



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4658

DATE FILMED 11-24-97 CAMERA NO. 2

CAMERAMAN JmH

27043845001



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MUR 4658

July 7, 1997

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

THROUGH: John C. Surina
Staff Director

FROM: Robert J. Costa *AK*
Assistant Staff Director
Audit Division

SUBJECT: New Jersey Democratic State Committee — Referral Matters

On June 20, 1997, the Commission approved the final audit report on the New Jersey Democratic Victory Fund. The report will be released to the public on July 8, 1997. All findings included in the report are being referred to your office.

With respect to Finding II.C., *Request for Records*, the Committee submitted documents which indicate that it made expenditures on behalf of the 1992 Clinton/Gore campaign of at least \$227,030. Other documentation requested in the audit report but not provided, may indicate that additional amounts were paid on behalf of the 1992 Clinton/Gore campaign.

All workpapers and related documents are available for review in the Audit Division. Should you have any questions, please contact Wanda Thomas at 219-3720.

Attachment as stated

27043845002



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 7, 1997

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

THROUGH: John C. Surina
Staff Director

FROM: Robert J. Costa *AK*
Assistant Staff Director
Audit Division

SUBJECT: New Jersey Democratic State Committee — Referral Matters

On June 20, 1997, the Commission approved the final audit report on the New Jersey Democratic Victory Fund. The report will be released to the public on July 8, 1997. All findings included in the report are being referred to your office.

With respect to Finding II.C., *Request for Records*, the Committee submitted documents which indicate that it made expenditures on behalf of the 1992 Clinton/Gore campaign of at least \$227,030. Other documentation requested in the audit report but not provided, may indicate that additional amounts were paid on behalf of the 1992 Clinton/Gore campaign.

All workpapers and related documents are available for review in the Audit Division. Should you have any questions, please contact Wanda Thomas at 219-3720.

Attachment as stated

27043845003

97043845004

II. AUDIT FINDINGS AND RECOMMENDATIONS

BACKGROUND

During the audit period, the Committee maintained three federal bank accounts and ten non-federal accounts. Activity in "the FEC account", opened prior to 1991, consisted mainly of receipts from individuals and political committees as well as disbursements made to reimburse the non-federal account, transfers to other Committee accounts, and payments for day-to-day administrative expenses. A second federal account, "the FED 1 account", was established in September 1992 for the purpose of funding exempt activity, such as campaign materials and mailings handled by volunteers, voter ID, and Get-Out-the-Vote (GOTV) phone banks staffed by volunteers. A third federal account, "the FED 2 account" was established on September 16, 1992. The FED 2 account was set up to accept transfers from the Democratic National Committee (DNC) and make payments related to administrative, operating, and payroll expenses. Receipts of \$2,485,518 were deposited and \$2,233,938 in expenditures were made from the three federal accounts.

One non-federal account, the state operating account, was used to fund strictly state and local operating expenses and also expenses for shared federal and non-federal activities. Approximately, \$4,033,027 in receipts were deposited and \$3,570,151 in expenditures were made from this non-federal account.

The opening of the two federal accounts in September 1992 may have resulted from instructions contained in correspondence dated August 24, 1992 received from the Association of State Democratic Chairs (ASDC). According to this correspondence, state parties were to maintain two federal bank accounts - one for generic/administrative expenses and one for exempt activities; all transfers from the Democratic National Committee (DNC) were to be deposited into the generic/administrative federal account and all other money raised, into the exempt account. This arrangement was intended to insure that the costs of "exempt" activities were not paid by money transferred to the state party by the DNC.

The Committee did not handle its shared federal/non-federal expenses in accordance with 11 CFR §106.5, either by establishing a separate allocation account into which funds from its federal and non-federal accounts were deposited solely for the purpose of paying the allocable expenses or by paying all shared expenses from its federal account and transferring funds from its non-federal account to cover the non-federal share of the allocable expenses.

For the period 1/1/91 through 6/30/92, shared expenses were paid entirely from the Committee's non-federal accounts, a practice not in compliance with 11 CFR §106.5. According to Committee officials, this occurred because there was a lack of sufficient funds in the FEC account. A record of the payments from the non-federal accounts for shared expenses was maintained; as funds became available the amount of the federal portion was reimbursed to the non-federal accounts.

During 1991, the FEC account was the only federal account open. The account had deposits totaling \$48,323 and disbursements totaling \$34,198. A payment of \$26,707 was made to the non-federal account representing the federal portion of shared expenses paid by the non-federal account during the 1st quarter of 1991. In addition to these disbursements, the Committee reported that \$782,561 in disbursements for shared federal/non-federal activity were made from the non-federal accounts.³

The Committee's disclosure reports for calendar year 1991 include the disbursements made from the non-federal accounts. The federal share of the disbursements was reportedly \$238,944 and the non-federal share was reportedly \$570,323. The reports also contain entries representing fictitious transfers from the non-federal account totaling \$212,238. According to Committee officials, these entries were intended to represent the

³ In addition, other disbursements for shared activity were made from the non-federal accounts which were not reported (see Finding II.A.2.).

federal share of allocable expenses paid by the non-federal accounts. The Committee also reported debts of \$212,238 owed by the federal account to the non-federal account at December 31, 1991.

