FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 2196

DATE FILMED 3/4/87 CAMERA NO. 2

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MUR 2196

FEDERAL ELECTION COMMISSION

1) Routing Slips
2) Intra-office memoranda
3) Memo from Docket
4) 12 Day Report
5) Comments to 12 Day Report
6) Comments by Commissioner re: objection

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

____	(1) Classified Information	____	(6) Personal privacy
✓	(2) Internal rules and practices	____	(7) Investigatory files
____	(3) Exempted by other statute	____	(8) Banking Information
____	(4) Trade secrets and commercial or financial information	____	(9) Well Information (geographic or geophysical)
✓	(5) Internal Documents		

Signed Jonathan M. Levin

date 2/23/87

FEC 9-21-77

pllm

FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

December 19, 1986

Lt. Col. Michael B. Lumbard
Office of General Counsel
Office of Legal Counsel
Office of the Secretary of Defense
Pentagon
Washington, D.C. 20301-1600

Re: MUR 2196
James H. Webb, Jr.

Dear Col. Lumbard:

On July 9, 1986, the Commission found reason to believe that your client, James H. Webb, Jr., violated 2 U.S.C. § 441i(a), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above-referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. Attached is the General Counsel's Report in which this Office made the recommendation to take no further action.

The file in this matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

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If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

JL
12/18/86

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
James H. Webb, Jr.) MUR 2196

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of December 16, 1986, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2196:

1. Take no further action.

2. Close the file.

3. Approve the letter attached to the General Counsel's report dated December 9, 1986.

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

Attest:

12-17-86
Date

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

2 7 0 3 4 7 1 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /CHERYL A. FLEMING

DATE: DECEMBER 11, 1986

SUBJECT: MUR 2196 - GENERAL COUNSEL'S REPORT
SIGNED DECEMBER 9, 1986

The above-captioned document was circulated to the Commission on Tuesday, December 9, 1986 at 4:00 P.M.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	
Commissioner Elliott	
Commissioner Josefiak	
Commissioner McDonald	X
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the Executive Session agenda for Tuesday, December 16, 1986.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: December 9, 1986

SUBJECT: MUR 2196 - General Counsel's Rpt.

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[X]	Compliance	[X]
Sensitive	[X]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	MUR 2196
James H. Webb, Jr.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 19, 1986, this Office received a letter from David H. Martin, Director of the Office of Government Ethics, referring to a situation possibly involving a violation of 2 U.S.C. § 441i. Enclosed with the letter was a memorandum to Mr. Martin from the Office of General Counsel of the Department of Defense. The memorandum asked Mr. Martin to examine whether a situation described in another attached memorandum amounted to the acceptance of an excessive honorarium in violation of 2 U.S.C. § 441i.

The attached memorandum was written by James H. Webb, Jr., Assistant Secretary of Defense (Reserve Affairs) and sent to the General Counsel of the Department of Defense. In his memorandum, Mr. Webb stated that, during 1985, Parade magazine paid Webb Enterprises $4,500 for a Father's Day article that Mr. Webb wrote regarding the birth of his son. Mr. Webb stated:

> I have not received any of this compensation personally, but am aware that, for purposes of ethical considerations, the payment of a corporation from which I draw no salary nonetheless constitutes remuneration for the product delivered to Parade.

Mr. Webb raised the issue of a possible violation of 2 U.S.C. § 441i and then questioned whether the limit of 2 U.S.C. § 441i was applicable to him. Mr. Webb stated that this section,

which prohibits elected or appointed federal officers or employees from accepting an honorarium in excess of $2,000 for any appearance, speech, or article, may not apply to him because it was meant to prevent circumvention of the limits pertaining to political campaigns and because the payment for the article was "much closer to having been a stipend than it is to being an honorarium." Mr. Webb stated:

> I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article a year) for several years.

Based on the letter from the Office of Government Ethics and the accompanying memoranda, this Office decided to generate a Pre-MUR. Upon this Office's recommendation, the Commission, on July 9, 1986, opened a Matter Under Review, found reason to believe that Mr. Webb violated 2 U.S.C. § 441i(a), and approved interrogatories to be sent to Parade and to Mr. Webb. These questions sought information related to the contractual arrangements for the Father's Day article and the relationship between Parade and Mr. Webb. By asking these questions, this Office was attempting to determine whether Mr. Webb, through Parade's payment to Webb Enterprises, accepted payment for the article and whether there was a continuous compensatory relationship between Parade and Mr. Webb, making the payment a "stipend," rather than an honorarium.

Carlo Vittorini, the publisher of Parade, replied on behalf of the magazine. Mr. Vittorini states that Mr. Webb has written three articles for Parade, two in 1982 and one in 1985.

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He states that "[e]ach article required its own individual (single) contract and was consistent with our normal author/publisher relationships."

Mr. Webb replied with a sworn affidavit signed by him and a legal memorandum from his counsel. With respect to the issue of the acceptance of an honorarium, Mr. Webb acknowledges that he is the sole owner of Webb Enterprises, "which was created in order to stabilize [his] royalty income as an author" to facilitate financial planning on his part. He states that he has access to the funds of Webb Enterprises up to the 15 per cent limit on outside income set by the Ethics in Government Act of 1978, although he has not "availed" himself of this access.

Mr. Webb addresses the issue of the continuous relationship with Parade extensively. He states that, since 1981, he has had a "long term and sustained relationship" with Parade, as well as a "personal relationship" with the editor, Walter Anderson. Mr. Webb lists contracts for four articles between his agent, the Sterling Lord Agency, Inc., and Parade. These contracts include one in 1981 (dated July 1, 1981), two in 1982 (dated April 21 and September 20, 1982), and the contract for the article at issue (dated April 10, 1985). He states that, in the case of each contract, he discussed "further story ideas" with Parade and then the magazine conducted arms-length financial negotiations with his agent. Mr. Webb also asserts that, over the years, Mr. Anderson and he had many other discussions concerning ideas for articles. Mr. Webb states:

> I view our relationship to be both a business and personal one, which is one of the reasons for my writing commitments to his publication over a long period of time.

