FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1145

Date Filmed 5/14/80 Camera No. --- 2

Cameraman GPC

25 march 1980

Memorandum

TO: The File

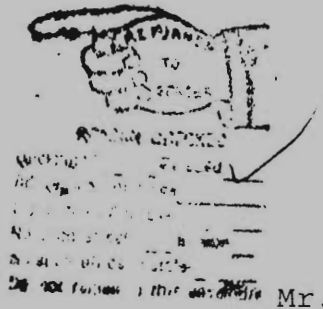
From: Michele Brown

The letter notifying Mr. Luellen of the Commission's finding in the matter in which he filed a complaint was re-sent by certified mail after having not been claimed. This time it was refused by Mr. Luellen. The letter should be sent by regular mail to the same address.

0 0 0 1 1 3 4 2 5 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Official Business
Penalty for Private Use $300



POSTAGE AND FEES PAID
U.S. MAIL

Mr. Robert J. Luellen
1521 Castle Hills Drive
New Castle, Indiana 47362

Refuse
NAME Yang
1st Notice 3-1
2nd Notice
Return 3-16

CERTIFIED
144150

8 0 2 1 1 9 4 2 5 2

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ..... ____¢
- ☐ Show to whom, date, and address of delivery ____¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ..... ____¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery $____
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Robt J. Kuller
1521 Castle Hills Drive
New Castle, Indiana 47362

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	94456	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

POSTMARK

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO: 1978-272-382

NLL 1145 M. Brown

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered.....____¢
- ☐ Show to whom, date, and address of delivery..____¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered.....____¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Robt. P. Johnstone
1313 Merchants Bank Building
Indianapolis, Indiana

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	94457	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
D. Harding

4. DATE OF DELIVERY
3-13-80

POSTMARK
INDIANAPOLIS, IND. FEDERAL
MAR 13 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO: 1978-272-382

MHR 1145 M. Brown

9271184253

3/7/80

Memorandum

To: The File

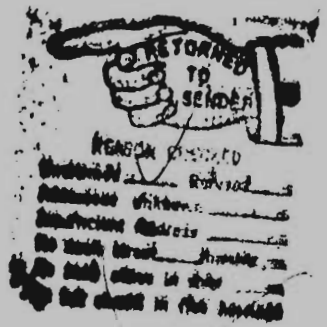
From: Michele Brown

The letter sent to Mr. Mullen informing him that the Commission had determined there was no reason to believe a violation of § 441h had been committed by the Indianapolis Star, was returned unclaimed. The letter will be re-sent by regular mail.

90011842564

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Official Business
Penalty for Private Use $300



Mr. Robert J. Luellen
1521 Castle Hills Drive
New Castle, Indiana 47362

FEB 1980

POSTAGE AND FEES PAID

U.S.MAIL

NOTICE

NAME Vaught
1st Notice 1-24-80
2nd Notice 1-29
Return 2/8

CERTIFIED

943692

0 0 1 0 1 9 4 2 6

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ..... ____¢
- ☐ Show to whom, date, and address of delivery ____¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ..... ____¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery $____
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
R. J. LUELLEN
1521 Carry Hill Drive
New Castle Ind. 47362

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943692	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO: 1979-272-262

MUR 1145

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert J. Luellen
1521 Castle Hills Drive
New Castle, Indiana 47362

Re: MUR 1145

Dear Mr. Luellen:

The Federal Election Commission has reviewed the allegations of your complaint dated January 9, 1980, and determined that on the basis of the information provided in your complaint and information provided by the Respondent, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971 as amended ("the Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Michele D. Brown, the staff member assigned to this matter at (202)523-4175.

Sincerely,

Charles N. Steele
General Counsel

3 0 0 1 1 9 4 2 5 7

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert J. Luellen
1521 Castle Hills Drive
New Castle, Indiana 47362

Re: MUR 1145

Dear Mr. Luellen:

The Federal Election Commission has reviewed the allegations of your complaint dated January 9, 1980, and determined that on the basis of the information provided in your complaint and information provided by the Respondent there is no reason to believe that a violation of the Federal Election Campaign Act of 1971 as amended ("the Act").has been committed.

Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Michele D. Brown, the staff member assigned to this matter at (202)523-4175.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert P. Johnstone
BARNES, HICKAM, PANTZER AND BOYD
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Re: MUR 1145

Dear Mr. Johnstone:

On January 21, 1980, the Commission notified you of a complaint alleging that your client, the Indianapolis Star, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 6 , 1980, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

8 0 0 1 1 3 4 2 5 9

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert P. Johnstone
BARNES, HICKAM, PANTZER AND BOYD
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Re: MUR 1145

Dear Mr. Johnstone:

On January 21, 1980, the Commission notified you of a complaint alleging that your client, the Indianapolis Star, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1980, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1145
Indianapolis Star	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on March 6, 1980, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1145:

1. Find NO REASON TO BELIEVE that the Indianapolis Star or any of its empolyees has violated 2 U.S.C. §441(h).

2. Approve and authorize the sending of the letters to Mr. Luellen, the complainant, and Mr. Johnstone, attorney for the respondent, as attached to the First General Counsel's Report dated March 3, 1980.

Voting for this determination were Commissioners Aikens, Friedersdorf, Harris, McGarry, Reiche, and Tiernan.

Attest:

3/6/80
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 3-3-80, 4:04
Circulated on 48 hour vote basis: 3-4-80, 11:00

9001184271

March 3, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1145

Please have the attached First GC Report on MUR 1145 distributed to the Commission on a 48 hour tally basis.

Thank you.

8 0 0 1 1 1 5 4 0 7 2

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 2046

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 3-3-80

MUR # 1145 P4:04
DATE COMPLAINT RECEIVED
BY OGC 01/17/80

STAFF MEMBER M. Brown

COMPLAINANT'S NAME: Robert Luellen

RESPONDENT'S NAME: Indianapolis Star

RELEVANT STATUTE: 2 U.S.C. § 441h

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

Mr. Luellen alleges that the failure of the Indianapolis Star to report his announcement that he is running for Congress, although it did report that William Dubois is a candidate and that William Frazier is a possible candidate, is a violation of 2 U.S.C. § 441h and has damaged his political campaign.

FACTUAL AND LEGAL ANALYSIS

2 U.S.C. § 441h prohibits a candidate for Federal office or his agent from fraudulently misrepresenting himself or any organization under his control as acting "for or on behalf of any other candidate" on a matter which is damaging to such other candidate.

It appears that Mr. Luellen is alleging that the employees of the Indianapolis Star are fraudulenty misrepresenting themselves and are acting on behalf of Mr. Frazier, Mr. Dubois, or both and thus tried to damage Mr. Luellen's campaign by failing to report his candidacy announcement in the newspaper.

Robert P. Johnstone, counsel to the Indianapolis Star, states in his response to the complaint that "neither the Indianapolis Star nor Mr. Gelarden (the political editor) are candidate(s) for Federal office or ...employee(s) or agent(s) of such a candidate." Mr. Johnstone states also that on January 24, 1980, Mr. Gelarden wrote a column which mentioned that Mr. Luellen was a candidate. This occurred the day before the newspaper was informed of the complaint against them. On Sunday, January 27, 1980, the column appeared in the newspaper.

It is the opinion of the Office of General Counsel that no violation of the Act has occurred.

RECOMMENDATION

1. Find no reason to believe that the Indianapolis Star or any of its employees has violated 2 U.S.C. § 441(h).

2. Approve and authorize the sending of the attached letters to Mr. Luellen, the complainant, and Mr. Johnstone, attorney for the respondent.

3. Close the file.

Attachments

Complaint
Notice letter to respondent
Response from the Indianapolis Star
Proposed letters to Mr. Luellen and Mr. Johnstone

Official Complaint
Federal Election Commission
1325 K Street NW
Washington, DC. 20463

1521 Castle Heights Drive
New Castle, Indiana 47362
January 9, 1980

RECEIVED
FEDERAL ELECTION
COMMISSION

GCC#
941

Dear F.E.C.:

In compliance with 2 USC 437 g (a)(1)

'80 JAN 14 AM 9:57

1980 JAN 15 PM 1:05

of the Federal Election Campaign Act, as amended, I hereby make this official complaint against Indianapolis Newspapers the publishers of Indianapolis Star located at 307 N. Pennsylvania Street in Indianapolis, Indiana 46206. The publication of notice of complaint against newspaper in the Journal of FEC for January 1980 mentions that under 11 CFR 111.4(b) Commission must use discretion to reject any complaint for insubstantiality. I intend to show that complaint I register is based on law violation, important, and not fixed by discretion of any authority in the matter of will or caprice. Hamilton vs. FEC clearly [illegible] mission, involved beyond discretionary practice must rely on judgement of law which is a abuse of this discretion. Therefore well settled to state a claim. I will seek to return by virtue of authority, rights or supposed rights, to demand that is due.