During 1992, the Committee's federal accounts had deposits totaling \$2,437,195 and disbursements totaling \$2,199,740. In addition to these disbursements, the Committee reported that \$1,204,778 in disbursements for shared federal/non-federal activity were made from the non-federal accounts.⁴

The Committee's reports for the period 1/1/92 through 6/30/92 disclose total disbursements of \$829,795. This amount includes \$646,884 in disbursements which were made from the non-federal accounts for shared activity. The federal share of the disbursements was reportedly \$191,402 and the non-federal share was reportedly \$455,481. These reports also contain entries representing fictitious transfers of \$191,402 from the non-federal accounts. During this period, the Committee reported the incurrence of additional debts of \$191,402 owed by the federal account to the non-federal accounts. It also reported payments of \$182,253 against the debts owed to the non-federal accounts.

For the period 7/1/92 through 12/31/92, the Committee's reports disclosed total disbursements of \$2,489,785, of which \$1,615,807 was reportedly for shared expenses. Of this amount \$557,894 in payments were made from the non-federal accounts. The Committee's reported receipts include transfers of \$894,649 from the non-federal accounts, including \$97,166 in fictitious transfers. During this period, the Committee reported the incurrence of additional debts of \$67,928 owed by the federal account to the non-federal accounts and made payments of \$268,553 against the debts owed to the non-federal accounts.

Findings II.A.1. through II.A.3. detail other irregularities with respect to the reporting of shared federal/non-federal activities. Finding II.B. addresses over-funding by the non-federal accounts and the reporting of debt relating thereto. Finding II.D. addresses the Committee's Misstatement of Financial Activity on FEC disclosure reports.

A. REPORTING OF SHARED FEDERAL AND NON-FEDERAL ACTIVITY

Section 102.5(a) of Title 11 of the Code of Federal Regulations states, in part, that organizations that are political committees under the Act, including a party committee, which finances political activity in connection with both federal and non-federal elections shall establish a separate federal account in a depository. Such account shall be treated as separate federal political committee which shall comply with the requirements of the Act. All disbursements, contributions, expenditures and transfers by

⁴ See footnote 2/ above

the committee in connection with any federal election shall be made from its federal account; or, establish a political committee which shall receive contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that a political committee that pays allocable expenses shall also report each disbursement from its federal account in payment for a joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program or exempt activity. The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, that committees that have established separate federal and non-federal accounts, shall pay the expenses of joint federal and non-federal activities by either of the following: The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or the committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee establishes a separate allocation account, all allocable expenses shall be paid from that account for as long as the account is maintained.

Section 106.5(d)(2) of Title 11 of the Code of Federal Regulations states, in relevant part, that state and local party committees in states that do not hold federal and non-federal elections in the same year shall allocate the costs of generic voter drives according to the ballot composition method based on a ratio calculated for that calendar year. These committees shall allocate their administrative expenses according to the ballot composition method based on the ratio calculated for the two-year Congressional election cycle.

1. Schedule H4 Reporting Irregularities

During the review of the Committee's shared activity expenses, the Audit staff determined that the Committee had reported on its joint federal/non-federal activity schedule (Schedule H4) allocable expenses totaling approximately \$667,161 which appeared to be classified incorrectly. Although the Committee's reports disclosed specific expense purposes such as generic slate cards, GOTV calls, volunteer expenditures-election day, and Vans/GOTV rally, all of the above expenses were allocated at the percentage for

administrative expenses on the Committee's pre and post general election reports. These expenses appear to be generic voter drive expenses. In calculating the federal share for these expenses, the Committee incorrectly applied the administrative expense ratio (33.34% Federal, 66.66% Non-federal) rather than the correct ratio (50%) for the allocation of generic voter drive costs.⁵

Based on the above, the Audit staff calculated an overpayment of \$111,150 made by the non-federal account to fund shared expenses. This amount is included in the total overpayment by the non-federal accounts discussed at Finding B.

At the exit conference, the Committee was provided with copies of the Audit staff's workpapers detailing the above misclassified expenses. Committee officials were surprised that staff members had not classified shared activity transactions as previously instructed.

The interim audit report recommended that the Committee file amended Schedules H4 showing the correct allocation for \$667,161 in expenses identified by the Audit staff as incorrectly classified.

In response to the interim audit report, the Committee acknowledged that errors were made with regard to the reporting of expenditures, but does not agree with all of the adjustments proposed by the Audit staff. For this reason, the Committee stated that it desired to reach an agreement with the Commission regarding the proper adjustments before amending the reports.

Regarding the \$667,161 in expenses incorrectly classified, the response included a schedule of 13 expenditures to NJ Bell and AT & T which the Committee states are incorrectly classified by the Audit staff as Voter Drive rather than Administrative expenses. With respect to 4 of the expenditures totaling \$24,519, the Committee states that they represent charges for actual phone usage. The response states:

"The payments of the invoices, while near election day, simply reflect the grace period provided by these vendors. Because of the period these invoices covered, the NJDSC [New Jersey Democratic State Committee] believes its original classification is accurate and that the adjustments recommended by the Interim Audit are invalid."

Regarding the 9 remaining items totaling \$17,900, the Committee states that these are clearly described as deposits and, "the round dollar amount of each expenditure, especially when contrasted with other payments for usage, would support this. While these deposits were made for activities that would support the Interim Audit's

⁵ State party committees in states like New Jersey which held a non-federal election in 1991 and then a federal election in 1992, must allocate generic voter drive costs using a ratio calculated separately for each calendar year based on the ballot composition for that election.

reclassification as Voter Drive activities, because these deposits were ultimately refunded, the NJDSC believes that the act of the refunding of these expenditures ultimately reverses the Interim Audit's reallocation for these items rendering the initial allocation unnecessary."