Each of the articles involved a separate contract. Mr. Webb states that Parade has a corporate policy against long-term contractual agreements, thus necessitating the separate contracts. Mr. Webb also claims that a separate contract for each "project" is necessary "because the length and logistics of the arrangement . . . are not known until the project is selected." He further contends that this is the magazine industry norm. He continues:

> However, the success of my articles for Parade, my satisfaction with their editorial staff, and the frequency of my writings for this magazine proves that the magazine and I have a special relationship that will no doubt continue far into the future. This is bolstered by my friendship with the editor, and my respect for his professional acumen. The fact that no article of mine has ever been rejected by that magazine is also testimony that Parade has been, since 1981, my regular and consistent publisher.

Counsel for Mr. Webb makes a number of arguments on behalf of his client. First, counsel argues that 2 U.S.C. § 441i(a) should have no effect with respect to his client because this payment to Mr. Webb was not an honorarium within the "common definition" of honorarium or the definition intended by Congress. Counsel maintains that an honorarium is a "voluntary reward for which no remuneration could be collected at law," and that, therefore, the definition of "honorarium" appearing at 11 C.F.R. § 110.12(b) is erroneous. Because the payment to Mr. Webb was enforceable at law, counsel argues that it was not an honorarium.

Counsel also maintains that 2 U.S.C. § 441i(a) is unconstitutional as applied in this situation. Counsel argues that the statutory section constitutes a "prior restraint" on expression and that there is no "controlling government interest" in restricting the writing of an article on the birth of one's son. Counsel further argues that the enforcement of this provision creates a Fifth Amendment due process problem because the meaning of the word "honorarium" in the statute is vague. He states that this vagueness is especially significant in this matter where First Amendment rights are involved.

Unlike his first two arguments, counsel's third argument is premised upon the acceptance of the wording in the statute and the regulations at 11 C.F.R. § 110.12. According to 11 C.F.R. § 110.12(c)(3), an honorarium does not include a "stipend," i.e., "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." Counsel asserts that "the fact that each article was written on a separate contract should not be controlling." In support of his argument, counsel cites AO 1985-4. In that situation, the requestor, a United States Senator, presented a situation in which he had made oral agreements on an annual basis over a period of ten years with a university to conduct public affairs seminars for students three times a year. The compensation received was based on the number of seminars he conducted. The Commission determined this compensation to be a stipend. Counsel asserts that the situation presented in that advisory opinion is "very close" to the situation in this matter. Counsel points out that in each case,

there was a continuous compensatory relationship that existed over a period of years. He states that each situation involved "periodic consecutive contracts," rather than one long-term contract to cover the seminars or the articles. Counsel re-emphasized Mr. Webbs's description of his ongoing relationship with Parade. He refers to "the special and continuing personal relationship between Mr. Webb, the magazine and that of the magazine's publisher," the assertion that Parade contracts for each article individually and the claim that such individual contracts are the magazine industry norm.

II. LEGAL ANALYSIS

Section 441i(a) of Title 2 states that "[n]o person while an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than $2,000 . . . for any appearance, speech, or article." Section 110.12(b) of the Commission Regulations defines the term "honorarium" as

> a payment of money or anything of value received by an officer or employee of the Federal government, if it is accepted as consideration for an appearance, speech, or article. An honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

According to 11 C.F.R. § 110.12(b)(5), the term "accepted" means "that there has been actual or constructive receipt of the honorarium and that the federal office holder or employee exercises dominion or control over it and determines its subsequent use." As stated above, 11 C.F.R. § 110.12(c) excludes

stipends from the definition of honorarium. A stipend is defined at 11 C.F.R. § 110.12(c)(3) as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated."

Mr. Webb states that payment for the article was made to Webb Enterprises, an entity of which he is the sole owner, and that he has access to the funds of the corporation up to the legal limit set by the Ethics in Government Act. Although he asserts that he has not availed himself of this access, he has the ability to do so, and, therefore, he has control over the payment for the article and can determine the payment's subsequent use.

The central issue of this matter as discussed in the First General Counsel's Report and the reply to the reason to believe notification is whether this payment was a stipend. The Commission has issued a number of advisory opinions distinguishing between "honoraria" and "stipends." AO 1980-76 involved arrangements for monthly radio programs and weekly television appearances. AO 1980-140 involved a contract for a five-year series of radio commentaries. AO 1984-56 involved an arrangement whereby a publisher would pay an author in quarterly installments for book promotional appearances over a two-year period. AO 1985-4 involved oral agreements to teach public affairs seminars at a university on a regular basis. The agreements to teach were made on an annual basis and compensation was based on the number of seminars conducted. In each of these advisory opinions, the standard set out for determining if

compensation for an appearance, speech, or article is a stipend is whether the circumstances presented indicate a "continuing compensatory relationship." In each of these opinions, the requestor has presented circumstances involving an arrangement for a number of appearances, lectures, or classes over a period of time, i.e., a continuing relationship.

Mr. Webb and his counsel argue that a continuous compensatory relationship exists between the magazine and its editor on the one hand and Mr. Webb on the other. They have asserted that, like the situation posed in 1985-4, this matter involves "periodic consecutive contracts." Contrary to respondent's assertion, however, this matter does not involve "periodic consecutive contracts." Although the situation in 1985-4 did not involve a written long-term contract providing for a number of years of appearances, it did involve agreements at regular intervals over a long period. In this matter, agreements for individual contracts were not at regular intervals. There were agreements for three articles within the first year and a half of the relationship posited by the respondent and, another contract was not signed until two and one-half years after the third contract, indicating a possible lack of continuity in any posited compensatory relationship.