Complaint with Federal Election Record
Newspaper complaint

(1) My name is Richard J. (T.O.) Fuller, living at 1521 Castle Hills Drive, New Castle, Indiana 47362. My telephone number is 317-529-2872. I am the complainant herein.

(2) I hereby claim that Indianapolis Newspapers Inc. (the Indianapolis Star publication), located at 307 N. Pennsylvania St., in Indianapolis, Marion County, did and does violate Federal Election Campaign Act, as amended, under 2 USC 441(b). Under the authority of this U.S. Code, Complainant and Jerrold's and that Joe Sellers, Political Editor of Indianapolis Star, did and does "willfully and knowingly participate in a conspiracy to violate the provisions of Federal law" (Expressed as paragraph 1 of the paragraph). "in violation of this paragraph".

Violation

Paragraph One involves fraudulent misrepresentation of campaign authority as a Federal candidate or an employee or agent of such candidate who fraudulently misrepresents himself or any committee or organization under his control as soliciting, voting or otherwise acting for or on behalf

of my candidacy for political party or engaging in agent thereof in a matter which is damaging to such other candidate (unlawfully).

On date that William Dillon of Minnie Lebanon announced his candidacy as Congress (Dem) Candidate 10th District, an article in Hammonton Star which also named William G. Kroger, as possible candidate for Congress; no mention was made of my name. My call to Editor who stated he was John Lisk, lead me to [illegible] stated he was John Lisk, lead me to [illegible] candidacy announcement to Star, as Lisk was Deceased Lisk referred to Political Editor Bob Redan and stated he handled such matters. In 1974, 76 & 78 I have covered matters of candidacy in primary elections in 10th District in Hammonton Star. Yesterday I submitted my [illegible] announcement of candidacy January 8, after talking with Bob Redan on the phone, he stating just announcement "lost" for he did not see it. I contacted F.B.I. on the matter daily as was federal law (2 U.S.C. 441(h)) and its violation, by mail & telephone, which clearly damaged my political campaigning.

Failure to publish this announcement in a state wide newspaper damaged my reputation and campaign. This is approximately was a 2 week speaking tour, which is sufficient for complaint. Malicious intent of Newspaper to do damage is clearly expressed to FBI by unpaid in letter stating "persons of unfriendliness of Delimapolis Star did appear in the pass of this property and did intend harm by their actions and talk (utterances) for one of them is my cousin". Such misinformation and coercion concerning a political election & a newspaper article is clearly libel in that newspaper, its personnel & those involved therein. This is clear indication a conspiracy to do this damage falling under ~~violating~~ violating which is conspiring to violate under paragraph 2 of 2 USC 441(b). (as cited)

Claim is that I have been damaged by failure to announce myself as a candidate for Congress - which thereby cost me 1/3 of the population vote in a 477,000 population district (of the Republican Party) (consistently). I further claim that I am have announcement of my candidacy for Congress with equal presentations otherwise, as

Claim

Economic Interest dressed Thus indicable offering me?

Claim: Freezer or Bakers or any other Congress Candidate which Item has been to run. Penalty of law 2 USC 441(b) is $25,000 or 1 year imprisonment or both or 300% of contributions or expenditures involved with violation instead of $25,000 whichever is greater. Under 441(j) of this title, this code shall apply regardless of whether, receiving of contributions or expenditures for national Committee approaches the $100 qualification or not for a quarter of reporting on committee. I must point out illegality of Publication published in this area of the United States.

(3) Any statement taken on this complaint is hearsay of many mail to Democratic Star which is in the hands of Democratic News paper Line. Democratic Schemes

(4) I asserts that I am a candidate for Congress of the United States for 1980, in this district and I am not filing the complaint on behalf or at the request or suggestion of another candidate.

Very truly,
Robert J. Fuller
Robert J. Fuller
Candidate for Congress
1974, 76 & 78
Republican Party
5th District

Filed for Elections
to Congress 80
1/9/80
Res. of Kirby Co.
Alber C. Melom Notary
Comm. Exp. 10/10/52

90011131279

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Indianapolis Star
307 Pennsylvania Street
Indianopolis, Indiana

Re: MUR 1145

Dear Sirs:

This letter is to notify you that you that on January 17, 1980, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campagin Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of the complaint is enclosed. We have numbered this matter MUR 1145. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Michelle Brown, the staff member assigned to this matter at (202)523-4175. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

M. Brown

C1C#
330

THE INDIANAPOLIS STAR
THE INDIANAPOLIS NEWS

INDIANAPOLIS NEWSPAPERS, INC.
INDIANAPOLIS, INDIANA 46206

EUGENE S. PULLIAM
PUBLISHER
(317) 633-1298

RECEIVED FEDERAL ELECTION COMMISSION
80 FEB 8 PM 1:22

February 5, 1980

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, DC 20463

Re: MUR 1145

Dear Sir:

We are in receipt of your letter dated January 21, 1980.