The Committee proposed reducing the allocation detailed in the interim report by \$7,067. Other than statements included in the response, the Committee provided no documentation, such as telephone bills or evidence of refunds to support its position. Therefore, the Audit staff's conclusion remains unchanged.⁶

2. Unreported Shared Expenses Paid by the Non-Federal Account

As noted earlier, the Committee utilized non-federal accounts to fund expenses for shared federal and non-federal activities. The Audit staff determined, for the period under audit, that the Committee failed to allocate and report approximately \$253,294 in shared activity expenses paid by the state operating account. Of this total, \$98,759 should have been allocated to the federal account.

The \$253,294 in expenses is comprised of \$158,440 in administrative expenses, of which \$52,819 is the federal share; \$88,904 in GOTV and voter registration expenses (federal share totaling \$44,452); and \$5,950 in fundraising expenses (federal share totaling \$1,488).

At the exit conference, the Audit staff provided the Committee with workpapers detailing the above GOTV, Voter registration, and fundraising activity expenses.

The interim audit report recommended that the Committee file memo schedules H4 to disclose the \$253,294 in allocable expenses paid from the non-federal account.

In response to the interim report, the Committee submitted two schedules of disbursements which it states were incorrectly included on the Audit staff's schedules of disbursements from the non-federal account which should have been allocated and reported. The Committee stated that the items listed on the schedules submitted "represent expenditures that were made solely for the purpose of state political issues. Most notable of these expenditures were those to Carville & Begala." The Committee attached a letter from this firm which references its consulting work for the Committee. The letter states that the firm's consultation in New Jersey was in no way related to the 1992 federal election.

6

The Committee reported the receipts of \$18,000 in refunds from NJ Bell and \$238 from AT&T on its disclosure report for the period 1/1/93 - 3/31/93.

Given the Committee's explanations with regard to the items on the Committee's schedules and the Audit staff's review of the related documentation, the Audit staff has adjusted the amount of the allocable expenses paid from the non-federal account by \$144,964, leaving a balance of \$108,331 in allocable expenses which must be disclosed on memo schedules H4. Of the \$108,331, \$40,320 is allocable to the federal account.

The Committee did not file amended reports in response to the interim audit report.

3. Unreported Shared Expenses Paid by a Federal Account

During our review of the Committee's FED 2 account, the Audit staff determined that the Committee failed to report a total of \$149,381 in shared activities transactions on its Schedule H4. In addition, our review indicated that the Committee had prepared revised Schedules H4 which were materially correct. However, these schedules have not been filed with the Commission.

The interim audit report recommended that the Committee file Schedules H4 to disclose the \$149,381 in disbursements from the FED 2 account which were not previously reported. As stated, no amended reports were filed.

B. APPARENT OVER-FUNDING BY THE NON-FEDERAL ACCOUNTS

Section 102.5(a) of Title 11 of the Code of Federal Regulations states, in part, that organizations that are political committees under the Act, including a party committee, which finances political activity in connection with both federal and non-federal elections shall establish a separate federal account in a depository. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account; or, establish a political committee which shall receive contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, that committees that have established separate federal and non-federal accounts, shall pay the expenses of joint federal and non-federal activities by either of the following: The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or the committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint

27043845010

federal and non-federal activities. Once a committee establishes a separate allocation account, all allocable expenses shall be paid from that account for as long as the account is maintained.

Section 106.5(g)(2) of Title 11 of the Code of Federal Regulations states, in part, that any portion of a transfer from a committee's non-federal account to its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

Section 104.3(d) of Title 11 of the Code of Federal Regulations states, in part, that each report filed under 11 CFR 104.1 shall, on Schedule D, disclose the amount and nature of outstanding debts owed by the reporting committee.

Section 104.11 of Title 11 of the Code of Federal Regulations states, in part, that debts owed by a political committee which remain outstanding shall be continuously reported until extinguished. These debts shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt was incurred or extinguished.

Based on our analysis at the conclusion of fieldwork, the Audit staff identified allocable expenses totaling \$3,447,124, of which \$1,240,263 represents the federal share, and \$2,206,862 the non-federal share. Against these expenses, the Audit staff determined that the federal account paid \$1,001,348 and the non-federal account paid \$2,445,777. Therefore, it appeared that the non-federal account made payments for allocable expenses in excess of its allocable share by \$238,915 (\$2,445,777 - \$2,206,862).

During the period 1/1/91 through 9/30/92, the Committee recognized and reported as debts, amounts owed by the federal accounts to the non-federal accounts for the federal share of shared expenses paid by the non-federal account. (See Section II. Background above.) However, for the period 10/1/92 through 12/31/92, the Committee ceased to recognize and report as debts amounts paid solely by the non-federal accounts for shared expenses.

Copies of workpapers were provided to the Committee detailing the apparent overpayment. Committee officials had no comment.

The interim audit report recommended that the Committee provide evidence which demonstrates that the non-federal account did not make payments of \$238,915 in excess of its share for allocable expenses. Absent such evidence, the report recommended that the federal account repay the non-federal account \$238,915 and provided evidence of such repayment (copies of the front and back of the negotiated check). If funds were not available to make the repayment, the amount is to be continuously reported as a debt until extinguished.