Based on the circumstances presented by respondent and his counsel and by the publisher of Parade, however, this Office recommends that the Commission take no further action in this matter. It appears that Mr. Webb and Parade maintained relationship between 1981 and 1985, including a personal relationship between Mr. Webb and the editor which involved many

discussions for ideas for articles. In addition, it appears that the signing of a long-term contract, which might have formalized an ongoing releationship, was contrary to the policy of the magazine.

III. RECOMMENDATIONS

1. Take no further action.
2. Close the file.
3. Approve the attached letter.

Charles N. Steele
General Counsel

12/9/86
Date

BY: Lawrence M. Noble
Deputy General Counsel

Attachment
1. Reply from Parade.
2. Reply from Mr. Webb and counsel.
3. Proposed letter to counsel for Mr. Webb.

PARADE

PUBLICATIONS, INC.

Office of the President

1513
JUL 23 AM: 55
MUR 2196

July 18, 1986

RECEIVED
SECRETARIAT
GENERAL COUNSEL
86 JUL 23 P3: 32

Mr. Lawrence M. Noble
Deputy General Counsel
Federal Election Commission
Washington, DC 20463

Dear Mr. Noble:

Attached please find my response to the Interrogatories that you requested.

We are glad to be of service.

Sincerely,

Carlo Vittorini

Carlo Vittorini
Publisher

CV/sl
enc.

Attachment 1 - p. 1 of 2

750 Third Avenue, New York, New York 10017 (212) 573-7111

INTERROGATORY

Mr. James Webb has written three articles for PARADE -- two in 1982 and one in 1985. In each circumstance, PARADE approached Mr. Webb on the basis of his professional expertise.

There were written contracts for each of these articles and they are a standard form used with all our authors.

Each article required its own individual (single) contract and was consistent with our normal author/publisher relationships.

PARADE Publications, Inc.

Carlo Vittorini

Carlo Vittorini, Publisher

Sworn to before me
this 18th day of July, 1986

Lori Williams

LORI WILLIAMS
Notary Public, State of New York
No. 31-4795760
Qualified in New York County
Commission Expires January 31, 1989

1-p. 2 of 2

QCC#1290
Levin

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

21 AUG 1986

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 2196
James H. Webb, Jr.

86 AUG 21 P2:55

Dear Mr. Steele:

Please find attached the requested declaration, as well as a memorandum of the applicable law. I believe these documents demonstrate that the publication of my article entitled "When My Son Was Born" did not subject me to the restrictions of 2 U.S.C. Section 441i(a).

Sincerely,

James H. Webb

James H. Webb, Jr.

Attachments

Attachment 2 - p 1 of 19

FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C. 20463

AFFIDAVIT OF JAMES H. WEBB, JR.

I, James H. Webb, Jr., declare and say:

1. I was confirmed by the Senate of the United States on April 27, 1984, and was sworn in as Assistant Secretary of Defense (Reserve Affairs), Department of Defense, on May 1, 1984.

2. In 1985, I wrote an article for Parade magazine entitled "When My Son Was Born" for publication on Father's Day. Parade magazine subsequently paid Ms. Elizabeth Kaplan of the Sterling Lord Agency, Inc., my agent in New York City, the sum of $5,000 pursuant to a contract between Sterling Lord and Parade magazine, dated April 10, 1985. Ms. Kaplan subsequently paid Webb Enterprises the sum of $4,500.

3. I am the sole owner of Webb Enterprises, which was created in order to stabilize my royalty income as an author, thus enabling me to do a certain amount of financial planning on an informed basis. Under the law, I have access to Webb Enterprises' funds up to the limitation on outside income imposed by the "15 percent rule." I have not availed myself of this access. My wife has received a small amount each year as recompense for directing the affairs of the corporation, and I have continued to sign the checks for the corporation's bills, which include rental of a small office, utilities, CPA fees, and other essential items. This arrangement was fully discussed with the White House, DoD, and the Senate Armed Services Committee prior to my confirmation.

4. Since 1981, I have had a long term and sustained relationship with Parade magazine, as well as a personal relationship with Mr. Walter Anderson, editor of that publication. Besides the article entitled "When My Son Was Born," contracts on my articles between the Sterling Lord Agency, Inc. and Parade include: (1) "Letters to My Friends/Return to Vietnam" (July 1, 1981); (2) "Vietnam Vets Program" (April 21, 1982); and (3) "Americans in Japanese Prisons" (September 20, 1982). All of these contracts involved arms-length negotiations between Sterling Lord and Parade. They were signed by my agents, and not by me, and all monies were given directly to Sterling Lord Agency, Inc. In each case, I discussed further story ideas with Parade, and the magazine then subsequently conducted all financial negotiations with Sterling Lord. Mr. Anderson and I have had numerous other discussions over the years concerning story ideas and possible article subjects. I view our relationship to be both a business and personal one, which is one of the reasons for my writing commitments to his publication over a long period of time.

5. The fee of $5,000, including agents commission, paid by Parade was a fair contract price for an article of 1200-1500 words in a national publication with a circulation of 25 million. This amount was comparable to fees paid for articles written by me and published in Parade before I assumed my present duties as Assistant Secretary of Defense (Reserve Affairs).

6. Parade magazine has a corporate policy against long term contractual agreements with anyone other than with salaried

statute, I immediately and voluntarily initiated the request for opinion which prompted this inquiry. The Federal Election Commission might never have become involved with this issue except for my initiation of the correspondence. I initiated this in order to seek advice on how to treat such a payment under the overall 15 percent limitation on outside income imposed by the Ethics in Government Act of 1978. Let me point out that The Presidential Appointees Handbook, which was published by the federally chartered National Academy of Public Administration, and which is provided to all prospective appointees, makes no mention of 2 U.S.C. §441i(a). I was, to say the least, rather dismayed that one could conclude that §441i(a) might apply in such a case. I point out and emphasize that my article entitled "When My Son Was Born" concerned the birth of my child, and was in honor of a national day of recognition. I am at a loss to see how this article could be viewed as creating a conflict of interest or an ethical problem with my duties as Assistant Secretary of Defense.