This is to advise that Robert P. Johnstone, Barnes, Hickam, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis, Indiana 46204, (317) 638-1313, will represent us in this matter.

This letter constitutes notice that communications from the Commission regarding this matter may be directed to Mr. Johnstone.

Sincerely,

ESP:ag

80 FEB 8 P3:25

RECEIVED

BARNES, HICKAM, PANTZER & BOYD
1313 MERCHANTS BANK BUILDING
INDIANAPOLIS, INDIANA
46204

ALAN W. BOYD
CHARLES M. WELLS
THOMAS M. SCANLON
FREDERIC D. ANDERSON
LESTER IRONS
JERRY P. BELKNAP
ROBERT B. ASHBY
LOUIS A. HIGHMARK
JOHN W. HOUGHTON
LESTER M. PONDER
GEORGE J. ZAZAS
HOWARD J. COFIELD
EUGENE C. MILLER, JR.
RICHARD E. DEER
ROBERT E. HIGHFIELD
HENRY J. PRICE
HERBERT C. SNYDER, JR.
JAMES A. McDERMOTT
SHIRLEY A. SHIDELER
ROBERT H. REYNOLDS
JON O. NOLAND
CHARLES E. BRUESS
H. KENT HOWARD
ROBERT P. JOHNSTONE
TOM CHARLES HUSTON
JAMES A. STRAIN
GEORGE H. BAKER
TONI SUE AX
BRYAN G. TABLER
DANIEL H. FITZ GIBBON
STEPHEN K. SMITH
MICHAEL R. FRUEHWALD
EDWARD O. DeLANEY
BRUCE R. KARR
DONALD E. KNEBEL
WAYNE C. KREUSCHER
KRISTIN G. PFEIFER
DANIEL W. McGILL
KENT E. AGNESS
MICHAEL R. CONNER
CLAUDIA V. SWHIER
JOHN T. KOLINSKI
ROBERT K. BELLAMY
PETER J. RUSTHOVEN
LARRY J. STROBLE
PAUL F. DONAHUE
MICHAEL ROSIELLO
PAULA M. FROST
V. JAMES DICKSON
JAMES D. MOORE
LYNN BRUNDAGE
CATHERINE L. BRIDGE
STEPHEN W. LEE
ROBERT H. JERRY, II
JAMES E. MAHONEY
DAVID M. POWLEN
EDWIN B. WAINSCOTT
MICHAEL P. LUCAS
DAVID L. SWIDER
BARBARA S. WEBBER
JEFFREY J. LEWIS
JEFFREY C. MARTIN
MARCUS B. CHANDLER
DAVID F. SNIVELY

EARL B. BARNES (1881-1966)
HUBERT HICKAM (1892-1978)
KURT F. PANTZER (1892-1979)

CABLE ADDRESS
"LEXOPOLIS"

TELEPHONE
317-638-1313

February 6, 1980

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1145

Dear Mr. Steele:

At the request of the Indianapolis Star, we have reviewed your letter of January 21, 1980 and the enclosures which accompanied that letter. The Indianapolis Star has requested that we submit the following information to you in response to the allegation that the newspaper has violated certain sections of the Federal Election Campaign Act of 1971.

Robert J. Luellan, the complainant, is a candidate for the Republican nomination for United States Representative from Indiana's Tenth Congressional District. Mr. Luellan also sought this nomination in 1974, 1976 and 1978, without success. The core of Mr. Luellan's complaint against the Indianapolis Star apparently is that the newspaper did not report his most recent announcement for Congress, while it did report that another individual, William Dubois, had announced his candidacy for the 10th District seat, and did mention a third man, William Frazier, as a possible candidate. In fact, on January 24, 1980, the day before he was informed of Mr. Luellan's complaint, Political Editor R. Joseph Gelarden wrote a column which mentioned that Mr. Luellan was a candidate. That column appeared in the Star on Sunday, January 27, 1980.