In addition, the report recommended that the Committee include as part of the amended January 31 Year End Report (1992) requested for Section II.D. Misstatement of Financial Position, a Schedule D (Debts and Obligations Excluding Loans) which discloses the debt (\$238,915) owed to the non-federal account.

As previously stated, no amended reports were filed in response to the interim report. Moreover, the response makes no reference to the recommended reimbursement to the non-federal account. However, based on the Committee's response to Section II.A.2. above, the amount which must be reimbursed to the non-federal account has been reduced to \$180,476.

C. REQUEST FOR RECORDS

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations requires each political committee or person required to file any report or statement under this subchapter to maintain all records relevant to such reports or statements. Those records, with respect to matters required to be reported, include 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.

Section 441a(d)(1) of Title 2 of the United States Code states, in part, that the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee may make expenditures in connection with the general election campaign of candidates for Federal office subject to the limitations contained within this sub-section.

Sections 110.7(a)(1) and (4) of Title 11 of the Code of Federal Regulations state that the national committee of a political party may make expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party. The national committee of a political party may make expenditures authorized by this section through any designated agent, including State and subordinate party committees.

Sections 100.8(b)(18)(i), (ii), (v) and (vii) of Title 11 of the Code of Federal Regulations state, in part, that payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election of such candidates provided that the following conditions are met:

- (i) Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this section, the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
- (ii) The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.
- (v) Payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3.
- (vii) Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

The Audit staff identified six vendors that provided various campaign materials, phone bank and voter registration services to the Committee. The Committee generally maintained copies of related invoices and vendor statements, however, no samples or copies of phone bank/GOTV materials (i.e., GOTV literature, description of direct mail projects, a description of the phone bank program or phone bank scripts) were available for review. Without such materials, the Audit staff was unable to determine whether payments for any of these expenses represented contributions to candidates or verify that the Committee's allocation and reporting of the expenses for these activities was correct.

The payments included approximately \$284,000 to Message and Media, Inc., a direct mail vendor. Invoices available for review by the Audit staff during audit fieldwork indicated that the payments were for "Clinton Mail Costs." In addition to the \$284,000 paid by the Committee, another \$46,000 was billed to the Committee but no disbursement for this amount was identified as paid by the Committee. The Committee reported the payments on Schedule B as exempt activity (pursuant to 11 CFR §100.8(16) and (18)). Based on references on the invoices to Clinton Mail and in the absence of evidence to document the exempt nature of the disbursements, it appeared that expenses of

\$330,000 (\$284,000 + \$46,000) related to services provided by Message and Media, Inc. may have been made on behalf of the Clinton/Gore campaign.⁷

Payments to the other vendors noted above included \$189,000 to a telecommunications company for phone bank activity; and approximately \$129,000 to the remaining four vendors for printing and production of campaign materials and voter file enhancement. The payments to the telecommunications company and those for voter file enhancement were reported on Schedule H4⁸. The remaining payments were reported as exempt activities on Schedule B of the Committee's disclosure reports.

The Audit staff provided the Committee with a list of the vendors and requested copies of documents. In addition, the matter was addressed during a discussion with a Committee staff person and at the exit conference. At the exit conference, the Committee provided copies of a phone bank script relative to one of the vendors.

The interim audit report recommended that the Committee obtain from its phone bank/GOTV vendors the following documentation:

- a. With respect to the direct mail, copies of direct mail pieces; documentation which details the number of pieces mailed, the origination point of each mailing, the drop date(s), postage costs, costs of mailing lists used, cost of labels, if used; documentation for the \$46,000 billed but not paid as noted above, and any other relevant costs associated with the mailings.
- b. With respect to the phone bank activity, copies of phone bank scripts; a detailed analysis of all phone bank costs, including the location of the phone banks, the dates, number of calls made, documentation which associates the cost of each phone bank program with a particular script and documentation which details whether the phone banks were used in connection with volunteer activities.
- c. With respect to the voter file enhancement, documentation which details how the voter files were used (i.e., in relation to GOTV activity, phone banks, direct mail, etc.).

⁷ According to the documentation made available to the Audit staff, the Committee was not authorized by the DNC under 11 CFR §110.7(a)(4) to make expenditures pursuant to 2 U.S.C. §441a(d)(1). The DNC reported that \$9,682,711 of its \$10,331,703 National Party Limit for the 1992 Presidential election had been expended through December 31, 1994.

⁸ One payment to the telecommunications company in the amount of \$36,250 was not reported.

d. With respect to the campaign materials, documentation which details how the campaign materials were used (i.e., on behalf of a candidate, in relation to GOTV activity, in connection with volunteer activities, as direct mail, etc.); copies of or a description of the materials.

The Committee's response to the interim report states: "The records available all comply with FEC regulations and are either federal exempt volunteer activity or permissible GOTV activity. Based upon an evident pattern, the NJDSC respectfully submits that the activities of the 1992 election were executed according to the pertinent regulation."

a. Direct Mail

With respect to item a. on page 13, the Committee submitted copies of two invoices from Message and Media which detail certain costs associated with various mailers. Also submitted were copies of the mailers. The mailers are identified on the invoices as "Persuasion mailers," "Family/Women's Mailer," "Hispanic Mailers and "GOTV Slate Mail." Except for the GOTV Slate Mail, the mailers generally contain language in support of the election of Bill Clinton and Al Gore. The GOTV Slate Mail also lists candidates for Congress and some state and local offices. No documentation was provided for the \$46,000 billed to but not paid by the Committee.