9. As alluded to in paragraph 3, supra, I explained my intentions and business relationships in great detail to the White House, the DoD, and to the Staff Director and Counsel for the Senate Armed Services Committee prior to my confirmation. I also have, in a regular manner, noted my relationship with Webb Enterprises in my annual conflict of interest statement. I have taken great care during my time in this position to ensure that my activities comply with the "15 percent rule", as well as 18 U.S.C. §209, and all other conflict of interest laws. The

fact remains that the application of 2 U.S.C. §441i(a) to my circumstances bears no relationship to any ethical issue or lawful government interest. Nothing brings that out more dramatically than the very title of my article - "When My Son Was Born"; nothing could be less obtrusive to the proper fulfillment of the obligations of my office or the functioning of the Government. I submit that it would be contrary to the intentions of the various laws governing official conduct to find that I have violated a law that no one, in my many discussions, mentioned as applicable to my situation, and the existence of which was not even mentioned in the relevant Handbook for Presidential appointees. I must reiterate that this matter is before the FEC because I raised it, sua sponte, in order to fully clarify my status after learning of this provision.

10. In closing, let me reemphasize my unequivocal belief that I have violated no law, either in spirit or in fact. I have attached a Memorandum of the Law that should be read in conjunction with this affidavit.

I hereby declare under penalty of law that the foregoing is true to the best of my knowledge and belief.

James H. Webb, Jr.
Assistant Secretary of Defense
(Reserve Affairs)

Executed this 21 day of August 1986

Attachments
1. Memorandum of the Law
2. Contract

Subscribed and sworn to before me this 21st day of August 1986.

Notary Public

My commission expires:
12 August 1988

2-p. 7 of 19

MEMORANDUM OF THE LAW

MUR NO. 2196

The following issues are germane to the applicability of 2 U.S.C. §441i(a) concerning the receipt of payment by Webb Enterprises from Parade magazine.

A. Honorarium

The receipt of payment for Mr. Webb's article published in Parade was not an "honorarium." The Federal Election Campaign Act of 1971, now codified in 2 U.S.C. §441i(a), states that no "honorarium" of more than $2,000 may be accepted by an appointed federal employee for any appearance, speech, or article. Critical to the relevance of §441i(a) is the meaning of this key word "honorarium."

"Honorarium" is not defined within the law. As correctly stated by Senator Goldwater on the floor of the Senate,

> [t]he language of this provision is badly drafted and no one can fairly understand what he is prohibited from doing. The term "honorarium" is not defined in this section or anywhere else in the Federal Election Campaign Act (of 1971). Nor does any other section of the United States Criminal Code to which this section has been added, contain any definition of "honorarium." (Congressional Record, pg. 7166, March 18, 1976).

Ordinarily, a word in a statute which is not defined, will be given its usual, natural and commonly understood meaning, Crane v. Commissioner of Internal Revenue, 331 U.S. 1 (1947); Addison v. Holly Hill Fruit Products, Fla., 322 U.S. 607 (1943); Helvering v. Hutchings, Tex., 312 U.S. 393 (1940); 86 C.J.S.

Statutes §329. In common use, "honorarium" means a voluntary reward for which no remuneration could be collected at law, hence a voluntary payment for a service rendered. Cunningham v. Commissioner of Internal Revenue, C.C.A., 67 F.2d 205 (1933); 41 C.J.S. Honorarium. It is not an enforceable contract. Webster's Dictionary defines "honorarium" as "a payment usually for services on which custom or propriety forbids a price to be set," Webster's New Collegiate Dictionary 549 (5th Ed. 1977).

"Honorarium" is not a commonly used word. Therefore, there is a presumption that Congress must have meant something specifically by its use. Congress could have used just as easily "payment" or "fee," but it did not. In fact, on April 3, 1974, the original amendment that was a forerunner of this law was introduced on the floor by Senator Allen. His amendment 1052 read, in part, as follows: "No Member of Congress shall accept any honorarium, fee, payment, or expense allowance . . . for any speech, article . . . or appearance . . . ." (Emphasis Added) (Congressional Record, p. 5181, April 3, 1974). By a vote of 61-31, the Senate rejected this sweeping language and the specific words "fee" and "payment" that would include a contract such as eventually made between Parade and Sterling Lord for Mr. Webb's article.

Several months later, both the House and Senate accepted the more limiting language within the statute. If there is any doubt as to the intent of Congress to mean "honorarium" in its common everyday meaning, and not a contractual fee or payment

arrangement, I cite the language of Senator Goldwater before the Senate:

> To begin with, "honorarium" is not even explained in the proposed legislation. I looked it up in a dictionary, and it reads: An honorary payment, a reward, usually in recognition of gratuitous or professional services on which custom or propriety forbids any price to be set. (Congressional Record, pg. 7904, March 24, 1976).

In reply, there was no disagreement on this point by the other Senators present.

In the House, the bill was first introduced by Congressman Annunzio in hearings before the Committee on House Administration. In the transcript from those hearings, it is clear that this measure was intended to curb excessive honoraria collected by Senators beyond that in reimbursement for services rendered. Congressman Annunzio was upset at Senators getting reimbursed not for the quality of their speeches, but only because they are U.S. Senators. (Transcript, June 5, 1974, Markup Hearings on the Federal Election Campaign Act Amendments of 1974, pp. 377-378, Committee on House Administration, 93rd Congress, 2d Session, 1974). Chairman Hays refers to such an honorarium as "a disguised contribution." (Supra, pg. 375) It is obvious that the members of the Committee were concerned about honoraria paid to an individual because of his public office and not because the services rendered were worth the amount paid. As stated by Mr. Webb, the fees paid by Parade for his Father's Day article were in line with an article of such a length in a national publication, and were equivalent to those fees paid by Parade

before he assumed his public position. Obviously, the law was not intended to cover Mr. Webb's situation.