Mr. Luellan's complaint is completely without basis in law or fact. The complaint alleges that the Indianapolis Star, by not running his announcement of candidacy promptly, violated 2 U.S.C. §441. Mr. Luellan is referring to Section 322 of the Federal Election Campaign Act of 1971, Pub. L. No. 94-283, as renumbered by Pub. L. No. 96-187, which provides:

> Sec. 322. Fraudulent misrepresentation of campaign authority. No person who is a candidate for Federal office or an employee or agent of such a candidate shall --
>
> (1) frauduently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or
>
> (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

That provision obviously has no application to the situation about which Mr. Luellan complains. First, neither the Indianapolis Star nor Mr. Gelarden are "candidate[s] for Federal office or . . . employee[s] or agent[s] of such a candidate." See 2 U.S.C. §431(2) (defining "candidate.") Second, Mr. Luellan has not alleged that anyone fraudulently misrepresented himself as speaking or writing or otherwise acting on Mr. Luellan's behalf. Thus, neither the Star nor its employees could possibly be deemed to have participated in or to have conspired to participate in a plan to misrepresent Mr. Luellan.

Furthermore, it is clear that a newspaper's exercise of editorial discretion regarding coverage of a Congressioal race is in no way limited by the Federal Election Campaign Act of 1971 or Chapters 95 and 96 of Title 26, also mentioned in your letter. Chapters 95 and 96 of Title 26 deal with financing of Presidential primary and general elections. The Federal Election Campaign Act, in addition to proscribing

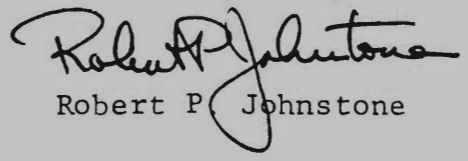
fraudulent misrepresentation of campaign authority, regulates contributions to and expenditures of candidates for federal elective office. Intrusion into editorial discretion was clearly not contemplated by Congress. Section 301(9)(B)(i) of the Act, as amended by Pub. L. 96-187, provides that the term "expenditure" does not include "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." See Buckley v. Valeo, 424 U.S. 1, 51 n. 56 (1976). See also 11 C.F.R. §100.7(b)(3) (tracking the statutory exclusion and specifying terms on which a facility may cover a race involving a candidate who owns or controls the facility); 11 C.F.R. §100.4(b)(8) (a similar exclusion of news stories, commentaries and editorials from the definition of "contribution.") The Star is not owned or controlled by any political party, committee or candidate.

Finally, we are certain that the Commission recognizes that this type of complaint is contrary to a newspaper's exercise of its First Amendment rights. In Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 258 (1974), the Supreme Court stated that the "choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." Certainly, the newspaper's choice of material with respect to Mr. Luellan's candidacy is clearly protected by this decision.

We suggest that Mr. Luellan's frivolous complaint should be promptly dismissed without further investigation. Certainly, the law provides that the Commission should refuse to investigate complaints that have failed to allege a violation of the

law. In re Federal Election Campaign Act Litigation, Fed. Elec. Campaign Fin. Guide (CCH) ¶9082 (D.D.C. 1979) (sustaining Commission's refusal to investigate numerous complaints that failed to allege a violation of the law).

Yours very truly,



Robert P. Johnstone

RPJ:jz

9 0 0 1 1 1 3 1 3 3 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert J. Luellen
1521 Castle Hills Drive
New Castle, Indiana 47362

Re: MUR 1145

Dear Mr. Luellen:

The Federal Election Commission has reviewed the allegations of your complaint dated January 9, 1980, and determined that on the basis of the information provided in your complaint and information provided by the Respondent, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971 as amended ("the Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Michele D. Brown, the staff member assigned to this matter at (202)523-4175.

Sincerely,

Charles N. Steele
General Counsel

3 0 0 1 1 2 1 3 3 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert P. Johnstone
BARNES, HICKAM, PANTZER AND BOYD
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Re: MUR 1145

Dear Mr. Johnstone:

On January 21, 1980, the Commission notified you of a complaint alleging that your client, the Indianapolis Star, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1980, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

THE INDIANAPOLIS STAR
THE INDIANAPOLIS NEWS

INDIANAPOLIS NEWSPAPERS, INC.
INDIANAPOLIS, INDIANA 46206

EUGENE S. PULLIAM
PUBLISHER
(317) 633-1298

February 5, 1980

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, DC 20463

Re: MUR 1145

Dear Sir:

We are in receipt of your letter dated January 21, 1980.

This is to advise that Robert P. Johnstone, Barnes, Hickam, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis, Indiana 46204, (317) 638-1313, will represent us in this matter.

This letter constitutes notice that communications from the Commission regarding this matter may be directed to Mr. Johnstone.