The invoices provided total \$361,260. One invoice in the amount of \$157,897 related to the GOTV Slate mail. These expenses appear to qualify as exempt activity under 11 CFR 100.8(b)(10) and need not be allocated to any specific candidate. The other invoice, in the amount of \$203,363 relates to the other mailers. Except for statements included in the Committee's response, no documentation was provided to support the exempt nature of these expenses. Thus, it appears that \$203,363 in expenses for direct mail do not qualify for the exemption under 11 CFR 100.8(b)(18) and are therefore contributions on behalf the Clinton/Gore campaign.

As previously stated, the Audit staff identified payments of approximately \$284,000. Information to relate the payments to the invoices was not provided.

b. Phone Bank Activity

With respect to item b. on page 13, the Committee submitted vendor invoices totaling \$187,750, copies of scripts, and documentation which details dates and numbers of calls made by National Telecommunications Services, Inc.

According to the documentation, from October 19-24, 1992 calls were made in conjunction with a "New Jersey Voter File Enhancement Project." The documentation indicates that this was a voter identification program. Separate scripts for each of 13 Congressional districts contained 3 questions.

The first asked if the election for President of the United States were held today, would you vote for: Bill Clinton, George Bush, or Ross Perot. The second asked, in the race for Congress, would you vote for the Democratic or the Republican candidate. The candidate's name for each Congressional district was identified. The third question asked if you would vote for the Democratic or Republican slate of candidates for certain county and local offices. Associated payments for these calls totaled \$71,000. The Committee's response states that "The records available all comply with FEC regulations and are either federal exempt volunteer activity or permissible GOTV activity." The Audit staff notes that the documentation states that the calls were made from Silver Spring, Maryland and Cincinnati, Ohio, it is therefore highly unlikely that the phone banks were operated by volunteers.

Because specific candidates were mentioned in calls made from October 19-24 and the phone bank was apparently not a volunteer activity, the costs associated with its operation do not meet the criteria for exempt activity under 11 CFR 100.8(b)(18). The costs are allocable contributions on behalf of Presidential candidate Bill Clinton, the Democratic Congressional candidates and the county and local candidates. Accordingly, one third of the costs or \$23,667 represents a contribution on behalf of Bill Clinton, \$1,821 represents the amount of the contributions made on behalf of each of the 13 Congressional candidates (\$23,667/13), and \$23,667 may be allocated to county and local candidates.

Calls made from October 29 through November 3, 1992 contained a "Get Out the Vote" message. No candidates were identified. Costs associated with these call totaled \$118,250 and need not be allocated to any specific candidate.

c. Voter Files

With respect to item c. on page 13, the Committee's response to the interim report, states, "A request has been made of Financial Innovations to provide the necessary items; however, as they are busy meeting the demands of the current election cycle, they will only be able to search for the applicable information after November 5, 1996. Both the Writing Company and Mid-Atlantic Voter Contact, Inc. are no longer in business, and although a good faith effort has been made to locate the requested information, we were unable to obtain records from these entities." No other information was provided with the Committee's response.

d. Campaign Materials

With respect to item d. on page 14, the Committee submitted copies of materials produced by Royal Printing Company. The materials included a yard sign, handouts and a leaflet which generally advocate voting for Bill Clinton and Al Gore. The cost of the materials appear to be exempt under 11 CFR 100.8(b)(16).

D. MISSTATEMENT OF FINANCIAL ACTIVITY

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

As previously stated, the Committee's reported activity includes receipts and disbursements which are attributable to the Committee's non-federal accounts. (See Section II Background above.) As a result of this and other irregularities, the Committee's reports contain the following misstatements.

1. January 1, 1991 through December 31, 1991

a. Beginning Cash on Hand

The reported beginning cash on hand balance was understated by \$2,200, a result of the Committee not including in the balance a deposit received in 1990.

b. Receipts

Reported total receipts were overstated by \$214,438, primarily the result of reporting \$212,238 in fictitious transfers from the non-federal accounts.

c. Disbursements

Reported total disbursements were overstated by \$782,615, which resulted from reporting \$782,561 in disbursements actually paid from the Committee's non-federal accounts.

d. Ending Cash on Hand

The reported ending cash on hand balance was understated by \$570,347 due to the misstatements noted above.

2. January 1, 1992 through December 31, 1992a. Receipts

The Committee reported total receipts of \$2,692,959 for 1992. The Audit staff determined that the Committee should have reported total receipts of \$2,437,195. Therefore, the Committee's receipts were overstated by a net amount of \$255,764. The overstatement was the result of the following:

A.	reported transfers from non-federal accounts not made	(\$288,569)
B.	unreported receipts	53,857
C.	miscellaneous reporting errors and reconciling adjustment	(21,052)
	Total (net) overstatement	<u>(\$255,764)</u>

b. Disbursements

The Committee reported total disbursements of \$3,319,580 for 1992. The Audit staff determined that the Committee should have reported total disbursements of \$2,199,740. Therefore, the Committee's reported disbursements were overstated by a net amount of \$1,119,839. This overstatement was the result of the following:

A.	reported disbursements made from non-federal accounts	(\$1,204,778)
B.	disbursements not reported (See Finding II.A.3.)	149,518
C.	disbursement reported twice	(46,365)
D.	miscellaneous reporting errors and reconciling adjustment	(18,214)
	Total (net) overstatement	<u>(1,119,839)</u>

c. Ending Cash on Hand

The reported ending cash on hand balance was understated by \$4,006, due to the misstatements detailed above.