Several years later, 11 C.F.R. §110.12(b) was issued broadly defining "honorarium" to be any "payment of money or anything of value received . . . if it is accepted as consideration for an appearance, speech, or article." This regulation, which now encompasses any contract, is wholly unsupported by the law and should have no legal effect. In fact, the definition provided by the regulation is the opposite of that of the common definition of "honorarium" and that intended by Congress: a payment not enforceable at law.

It is a well-founded axiom of the law that a new meaning cannot be given to words of an old statute because of changed conditions at a time after the enactment of the statute. Dunn v. Commissioner of Civil Service, 183 N.E. 889, 281 Mass. 376 (1933). If the authors of the regulation believe that some evil, real or imagined, exists beyond that envisioned by Congress, the solution is to return to Congress and ask that the law be changed. An interpretation of the language within the regulation that is beyond that of the statute is unlawful and unenforceable.

B. Constitutional Questions

The restriction on the publication of an article entitled "When My Son Was Born" is obviously unconstitutional. Any system of prior restraint of expression involving the freedom of speech or press bears a heavy presumption against its constitutional validity, and the Government carries a heavy burden to show a justification for the imposition of such a restraint. New York

Times Co. v. U.S., 403 U.S. 713 (1971); U.S. v. Washington Post, 403 U.S. 713 (1971). Freedom of speech and press is the indispensible condition of nearly every other form of freedom. Curtis Pub. Co. v. Butts, 388 U.S. 130 (1967). Government regulation of this freedom is justified if it is within the constitutional power of government; if it furthers an important or substantial governmental interest; and if the restriction of First Amendment freedoms is no greater than is essential to the furtherance of that interest. Buckley v. Valeo, 171 U.S. App. D.C. 172 (1975). I ask - where is the controlling government interest concerning an article entitled "When My Son Was Born" and having to do with Father's Day. I submit there is none.

In the alternative, if the broad language of the regulation defining "honorarium" is deemed to be correct despite the common definition of the word, a constitutional due process problem is created by the enforcement of such an interpretation. Again, Senator Goldwater on the language of the bill:

> I remind those of my colleagues who are attorneys that one of the first principles of the Constitution rests in the protection of individual rights by the fifth amendment, what is known as the due process clause. In brief, the Supreme Court has said that due process includes "the deepest notions of what is fair and right and just."
>
> Due process, in the context of a criminal statute means that the language of that statute "must be sufficiently explicit to inform those who are subject to it what conduct on their part will renuer them liable to its penalties." A statute which forbids "the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its

application," in the words of the Supreme Court, "violates the first essential of due process of law."

This doctrine has been known as the "vagueness" doctrine and it has been the basis for voiding several legislative statutes. In this instant particularly, where section 327 restricts on its face first amendments freedom of speech, I believe such an unclear statute is a bad one. As the Supreme Court said in the recent case of Buckley against Valeo, where first amendment rights are involved, an even "greater degree of specificity is required." (Congressional Record, pg. 7166, March 18, 1976).

C. Stipend

The relationship between the author and the magazine, and the frequency of publication in this case, defines the type of payment as a "stipend", as defined by 11 C.F.R. §110.12(c)(3). That subparagraph amounts to an exception to the statute. The regulation states that "A stipend is a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events . . . ." (Emphasis Added). The fact that each article was written on a separate contract should not be controlling.

Of particular interest on this point is the Federal Election Commission's own Advisory Opinion, AO 1985-4. In that case, the petitioner asked whether a series of public affairs seminars for undergraduate students would fall under the "stipend" exception. The agreement to teach classes was made on an annual basis, presumably reestablished each year over a period of ten years, and the compensation received was based on the number of seminars actually conducted. This arrangement was viewed by the

Commission to be a "stipend," and outside the limitations of the law.

This cited case is very close to the situation we have with Mr. Webb, where payment was made for each individual article. In both cases, there exists "a continuing compensatory relationship," to use the words of the Federal Election Commission in AO 1985-4. In each case, this relationship extended over a period of years. In each case, the amount of payment was determined by the task and time expended by the respective respondent. In each case, periodic consecutive contracts were involved. The Commission did not require in AO 1985-4 one long-term contract to cover the total series of seminars over the 10 years. A course of conduct in AO 1985-4, forming a regular series of acts, established the "stipend," as it does here with a series of articles with one publisher over a period of many years - a relationship between author and magazine that existed long before the respondent assumed his present duties as the Assistant Secretary of Defense.

The affidavit to which this memorandum is attached provides all of the details on which to base a determination of a "stipend" in this case. Those details include the special and continuing personal relationship between Mr. Webb, the magazine, and that of the magazine's publisher; the fact that the method of contracting for each article individually is the only kind allowed by Parade; and the fact that individual contracts remain the normal method of employment for authors of articles in the magazine industry. As concluded by the Commission in its

previous opinion, AO 1985-4, the fact that one is not strictly a salaried employee of the organization, with all of the benefits accruing to an employee, or that there is not one single contract covering the entire period, does not prevent the compensation involved from being defined as a "stipend." The definition of "stipend" within 11 C.F.R. §110.12(c)(3) allows for this interpretation.

Conclusion:

For the arguments and reasoning presented herein, Mr. James H. Webb should be found not to have violated 2 U.S.C. §441i(a) by the publication of his article "When My Son Was Born" in Parade magazine.

parade

Parade Publications, Inc. • (212) 573-7000
750 Third Avenue, New York, N.Y. 10017

July 1, 1981

Dear Sterling Lord

This letter will serve to confirm our agreement with respect to the article Jim Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for Jim Webb (the "writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1500-2000 words, appropriate for publication in PARADE, on the subject of Letter to My Friends/ Return to Vietnam with the working title same as above. The article will be submitted in final form by 2 weeks after return.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

5. Writer agrees that the article will be original and accurate and that he will cooperate in the defense of any legal action arising from the article.