Sincerely,

ESP:ag

BARNES, HICKAM, PANTZER & BOYD
1313 MERCHANTS BANK BUILDING
INDIANAPOLIS, INDIANA
46204

ALAN W. BOYD
CHARLES M. WELLS
THOMAS M. SCANLON
FREDERIC D. ANDERSON
LESTER IRONS
JERRY P. BELKNAP
ROBERT S. ASHBY
LOUIS A. HIGHMARK
JOHN W. HOUGHTON
LESTER M. PONDER
GEORGE J. ZAZAS
HOWARD J. COFIELD
EUGENE C. MILLER, JR.
RICHARD E. DEER
ROBERT E. HIGHFIELD
HENRY J. PRICE
HERBERT C. SNYDER, JR.
JAMES A. McDERMOTT
SHIRLEY A. SHIDELER
ROBERT H. REYNOLDS
JON D. NOLAND
CHARLES E. BRUESS
H. KENT HOWARD
ROBERT P. JOHNSTONE
TOM CHARLES HUSTON
JAMES A. STRAIN
GEORGE H. BAKER
TONI SUE AX
BRYAN G. TABLER
DANIEL H. FITZGIBBON
STEPHEN K. SMITH
MICHAEL R. FRUEHWALD
EDWARD O. DeLANEY
BRUCE R. KARR
DONALD E. KNEBEL
WAYNE C. KREUSCHER
KRISTIN G. PFEIFER
DANIEL W. McGILL
KENT E. AGNESS
MICHAEL R. CONNER
CLAUDIA V. SWHIER
JOHN T. KOLINSKI
ROBERT K. BELLAMY
PETER J. RUSTHOVEN
LARRY J. STROBLE
PAUL F. DONAHUE
MICHAEL ROSIELLO
PAULA M. FROST
V. JAMES DICKSON
JAMES D. MOORE
LYNN BRUNDAGE
CATHERINE L. BRIDGE
STEPHEN W. LEE
ROBERT H. JERRY, II
JAMES E. MAHONEY
DAVID M. POWLEN
EDWIN B. WAINSCOTT
MICHAEL P. LUCAS
DAVID L. SWIDER
BARBARA S. WEBBER
JEFFREY J. LEWIS
JEFFREY C. MARTIN
MARCUS B. CHANDLER
DAVID F. SNIVELY

EARL B. BARNES (1881-1966)
HUBERT HICKAM (1892-1978)
KURT F. PANTZER (1892-1979)

CABLE ADDRESS
"LEXOPOLIS"

TELEPHONE
317-638-1313

February 6, 1980

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1145

Dear Mr. Steele:

At the request of the Indianapolis Star, we have reviewed your letter of January 21, 1980 and the enclosures which accompanied that letter. The Indianapolis Star has requested that we submit the following information to you in response to the allegation that the newspaper has violated certain sections of the Federal Election Campaign Act of 1971.

Robert J. Luellan, the complainant, is a candidate for the Republican nomination for United States Representative from Indiana's Tenth Congressional District. Mr. Luellan also sought this nomination in 1974, 1976 and 1978, without success. The core of Mr. Luellan's complaint against the Indianapolis Star apparently is that the newspaper did not report his most recent announcement for Congress, while it did report that another individual, William Dubois, had announced his candidacy for the 10th District seat, and did mention a third man, William Frazier, as a possible candidate. In fact, on January 24, 1980, the day before he was informed of Mr. Luellan's complaint, Political Editor R. Joseph Gelarden wrote a column which mentioned that Mr. Luellan was a candidate. That column appeared in the Star on Sunday, January 27, 1980.

Mr. Luellan's complaint is completely without basis in law or fact. The complaint alleges that the Indianapolis Star, by not running his announcement of candidacy promptly, violated 2 U.S.C. §441. Mr. Luellan is referring to Section 322 of the Federal Election Campaign Act of 1971, Pub. L. No. 94-283, as renumbered by Pub. L. No. 96-187, which provides:

> Sec. 322. Fraudulent misrepresentation of campaign authority. No person who is a candidate for Federal office or an employee or agent of such a candidate shall --
>
> (1) frauduently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or
>
> (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

That provision obviously has no application to the situation about which Mr. Luellan complains. First, neither the Indianapolis Star nor Mr. Gelarden are "candidate[s] for Federal office or . . . employee[s] or agent[s] of such a candidate." See 2 U.S.C. §431(2) (defining "candidate.") Second, Mr. Luellan has not alleged that anyone fraudulently misrepresented himself as speaking or writing or otherwise acting on Mr. Luellan's behalf. Thus, neither the Star nor its employees could possibly be deemed to have participated in or to have conspired to participate in a plan to misrepresent Mr. Luellan.