At the exit conference, the Audit staff explained that the misstatements were caused primarily by the Committee's practice of reporting as disbursements, payments actually made from its non-federal accounts and reporting as receipts, fictitious transfers from the non-federal accounts. The Committee was provided copies of the Audit staff's workpapers which detailed the misstatements. With regards to the above reporting errors, Committee officials expressed a willingness to file corrected disclosure reports.

The interim audit report recommended that, the Committee file amended reports for calendar years 1991 and 1992, as described below, to correct the misstatements of financial activity.

a. For calendar year 1991, file a comprehensive amendment which includes the Committee's activity for the entire year. The summary pages must reflect activity in the Committee's federal accounts only, together with the appropriate supporting Schedules A (Itemized Receipts) and B (Itemized Disbursements). In addition, the Committee must include memo entries on Schedules H4 (Joint Federal/ Non-Federal Activity Schedule) to disclose the disbursements for shared activity paid from the non-federal accounts. In lieu of filing a comprehensive amendment, the Committee may file an amended report for each reporting period.

b. For the period 1/1/92 through 6/30/92, file a comprehensive amendment which includes the Committee's activity for the period. The summary pages must reflect activity in the Committee's federal accounts only, together with the appropriate supporting Schedules A and B. In addition, the Committee must include memo entries on Schedules H4 to disclose the disbursements for shared activity paid from the non-federal accounts. In lieu of filing a comprehensive amendment, the Committee may file an amended report for each reporting period.

c. For the remainder of 1992, file an amended report for each reporting period (October 15th Quarterly Report, Twelfth Day Report Preceding the General Election, Thirtieth Day Report Following the General Election and the January 31 Year End Report) The report summary pages must reflect the Committee's federal activity only, together with the appropriate supporting Schedules A, B, D, H3 (Transfers from Non-federal Accounts) and H4 correcting the errors noted above. In addition, the Committee must include memo entries on Schedules H4 to disclose the disbursements for shared activity paid from the non-federal accounts.

As previously stated, no amended reports were filed in response to the interim audit report. In its response the Committee stated, "It is our sincere desire to reach agreement with the Commission regarding the proper adjustments before we amend and carry through the appropriate adjustments."

E. CASH DISBURSEMENTS TO ELECTION DAY WORKERS

Section 432(h)(1) of Title 2 of the United States Code states, in part, each political committee shall designate one or more depository institutions, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or National Credit Union Association, as its campaign depository. Each political committee shall maintain at least one checking account and no disbursements may be made (other than petty cash disbursements) by such committee except by check drawn on such account in accordance with this section.

Section 102.9(b) and (d) of Title 11 of the Code of Federal Regulations requires the treasurer of a political committee to keep an account of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of the name and address of every person to whom any disbursement is made and the date, amount, and purpose of the disbursement. In addition to the account to be kept, a receipt or invoice from the payee or a canceled check to the payee shall be obtained and kept for each disbursement in excess of \$200 by or on behalf of the committee. In performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts.

Section 102.10 of Title 11 of the Code of Federal Regulations states that "All disbursements by a political committee, except for disbursements from the petty cash fund under 11 CFR 102.11, shall be made by a check or similar draft drawn on account(s) established at the committee's campaign depository or depositories under 11 CFR part 103.

The Audit staff examined three checks totaling \$400,000, drawn on the Committee's FED 2 account which were made payable to a Committee staff member. According to Committee officials, the checks were cashed and the currency was distributed to defray the expenses of election day workers. Of the \$400,000 disbursed, \$69,476 was returned to the Committee and redeposited into the Committee's FED 2 account on November 4, 5, 8, and 20, 1992.

During the fieldwork, the Committee provided no records to account for the \$400,000 except for \$69,476 which was returned. Although a Committee document indicated that an additional \$500 was returned and deposited, the Audit staff could find no record of that deposit.

With respect to the Committee's currency distribution procedures, no documentation/information for the period under audit was available during the fieldwork, however, the Audit staff was provided copies of the Committee's 1993 written procedures for distributing currency. According to Committee officials these procedures were similar to procedures used in 1992. The written procedures indicated that cash was counted out into amounts ranging from \$10 to \$150 and placed in envelopes for distribution to a network of County coordinators in various County precincts. Upon receipt of the cash envelopes, County coordinators signed a coordinator receipt form which identified the coordinator receiving the cash, related region to be worked, itemization of amounts received, and purpose (i.e., GOTV operations) of the cash advance. Committee documents also noted that excess cash was returned to the cash coordinator for subsequent redeposit.

At the exit conference, Committee officials stated that the cash advances to election day workers were traditional, however the procedure was changed in 1994.

The interim audit report recommended that the Committee provide records to support that the payments described above were made in compliance with 2 U.S.C. §432(h)(1), 11 CFR §102.9(b) and (d) and 11 CFR §102.10.

In response to the interim report the Committee submitted copies of documents relative to cash disbursements totaling at least \$202,307 which included forms used by volunteers to acknowledge receipt of funds generally containing the volunteers' names, addresses, amounts, and signatures. Amounts indicated on the forms ranged from \$10 to \$75. In addition to forms on which an amount was indicated, the Committee submitted 763 forms which were signed by the recipient but the amount was not indicated.