6. PARADE shall pay you the sum of $ 5500 * for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $ 1000 * and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance. *Payable to and in the name of The Sterling Lord Agency, Inc.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Sincerely,

Murray Weiss

Agreed to by:

Date: July 10, 1981

No.

2 - p. 16 of 19

▸▸ **parade**

Parade Publications, Inc. • (212) 573-7000
750 Third Avenue, New York, N.Y. 10017

Mr. Sterling Lord
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, N.Y. 10021

September 20, 1982

1/15/84

Dear Sterling Lord:

This letter will serve to confirm our agreement with respect to the article James H. Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for James H. Webb (the "writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1500 words, appropriate for publication in PARADE, on the subject of Americans in Japanese Prisons with the working title Americans in Japanese Prisons. The article will be submitted in final form by November 8, 1982.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published and any subsequent reproduction thereof shall credit PARADE as the initial publisher.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

5. You agree that the article will be original and accurate and that you will cooperate in the defense of any legal action arising from the article.

6. PARADE shall pay you the sum of $5,000.00 for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $500.00 and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Sincerely,

Walter Anderson
Editor

Agreed to by:

_____

Date: _____

2-p 18 of 19

11/81

parade

Parade Publications, Inc. • (212) 573-7000
750 Third Avenue, New York, N.Y. 10017

April 10, 1985

Ms. Elizabeth Kaplan
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, NY 10021

Dear Ms. Kaplan:

This letter will serve to confirm our agreement with respect to the article James Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for James Webb (the "writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1200 - 1500 words, appropriate for publication in PARADE, on the subject of Father's Day with the working title same. The article will be submitted in final form by in-house.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published and any subsequent reproduction thereof shall credit PARADE as the initial publisher.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

5. ~~You~~ Writer agrees that the article will be original and accurate and that ~~you~~ he will cooperate in the defense of any legal action arising from the article.

6. PARADE shall pay you the sum of $ 5000.00* for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $ 500.00* and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance.

*payable to and in the name of The Sterling Lord Agency, Inc.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Agreed to by:

Date: April 16, 1985

Sincerely,

Larry Smith
Managing Editor

2 - p. 19 of 19

▸▸ **parade**

Parade Publications, Inc. • (212) 573-7000
711 Third Avenue, New York, N.Y. 10017

April 21, 1982

Mr. Sterling Lord
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, N.Y. 10021

Dear Sterling Lord:

This letter will serve to confirm our agreement with respect to the article Jim Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for Jim Webb (the "writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1200-1500 words appropriate for publication in PARADE, on the subject of Vietnam Vets Program with the working title Vietnam Vets Program. The article will be submitted in final form by July 20, 1982.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published and any subsequent reproduction thereof shall credit PARADE as the initial publisher.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

5. The writer agrees that the article will be original and accurate and that he will cooperate in the defense of any legal action arising from the article.

6. PARADE shall pay you the sum of $3000.00 * for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $500.00 * and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance.

*payable to and in the name of The Sterling Lord Agency, Inc.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Sincerely,

Walter Anderson
Editor

Agreed to by:

Date: April 26, 1982

2-p.17 of 19

11/81

individuals on its editorial staff. Therefore, well-known authors in addition to myself must technically arrange for each project separately. Also, this is necessary because the length and logistics of the arrangement (travel, research, number of interviews, etc.) are not known until the project is selected. This is the normal method of doing business in the magazine industry. However, the success of my articles for Parade, my satisfaction with their editorial staff, and the frequency of my writings for this magazine proves that the magazine and I have a special relationship that will no doubt continue far into the future. This is bolstered by my friendship with the editor, and my respect for his professional acumen. The fact that no article of mine has ever been rejected by that magazine is also testimony that Parade has been, since 1981, my regular and consistent publisher.

7. Upon entering public service, I scrupulously ensured that no actual or apparent conflict of interest resulted from my financial holdings or my interest in Webb Enterprises, a corporation engaged in the production of books and other literary products. Even though the corporation conducts no business with the Government, I elected to forego receiving any salary from the corporation during the period of my government service.

8. At the time of Parade's payment to Webb Enterprises, I was unaware of 2 U.S.C. §441i(a), a provision of the Federal Election Campaign Act of 1971, as amended, and assumed that the 15 percent outside income limitation governed contracts such as the one involved here. Upon subsequently becoming aware of the

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lt. Col. Michael B. Lumbard
Office of General Counsel
Office of Legal Counsel
Office of the Secretary of Defense
Pentagon
Washington, D.C. 20301-1600

Re: MUR 2196
James H. Webb, Jr.

Dear Col. Lumbard:

On July 9, 1986, the Commission found reason to believe that your client, James H. Webb, Jr., violated 2 U.S.C. § 441i(a), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the above-referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. Attached is the General Counsel's Report in which this Office made the recommendaiton to take no further action.

The file in this matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
General Counsel's Report

Attachment 3

GCCH/1290

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

21 AUG 1986

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 2196
James H. Webb, Jr.

Dear Mr. Steele:

Please find attached the requested declaration, as well as a memorandum of the applicable law. I believe these documents demonstrate that the publication of my article entitled "When My Son Was Born" did not subject me to the restrictions of 2 U.S.C. Section 441i(a).

Sincerely,

James H. Webb, Jr.

James H. Webb, Jr.

Attachments

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AUG 21 P2:55

FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C. 20463

AFFIDAVIT OF JAMES H. WEBB, JR.

I, James H. Webb, Jr., declare and say:

1. I was confirmed by the Senate of the United States on April 27, 1984, and was sworn in as Assistant Secretary of Defense (Reserve Affairs), Department of Defense, on May 1, 1984.