Furthermore, it is clear that a newspaper's exercise of editorial discretion regarding coverage of a Congressioal race is in no way limited by the Federal Election Campaign Act of 1971 or Chapters 95 and 96 of Title 26, also mentioned in your letter. Chapters 95 and 96 of Title 26 deal with financing of Presidential primary and general elections. The Federal Election Campaign Act, in addition to proscribing

fraudulent misrepresentation of campaign authority, regulates contributions to and expenditures of candidates for federal elective office. Intrusion into editorial discretion was clearly not contemplated by Congress. Section 301(9)(B)(i) of the Act, as amended by Pub. L. 96-187, provides that the term "expenditure" does not include "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." See Buckley v. Valeo, 424 U.S. 1, 51 n. 56 (1976). See also 11 C.F.R. §100.7(b)(3) (tracking the statutory exclusion and specifying terms on which a facility may cover a race involving a candidate who owns or controls the facility); 11 C.F.R. §100.4(b)(8) (a similar exclusion of news stories, commentaries and editorials from the definition of "contribution.") The Star is not owned or controlled by any political party, committee or candidate.

Finally, we are certain that the Commission recognizes that this type of complaint is contrary to a newspaper's exercise of its First Amendment rights. In Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 258 (1974), the Supreme Court stated that the "choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." Certainly, the newspaper's choice of material with respect to Mr. Luellan's candidacy is clearly protected by this decision.

We suggest that Mr. Luellan's frivolous complaint should be promptly dismissed without further investigation. Certainly, the law provides that the Commission should refuse to investigate complaints that have failed to allege a violation of the

law. In re Federal Election Campaign Act Litigation, Fed. Elec. Campaign Fin. Guide (CCH) ¶9082 (D.D.C. 1979) (sustaining Commission's refusal to investigate numerous complaints that failed to allege a violation of the law).

Yours very truly,

Robert P. Johnstone

Robert P. Johnstone

RPJ:jz

Johnstone
BARNES, HICKAM, PANTZER & BOYD
1313 MERCHANTS BANK BUILDING
INDIANAPOLIS, INDIANA 46204

INDIANAPOLIS, IND. PM

WE'RE COUNTING YOU
CENSUS '80 APRIL
28¢

'80 FEB 8 PM 1:22

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

00011814703

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert J. Luellen
1521 Castle Hills Drive
New Castle, Indiana 47362

Dear Mr. Luellen:

This letter is to acknowledge receipt of your complaint of January 9, 1980, against the Indianapolis Star which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within 5 days and recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondent's notification. You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Indianapolis Star
307 Pennsylvania Street
Indianopolis, Indiana

Re: MUR 1145

Dear Sirs:

This letter is to notify you that you that on January 17, 1980, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campagin Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of the complaint is enclosed. We have numbered this matter MUR 1145. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Michelle Brown, the staff member assigned to this matter at (202)523-4175. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered ..... ¢
☐ Show to whom, date, and address of delivery ..... ¢
☐ RESTRICTED DELIVERY
Show to whom and date delivered ..... ¢
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. $
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
INDIANAPOLIS STAR INC
307 BANKERS LANE ST.
INDIANAPOLIS, INDIANA

3. ARTICLE DESCRIPTION:
REGISTERED NO. 3
CERTIFIED NO. 889846
INSURED NO.

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

DATE OF DELIVERY JAN 25 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

RETURN RECEIPT REGISTERED, INSURED AND CERTIFIED MAIL

PS Form 3811, Aug. 1978

MUR 1145

Official Complaint
Federal Election Commission
1325 K Street NW
Washington, DC. 20463

1522 Castle Hill Drive
New Castle, Indiana 47362
January 9, 1980

BCC# 91

Dear FEC:

In compliance with 2 USC 437 g (a)(1) of the Federal Election Campaign Act, as amended, I hereby make this official complaint against Indianapolis Newspapers the publisher of Indianapolis Star located at 307 N. Pennsylvania Street in Indianapolis, Indiana 46206. The publication of notice of complaints against newspapers in the Journal of FEC for January 1980 mentions that under 11 CFR 111.4(b) Commission must use discretion to reject any complaint for insubstantiality. I intend to show that complaint I register is based on flagrant violation, important, and not fixed by discretion of any authority in the matter of will or caprice. Hamilton vs. FEC clearly should that Commission, involved beyond discretionary practice must rely on judgement of Congressional Intent of a Case of this discretion. Therefore well set out to state a claim. I will seek to return by virtue of authority, rights or supposed rights, to demand that is due.