It appears the disbursement of currency to volunteers in amounts of less than \$100 in conjunction with the use of the volunteer forms is akin to petty cash disbursements documented by a written journal.⁹ However, it should be noted that documentation in support of \$128,217 of the \$400,000 (\$400,000 - \$202,307 - \$69,476) disbursed has still not been provided.

F. DISCLOSURE OF EXEMPT LEGAL AND ACCOUNTING SERVICES

Section 104.3(h) of Title 11 of the Code of Federal Regulations requires a committee which receives legal or accounting services pursuant to 11 CFR 100.7(b)(13) and (14) shall report as a memo entry, on Schedule A, the amounts paid for these services by the regular employer of the person(s) providing such services, the date(s) such services were performed, and the name of each person performing such services.

9

See the Office of General Counsel's Memorandum to Robert J. Costa regarding the Final Audit Report on the North Carolina Victory Fund (LRA #473), page 2. In that document, the Counsel's office stated that "Volunteer Reimbursement Requests" used to document the disbursement of money orders is akin to petty cash disbursements documented by a written journal.

Our analysis indicated that the Committee received exempt legal services valued at \$34,020, but failed to disclose this activity. The value of the services provided by a law firm, the dates of the services, and the name(s) of the individual(s) providing such services should be disclosed as a memo entry on Schedule A.

At the exit conference, the Committee was provided a copy of the Audit staff workpapers, detailing the above omission.

The interim report recommended that the Committee file memo Schedules A to disclose the required information as it relates to those legal services mentioned above.

In response to the interim audit report, the Committee acknowledged that disclosure of pro bono legal services was inaccurate and stated that at the time that amended reports are filed, memo entries for the amount of pro bono legal services will be included. As previously stated, no amended reports were filed.

G. DISCLOSURE OF CONTRIBUTIONS FROM INDIVIDUALS

Section 434(b)(3)(A) of Title 2 of the United States Code requires a political committee to report the identification of each person who makes a contribution to the committee in an aggregate amount or value in excess of \$200 during a calendar year, together with the date and amount of any such contribution. Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" to be, in the case of an individual, the name, mailing address and occupation of such individual as well as the name of his or her employer.

Section 432(i) of Title 2 of the United States Code states, in part, that when the treasurer of a political shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with the Act.

With regard to reporting the identification of each person whose contribution(s) to the committee aggregate in excess of \$200 in a calendar year, 11 CFR §104.7(b) states that the treasurer will not be deemed to have exercised best efforts unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. Such effort shall consist of a clear request for the information (name, mailing address, occupation and name of employer) which informs the contributor that the reporting of such information is required by law.

In a sample review of the Committee's receipts, a material error rate was observed with respect to the disclosure of contributors' occupations and names of employers. The high error rate is apparently the result of the Committee's failure to maintain records containing the required information. For some of the contributions, copies of solicitation devices were maintained but did not request all of the required

information. For other contributions, the information was present in the Committee's records but not disclosed. The Audit staff saw no evidence that the Committee made any additional attempts to obtain the information. Therefore, it does not appear that the Committee demonstrated "Best Efforts" to obtain, maintain and submit the information.

At the exit conference, Committee officials stated that they thought those areas of concern have now been corrected.

The interim audit report recommended that the Committee provide evidence to demonstrate that it exercised best efforts to obtain the required contributor information, or absent such a showing, contact all contributors for which no record was maintained or information request made and provide copies of responses to these requests along with amended Schedules A to correct the public record.

In response to the interim report, the Committee stated:

"The NJDSC [New Jersey Democratic State Committee] did use best efforts to obtain contribution information. One senior campaign finance official was assigned full time to obtain all the information needed to comply with FEC guidelines for disclosure. In addition to following normal procedures of soliciting the required information, including an initial written request in the form of a contribution card, contributors were telephoned, solicitors of the contributions were contacted and letters were written where necessary to obtain missing information.

Despite these efforts, the New Jersey Democratic State Committee was not 100% successful in obtaining complete information for all contributors. 'Best Efforts', however, were expended to acquire address and employer information."

Documentation to support the Committee's statements regarding best efforts used during the audit period, such as telephone logs or copies of letters to contributors, was not provided. Also not provided was evidence in support of any current efforts by the Committee to obtain the information.

As previously stated, no amended reports were filed.

27043845023

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Oct 27 1 35 PM '97

In the Matter of)
)
Enforcement Priority System II)
and MUR 4658)
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On March 11, 1997, the Commission closed 18 cases in which the five-year statute of limitations under 28 U.S.C. § 2462 may have expired. *See* General Counsel's Report, 28 U.S.C. § 2462 *Statute of Limitations*, approved March 11, 1997; *see also* *FEC v. Williams*, 104 F. 3d 237 (9th Cir. 1996). The Report noted that the Office of General Counsel would perform periodic reviews of its caseload in light of the five-year statute of limitations. In addition, the Report stated that this Office would make periodic recommendations regarding those cases which may be affected by the five-year statute of limitations under 28 U.S.C. § 2462. Consistent with this approach, the Office of General Counsel recommends that a similar policy be incorporated into its enforcement priority system for cases assigned to the Public Financing, Ethics & Special Projects ("PFESP") section, EPS II. This Office also recommends pursuant to this policy, that the Commission no longer pursue MUR 4658 due to the expiration of the five-year statute of limitations period for a majority of the activity covered.