2. In 1985, I wrote an article for Parade magazine entitled "When My Son Was Born" for publication on Father's Day. Parade magazine subsequently paid Ms. Elizabeth Kaplan of the Sterling Lord Agency, Inc., my agent in New York City, the sum of $5,000 pursuant to a contract between Sterling Lord and Parade magazine, dated April 10, 1985. Ms. Kaplan subsequently paid Webb Enterprises the sum of $4,500.

3. I am the sole owner of Webb Enterprises, which was created in order to stabilize my royalty income as an author, thus enabling me to do a certain amount of financial planning on an informed basis. Under the law, I have access to Webb Enterprises' funds up to the limitation on outside income imposed by the "15 percent rule." I have not availed myself of this access. My wife has received a small amount each year as recompense for directing the affairs of the corporation, and I have continued to sign the checks for the corporation's bills, which include rental of a small office, utilities, CPA fees, and other essential items. This arrangement was fully discussed with the White House, DoD, and the Senate Armed Services Committee prior to my confirmation.

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4. Since 1981, I have had a long term and sustained relationship with Parade magazine, as well as a personal relationship with Mr. Walter Anderson, editor of that publication. Besides the article entitled "When My Son Was Born," contracts on my articles between the Sterling Lord Agency, Inc. and Parade include: (1) "Letters to My Friends/Return to Vietnam" (July 1, 1981); (2) "Vietnam Vets Program" (April 21, 1982); and (3) "Americans in Japanese Prisons" (September 20, 1982). All of these contracts involved arms-length negotiations between Sterling Lord and Parade. They were signed by my agents, and not by me, and all monies were given directly to Sterling Lord Agency, Inc. In each case, I discussed further story ideas with Parade, and the magazine then subsequently conducted all financial negotiations with Sterling Lord. Mr. Anderson and I have had numerous other discussions over the years concerning story ideas and possible article subjects. I view our relationship to be both a business and personal one, which is one of the reasons for my writing commitments to his publication over a long period of time.

5. The fee of $5,000, including agents commission, paid by Parade was a fair contract price for an article of 1200-1500 words in a national publication with a circulation of 25 million. This amount was comparable to fees paid for articles written by me and published in Parade before I assumed my present duties as Assistant Secretary of Defense (Reserve Affairs).

6. Parade magazine has a corporate policy against long term contractual agreements with anyone other than with salaried

individuals on its editorial staff. Therefore, well-known authors in addition to myself must technically arrange for each project separately. Also, this is necessary because the length and logistics of the arrangement (travel, research, number of interviews, etc.) are not known until the project is selected. This is the normal method of doing business in the magazine industry. However, the success of my articles for Parade, my satisfaction with their editorial staff, and the frequency of my writings for this magazine proves that the magazine and I have a special relationship that will no doubt continue far into the future. This is bolstered by my friendship with the editor, and my respect for his professional acumen. The fact that no article of mine has ever been rejected by that magazine is also testimony that Parade has been, since 1981, my regular and consistent publisher.

7. Upon entering public service, I scrupulously ensured that no actual or apparent conflict of interest resulted from my financial holdings or my interest in Webb Enterprises, a corporation engaged in the production of books and other literary products. Even though the corporation conducts no business with the Government, I elected to forego receiving any salary from the corporation during the period of my government service.

8. At the time of Parade's payment to Webb Enterprises, I was unaware of 2 U.S.C. §441i(a), a provision of the Federal Election Campaign Act of 1971, as amended, and assumed that the 15 percent outside income limitation governed contracts such as the one involved here. Upon subsequently becoming aware of the

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statute, I immediately and voluntarily initiated the request for opinion which prompted this inquiry. The Federal Election Commission might never have become involved with this issue except for my initiation of the correspondence. I initiated this in order to seek advice on how to treat such a payment under the overall 15 percent limitation on outside income imposed by the Ethics in Government Act of 1978. Let me point out that The Presidential Appointees Handbook, which was published by the federally chartered National Academy of Public Administration, and which is provided to all prospective appointees, makes no mention of 2 U.S.C. §441i(a). I was, to say the least, rather dismayed that one could conclude that §441i(a) might apply in such a case. I point out and emphasize that my article entitled "When My Son Was Born" concerned the birth of my child, and was in honor of a national day of recognition. I am at a loss to see how this article could be viewed as creating a conflict of interest or an ethical problem with my duties as Assistant Secretary of Defense.

9. As alluded to in paragraph 3, supra, I explained my intentions and business relationships in great detail to the White House, the DoD, and to the Staff Director and Counsel for the Senate Armed Services Committee prior to my confirmation. I also have, in a regular manner, noted my relationship with Webb Enterprises in my annual conflict of interest statement. I have taken great care during my time in this position to ensure that my activities comply with the "15 percent rule", as well as 18 U.S.C. §209, and all other conflict of interest laws. The

fact remains that the application of 2 U.S.C. §441i(a) to my circumstances bears no relationship to any ethical issue or lawful government interest. Nothing brings that out more dramatically than the very title of my article - "When My Son Was Born"; nothing could be less obtrusive to the proper fulfillment of the obligations of my office or the functioning of the Government. I submit that it would be contrary to the intentions of the various laws governing official conduct to find that I have violated a law that no one, in my many discussions, mentioned as applicable to my situation, and the existence of which was not even mentioned in the relevant Handbook for Presidential appointees. I must reiterate that this matter is before the FEC because I raised it, sua sponte, in order to fully clarify my status after learning of this provision.

10. In closing, let me reemphasize my unequivocal belief that I have violated no law, either in spirit or in fact. I have attached a Memorandum of the Law that should be read in conjunction with this affidavit.

I hereby declare under penalty of law that the foregoing is true to the best of my knowledge and belief.

James H. Webb, Jr.
Assistant Secretary of Defense
(Reserve Affairs)

Executed this 21 day of August 1986

Attachments
1. Memorandum of the Law
2. Contract

Subscribed and sworn to before me this 21st day of August 1986.