In compliance with notice in Journal of FEC on Newspaper complaints.

(1) My name is Robert J. (J.O.) Fuller, living at 1521 Castle Hills Drive, New Castle, Indiana 47362. My telephone number is 317-529-2872. I am the complainant.

(2) I hereby claim that Indianapolis Newspapers Inc. thru their Indianapolis Star publication, located at 307 N. Pennsylvania St. in Indianapolis, Indiana 46206 did and does violate Federal Election Campaign Act, as amended, under 2 USC 441(b). Under the authority of this U.S. Code, complaint and the authority of that Joe Sellers, Political Editor of Indianapolis Star, did and does "willfully and knowingly participate in or consent to participate in a plan, scheme or design to violate this (paragraph) of Federal law)" (Expressed as "paragraph one" in wording of this paragraph).

Violation

Paragraph One involves fundamental wise - representation of campaign authority as applies to Federal candidate or an employee or agent of such candidate who fundamentally was represented himself in any committee or organization under his control as speaking, writing or otherwise acting for or on behalf

of my candidacy political party or employer in agreement thereof in a matter which is damaging to such other candidate (unpaid).

On date that William Dubois of Prince Georges announced his candidacy as Congress (Dem) Candidate 10th District, an article in Hagerstown Star which also named William G. Frogel, as possible candidate for Congress; no mention was made of my name. My call to Editor who stated he was John Lisk, lead me to submit announcement to Star, as I have candidacy Lisk referred to Political Editor Jack Rebecca and stated he handled such matters. In 1974, 76 & 78 I have created matters of candidacy in primary election in 10th District in Hagerstown Star. Yesterday I submitted my second announcement of candidacy, January 8, after talking with Bob Bodan on the phone, he stating Lisk announcement "lost" for he did not see it. I consulted F.B.I. on the matter daily was federal law (2 USC 441(h)) and its violation, by mail & telephone, which clearly damaged my political campaigning.

Failure to publish this announcement in a state wide newspaper damaged my reputation and campaign. This is approximately within a 2 week span of time, which is sufficient for complaint. Malicious intent of Newspaper to be damage is clearly expressed to FBI by unpaid in letter stating "persons of unfriendness of Indianapolis star did appear in the press of this property and did intend harm by their actions and talk (utterances) for one of them is my cousin". Such misinformation and careless concerning a political election is newspaper outside is clearly libel in that newspaper, its personnel & those involved therein. This is clear intention in conspiracy to be this damage falling under ~~scheming~~ in designing which is conspiracy to fortunate under paragraph 2 of 20USC411(2). (as cited) Claim is that I have been damaged by failure to announce myself as a candidate for Congress - ~~then~~ thought I could win 1/3 of the popular vote in a 477,000 population district (of the Republican Party) (consistently). I further claim that I am libel announcement of my candidacy for Congress with equal presentation ~~otherwise~~, as

Claim

80011183301

Claim: Freezer or Dollars or any other Congress Candidate which Item has been to run. Penalty of Sec 2 USC 441 (b) is $25,000 or 1 year imprisonment or both or 300% of contributions or expenditures involved in the violation instead of $25,000 whichever is greater. Under 441(j) of this title, this code shall apply regardless of whether receiving of contributions or expenditures for any form Committee approaches the $100 qualification or not for a question of reporting on committee. I raised point on illegality of Pulitzer publishing in this area of the United States.

(3) Any statement taken on this complaint is hearsay of many mail to Democratic Star which is on the Records of Democratic newspapers Inc. of Democratic Delaware

(4) I asserted that I am a candidate for Congress of the United States for 1978, 10th District and I am not filing the complaint on behalf of or at the request or suggestion of another candidate.

Very truly yours,

Robert J. Fuellen

Candidate for Congress
1974, 76 & 78
Republican Party
10th District

Fund for Elections
for Congress 78

1491 S.C.
Rev. of Sheep Co.
Sheet Metal Metals
Conn 24 [illegible]

0001183 0 0

1521 Castle Wells Dr.
New Castle, Ind 47362

1980

USA 15c

Congressman Dawson
Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

20 JAN 10 PM 1:05
ARCHIVES

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1145

Date Filmed 5/14/80 Camera No. --- 2

Cameraman SPC

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