27043845024

II. STATUTE OF LIMITATIONS POLICY

An important element of EPS II is the identification of those pending cases that no longer warrant the further expenditure of resources. By focusing our investigative efforts on cases involving more recent activity, we can more efficiently allocate our limited resources.

Cases where most or all of the statute of limitations has already expired do not generally warrant the expenditure of further Commission resources. Moreover, in most cases, it would not be prudent for these cases to remain assigned to the PFESP Docket as inactive matters.

Thus, absent special circumstances, this Office recommends that the Commission exercise its prosecutorial discretion and routinely close these matters.¹

Cases presenting significant statute of limitations concerns will be initially identified and reviewed and, where circumstances warrant, be considered for dismissal without being fully rated and maintained on the PFESP Docket. If a case is deemed appropriate for dismissal, this Office will prepare a closing report, similar to that used for low rated and stale cases, and recommend that the Commission close the file. The closing report will indicate that the matter is being recommended for closing due to the expiration of the relevant statute of limitations period. We will attach the relevant referral materials, complaint and responses as well.

¹ Cases where certain issues are not time-barred, or which may be appropriate for injunctive relief, may be kept open and maintained on the PFESP Docket.

Accordingly, we recommend that the criteria for closure under EPS II be expanded to include those matters presenting significant statute of limitations concerns, i.e., a majority of the activity may be time-barred. See 28 U.S.C. § 2462; see also *FEC v. Williams*, 104 F. 3d 237 (9th Cir. 1996).² This policy is consistent with the Commission's determinations with respect to the *Williams* decision and will further ensure that OGC resources are spent on more recent activity. See General Counsel's Report, 28 U.S.C. § 2462 Statute of Limitations, approved March 11, 1997.

III. CASES PRESENTING STATUTE OF LIMITATIONS CONCERNS

Under the proposed policy, absent special circumstances, cases where a significant portion of the activity is time-barred under 28 U.S.C. § 2462 will be recommended for closing. Accordingly, this Office has identified one matter where the statute of limitations has potentially expired that we believe does not warrant the further investment of Commission resources. MUR 4658 (New Jersey State Democratic Committee) addresses activity from the 1992 election cycle and a majority of the activity may be time-barred under 28 U.S.C. § 2462.³ Accordingly, this Office recommends that the Commission exercise its prosecutorial discretion and close the file with respect to MUR 4658.

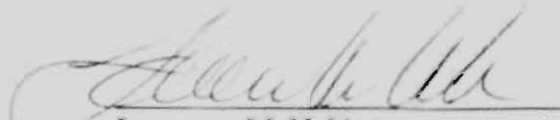
² On October 3, 1997, the Solicitor General filed a petition for writ of certiorari with the U.S. Supreme Court regarding *FEC v. Williams*, 104 F3d 237 (9th Cir. 1996).

³ MUR 4658 is a Title 2 audit referral which was referred to the Office of General Counsel on July 7, 1997. Using the earliest date of incurrence, this Office has calculated the statute of limitations dates for each of the findings as follows: (1) shared federal non-federal activity, January 1, 1996; (2) apparent over-funding by the non-federal accounts, January 1, 1996; (3) request for records, October 19, 1997; (4) misstatements of financial activity, January 1, 1996; (5) cash disbursements on election day, November 1997; and (6) disclosure of contributions from individuals, January 1, 1997.

IV. RECOMMENDATIONS

1. Expand the criteria for closure under EPS II to include those matters where the statute of limitations under 28 U.S.C. § 2462 has expired; and
2. Pursuant to this policy, take no action, close the file and approve the appropriate letters with respect to MUR 4658.

10/27/97
Date


Lawrence M. Noble
General Counsel

Attachment

Uncirculated referral materials

27043845027

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Enforcement Priority System II)
and MUR 4658.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 30, 1997, the Commission decided by a vote of 5-0 to take the following actions with respect to the General Counsel's October 27, 1997 report on enforcement priority and MUR 4658:

1. Expand the criteria for closure under EPS II to include those matters where the statute of limitations under 28 U.S.C. § 2462 has expired.
2. Pursuant to this policy, take no action, close the file and approve the appropriate letters with respect to MUR 4658.

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

Attest:

10-31-97
Date

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

Received in the Secretariat:	Mon.,	Oct. 27, 1997	1:35 p.m.
Circulated to the Commission:	Mon.,	Oct. 27, 1997	4:00 p.m.
Deadline for vote:	Thurs.,	Oct. 30, 1997	4:00 p.m.

lrd

97043845028



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November, 6, 1997

Raul "Rudy" Garcia, Treasurer
New Jersey Democratic State Committee
150 West State Street
Trenton, New Jersey 08508

RE: MUR 4658

Dear Mr. Garcia:

On July 7, 1997, the Federal Election Commission's Audit Division referred certain matters to the Office of General Counsel involving the New Jersey Democratic State Committee ("the Committee"), and you, as treasurer, for possible enforcement action. *See* Referral Materials. The referral resulted from an audit of the Committee undertaken pursuant to 26 U.S.C. § 9038(a).

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against the New Jersey Democratic State Committee and Raul "Rudy" Garcia, as treasurer. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in the matter on October 30, 1997.

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

If you have any questions, please contact me at (800) 424-9530 or (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory R. Baker", is written above the typed name.

Gregory R. Baker
Special Assistant General Counsel

27043845029



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4658

DATE FILMED 11-24-97 CAMERA NO. 2

CAMERAMAN Jmb

27043845030