	\$30,101.26

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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September 16, 1992

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: BUSH-QUAYLE '88 AND GEORGE BUSH, INC. COMPLIANCE
COMMITTEE -- REPAYMENT CHECK

On August 3, 1992, the Commission received a check from the Bush-Quayle '88 and George Bush, Inc. Compliance Committee in the amount of \$115,142.07. This payment represents the entire amount of the Commission's final repayment determination. However, the check was drawn on an account of the Bush-Quayle '92 Compliance Committee.

Attached is the memorandum sent to the Office of General Counsel requesting their guidance as to whether it is permissible for Bush-Quayle '88 and George Bush, Inc. Compliance Committee to make its repayment to the United States Treasury from contributions solicited for the candidates' 1992 general election legal and accounting compliance fund.

In the Office of General Counsel' response it is recommended that the Commission permit the Bush-Quayle '92 Compliance Committee to make the 1988 repayment. Counsel's response is included as an attachment for your information.

Recommendation

The Audit staff recommends that the Commission accept the repayment in the amount of \$115,142.07 drawn on an account of the Bush-Quayle '92 Compliance Committee.

This matter is being circulated on a 72 hour tally vote basis. If you have any questions, please contact Leroy Clay or Joe Stoltz at 219-3720.

Attachments:

August 4, 1992 memorandum to the Office of General Counsel
Office of the General Counsel's response

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

August 4, 1992

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

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

SUBJECT: REPAYMENT CHECK RECEIVED FROM THE BUSH/QUAYLE '88
CAMPAIGN

On August 3, 1992, the Commission received a repayment check from the Bush/Quayle 88 campaign in the amount of \$115,142.07. This represents the full amount approved in the statement of reasons on June 11, 1992. It is noted that the check is drawn on an account of the Bush-Quayle '92 Compliance Committee. It is our understanding that this account belongs to the 1992 general election committee legal and accounting compliance fund.

Section 9003.3(a)(2) of the Commission's regulations state that the legal and accounting compliance fund shall be used only for the purposes enumerated therein. One of the permissible uses is to make repayments pursuant to 11 CFR 9007.2. However, it does not appear that it was contemplated that such repayments would relate to a prior election cycle. Section 9003.3(a)(2)(iv) states that contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR 113, including payment of primary election debts.

It would appear that the intention was to limit the application of compliance fund moneys to previous elections to those cases where excess campaign funds exist after the payment of all general election expenses. Presumably this would include any repayments that might result from the audit of the 1992 campaign.

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Given the above, your opinion is requested concerning the permissibility of the Bush/Quayle 88 campaign from making the 1988 repayment from the 1992 compliance fund prior to the payment of all of the 1992 general election expenses. Pending your guidance on this matter the repayment check is being held in the safe in the Administrative Division.

Your prompt attention to this matter is appreciated. Should you have any questions please contact Joe Stoltz or myself.

Attachment

cc: Commissioners

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Reviewed on Audit
9/11/92



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

ATTACHMENT II
Page 1 of 4

September 11, 1992

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Mary Tabor
Attorney

SUBJECT: Bush-Quayle '88 and George Bush, Inc. Compliance
Committee -- Repayment Check (LRA #360)

I. INTRODUCTION

The Office of General Counsel has reviewed the Audit Division's memorandum dated August 4, 1992, requesting guidance on whether it is permissible for Bush-Quayle '88 and George Bush, Inc. Compliance Committee ("the Committee") to make its repayment to the United States Treasury from contributions solicited for the candidates' 1992 general election legal and accounting compliance fund. Neither the Presidential Election Campaign Fund Act nor the Commission's regulations directly address this question. Thus, we conclude that absent an express prohibition, the Committee may satisfy its 1988 repayment obligations from its 1992 compliance fund.

On July 2, 1992, the Committee received service of the notice of the Commission's final repayment determination in the amount of \$115,142.07. The Commission's regulations require a candidate to repay to the Treasury the amount determined by the

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Repayment Check
Bush-Quayle '88 and George Bush, Inc. Compliance Committee
(LRA #360)
Page 2

Commission to be repayable within 30 calendar days of such service of notice. 11 C.F.R. § 9007.2(d)(2). The Commission received a check representing the entire repayment amount on August 3, 1992; however, the check was drawn on an account of the Bush-Quayle '92 Compliance Committee.1/

II. ANALYSIS OF THE REPAYMENT ISSUE

Candidates who receive public funding are allowed to solicit private contributions for a separate account to pay the costs necessary to comply with the requirements of the FECA and the Presidential Election Campaign Fund Act. See Explanation and Justification for 11 C.F.R. § 9003.3(a)(1), 45 Fed. Reg. 43373 (June 27, 1980). Section 9003.3(a)(1) allows candidates for the office of president and vice president to establish a legal and accounting compliance fund prior to being nominated by their political party.2/ However, Commission regulations closely circumscribe the permissible uses of contributions to the compliance fund. See generally 11 C.F.R. § 9003.3(a)(2)(i).

One use permitted under 11 C.F.R. § 9003.3(a)(2)(i)(D) is the making of "repayments" as required by 11 C.F.R. § 9007.2. The issue is whether "repayments" include obligations incurred in the previous election cycle. Other provisions suggest that the Commission does not intend for presidential campaigns to spend compliance funds outside the current election cycle unless excess campaign funds remain in the account after post-election obligations are met. For instance, the regulations expressly prohibit candidates from using compliance funds to retire debts remaining from the presidential primaries until all expenses relating to the general election are paid. See 11 C.F.R. § 9003.3(a)(2)(iv). However, section 9003.3(a)(2)(i)(D) contains no language to limit the definition of "repayments" to those incurred in the current election cycle.3/

1/ In its 1992 July 15th Quarterly Report, the Bush-Quayle '88 Compliance Committee, Inc., disclosed \$73,894.30 cash-on-hand at the close of the reporting period. We also note that in the Statement of Reasons, the Commission determined that in addition to the \$115,142.07 repayment to the Treasury, the Committee must refund \$133,818.63 in excessive reimbursements and \$61,557.67 in unused prepayments to the appropriate media organizations. The Audit Division has not yet received documentation that those refunds have been made.

2/ The Bush-Quayle '92 Compliance Committee registered with the Commission on October 24, 1991.

3/ In addition, 11 C.F.R. § 9003.3(a)(2)(i)(C) allows candidates to use compliance funds to defray any civil or criminal penalties imposed pursuant to 2 U.S.C. § 437g or 26 U.S.C. § 9012, without restriction to penalties imposed for violations occurring during the current election cycle.

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We recognize that the August 3, 1992, payment was made before the beginning of the general election expenditure report period.^{4/} Commission regulations permit certain uses of the compliance fund prior to the general election expenditure report period. For example, the compliance fund may be used to make a loan to an account established under 11 C.F.R. § 9003.4 to defray qualified campaign expenses. 11 C.F.R. § 9003.3(a)(2)(G). These general election start-up costs must be repaid to the compliance fund after the beginning of the expenditure report period. 11 C.F.R. § 9003.4(b)(2). The regulations do not directly address whether repayments can be made before the beginning of the expenditure report period.

The Commission regulations also mandate that all solicitations for contributions to the compliance fund must be clearly stated as such. Such notification is necessary to inform contributors of the intended use of their contributions. Explanation and Justification for 11 C.F.R. § 9003.3(a)(1)(i)(A), 45 Fed. Reg. 43373 (June 27, 1980).^{5/} We do not believe it defeats the expectations of contributors to the Bush-Quayle '92 Compliance Committee to use their donations in lieu of the Committee's partially depleted 1988 compliance fund.^{6/} We also believe the use of private contributions to repay the federal government amounts due from a previous election cycle is distinct from the facts of Advisory Opinion 1988-5, in which the Commission prohibited Democratic presidential candidate Gary Hart from using 1988 federal matching payments to retire outstanding debts from his 1984 campaign. The situation at hand can also be distinguished from that of a committee subject to the Commission's debt settlement

^{4/} The general election expenditure report period for President Bush and Vice President Quayle began August 19, 1992, the day the Republican Party nominated its presidential and vice presidential candidates. 26 U.S.C. § 9002(12)(a).

^{5/} Similarly, revised 11 C.F.R. § 110.3(c)(4) as drafted would require a contributor to affirmatively authorize the transfer of funds from one federal campaign committee to another of the same candidate; an alternative approach would allow a transfer if the contributor does not object. See Notice of Proposed Rulemaking on Transfers of Funds Between Federal Campaign Committees, 11 C.F.R. part 110, 57 Fed. Reg. 36023 (August 12, 1992).

^{6/} Donors to the 1992 compliance fund whose contributions are used for the 1988 repayment would not be allowed a second limitation under 2 U.S.C. § 441a(a) for contributions that the Committee decides to spend on 1992 obligations. Moreover, this Office would be concerned if the 1992 compliance fund had specifically solicited funds from donors who had reached their contribution limitation for the 1988 general election. However, we have no indication that such specific solicitation occurred.

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that of a committee subject to the Commission's debt settlement regulations, which prohibit publicly funded presidential committees from assigning their debts to another authorized committee of the same candidate until after the audit, repayment and enforcement process. Explanation and Justification for 11 C.F.R. § 116.2(c), 55 Fed. Reg. 26381 (June 27, 1989).

If the Commission were to refuse to accept the repayment check from the 1992 compliance fund, the Committee could solicit contributions for the 1988 fund to make the repayment. Moreover, President Bush and Vice President Quayle could make the repayment from personal funds. 11 C.F.R. § 9003.2(c)(7). We do not feel, however, that it is necessary to pursue these alternative means of repayment. Because the Commission's regulations lack an express prohibition, we are persuaded by other policy interests to permit the Bush-Quayle '92 Compliance Committee to make the 1988 repayment. First, we believe it is in the public interest to conclude the 1988 audit process without further delay. Second, given the 1992 Committee's ability to raise additional compliance funds, there is little danger that this expenditure for 1988 will inhibit the Committee's ability to meet its 1992 obligations. We believe these interests outweigh any concern that the regulations do not contemplate such a repayment.

III. SUNSHINE RECOMMENDATION

It is our understanding that the Audit Division will present this question to the Commission for a decision whether to accept the repayment check as issued by the Bush-Quayle '92 Compliance Committee. The Commission's Sunshine Act procedures provide that the Office of General Counsel make Sunshine recommendations on issues to be considered by the Commission. Section 2.4(a) of the Commission's Sunshine Act regulations provides for the consideration of matters in closed session if they are specifically exempted from disclosure by statute. Additional bases for closing such meetings, include when an open meeting is likely to result in the disclosure of non-public audit procedures, policies or investigative techniques or information the premature disclosure of which would likely have an adverse effect on the implementation of a proposed Commission action. 11 C.F.R. §§ 2.4(b)(1) and 2.4(b)(6).

This Office believes that the Commission's discussion of this situation should be conducted in open session. We see no statutory or regulatory basis for discussing the repayment check in closed session.

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