Notary Public

My commission expires:
12 August 1988

MEMORANDUM OF THE LAW

MUR NO. 2196

The following issues are germane to the applicability of 2 U.S.C. §441i(a) concerning the receipt of payment by Webb Enterprises from Parade magazine.

A. Honorarium

The receipt of payment for Mr. Webb's article published in Parade was not an "honorarium." The Federal Election Campaign Act of 1971, now codified in 2 U.S.C. §441i(a), states that no "honorarium" of more than $2,000 may be accepted by an appointed federal employee for any appearance, speech, or article. Critical to the relevance of §441i(a) is the meaning of this key word "honorarium."

"Honorarium" is not defined within the law. As correctly stated by Senator Goldwater on the floor of the Senate,

> [t]he language of this provision is badly drafted and no one can fairly understand what he is prohibited from doing. The term "honorarium" is not defined in this section or anywhere else in the Federal Election Campaign Act (of 1971). Nor does any other section of the United States Criminal Code to which this section has been added, contain any definition of "honorarium." (Congressional Record, pg. 7166, March 18, 1976).

Ordinarily, a word in a statute which is not defined, will be given its usual, natural and commonly understood meaning, Crane v. Commissioner of Internal Revenue, 331 U.S. 1 (1947); Addison v. Holly Hill Fruit Products, Fla., 322 U.S. 607 (1943); Helvering v. Hutchings, Tex., 312 U.S. 393 (1940); 86 C.J.S.

Statutes §329. In common use, "honorarium" means a voluntary reward for which no remuneration could be collected at law, hence a voluntary payment for a service rendered. Cunningham v. Commissioner of Internal Revenue, C.C.A., 67 F.2d 205 (1933); 41 C.J.S. Honorarium. It is not an enforceable contract. Webster's Dictionary defines "honorarium" as "a payment usually for services on which custom or propriety forbids a price to be set," Webster's New Collegiate Dictionary 549 (5th Ed. 1977).

"Honorarium" is not a commonly used word. Therefore, there is a presumption that Congress must have meant something specifically by its use. Congress could have used just as easily "payment" or "fee," but it did not. In fact, on April 3, 1974, the original amendment that was a forerunner of this law was introduced on the floor by Senator Allen. His amendment 1052 read, in part, as follows: "No Member of Congress shall accept any honorarium, fee, payment, or expense allowance . . . for any speech, article . . . or appearance . . . ." (Emphasis Added) (Congressional Record, p. 5181, April 3, 1974). By a vote of 61-31, the Senate rejected this sweeping language and the specific words "fee" and "payment" that would include a contract such as eventually made between Parade and Sterling Lord for Mr. Webb's article.

Several months later, both the House and Senate accepted the more limiting language within the statute. If there is any doubt as to the intent of Congress to mean "honorarium" in its common everyday meaning, and not a contractual fee or payment

arrangement, I cite the language of Senator Goldwater before the Senate:

> To begin with, "honorarium" is not even explained in the proposed legislation. I looked it up in a dictionary, and it reads: An honorary payment, a reward, usually in recognition of gratuitous or professional services on which custom or propriety forbids any price to be set. (Congressional Record, pg. 7904, March 24, 1976).

In reply, there was no disagreement on this point by the other Senators present.

In the House, the bill was first introduced by Congressman Annunzio in hearings before the Committee on House Administration. In the transcript from those hearings, it is clear that this measure was intended to curb excessive honoraria collected by Senators beyond that in reimbursement for services rendered. Congressman Annunzio was upset at Senators getting reimbursed not for the quality of their speeches, but only because they are U.S. Senators. (Transcript, June 5, 1974, Markup Hearings on the Federal Election Campaign Act Amendments of 1974, pp. 377-378, Committee on House Administration, 93rd Congress, 2d Session, 1974). Chairman Hays refers to such an honorarium as "a disguised contribution." (Supra, pg. 375) It is obvious that the members of the Committee were concerned about honoraria paid to an individual because of his public office and not because the services rendered were worth the amount paid. As stated by Mr. Webb, the fees paid by Parade for his Father's Day article were in line with an article of such a length in a national publication, and were equivalent to those fees paid by Parade

before he assumed his public position. Obviously, the law was not intended to cover Mr. Webb's situation.

Several years later, 11 C.F.R. §110.12(b) was issued broadly defining "honorarium" to be any "payment of money or anything of value received . . . if it is accepted as consideration for an appearance, speech, or article." This regulation, which now encompasses any contract, is wholly unsupported by the law and should have no legal effect. In fact, the definition provided by the regulation is the opposite of that of the common definition of "honorarium" and that intended by Congress: a payment not enforceable at law.

It is a well-founded axiom of the law that a new meaning cannot be given to words of an old statute because of changed conditions at a time after the enactment of the statute. Dunn v. Commissioner of Civil Service, 183 N.E. 889, 281 Mass. 376 (1933). If the authors of the regulation believe that some evil, real or imagined, exists beyond that envisioned by Congress, the solution is to return to Congress and ask that the law be changed. An interpretation of the language within the regulation that is beyond that of the statute is unlawful and unenforceable.

B. Constitutional Questions

The restriction on the publication of an article entitled "When My Son Was Born" is obviously unconstitutional. Any system of prior restraint of expression involving the freedom of speech or press bears a heavy presumption against its constitutional validity, and the Government carries a heavy burden to show a justification for the imposition of such a restraint. New York

Times Co. v. U.S., 403 U.S. 713 (1971); U.S. v. Washington Post, 403 U.S. 713 (1971). Freedom of speech and press is the indispensible condition of nearly every other form of freedom. Curtis Pub. Co. v. Butts, 388 U.S. 130 (1967). Government regulation of this freedom is justified if it is within the constitutional power of government; if it furthers an important or substantial governmental interest; and if the restriction of First Amendment freedoms is no greater than is essential to the furtherance of that interest. Buckley v. Valeo, 171 U.S. App. D.C. 172 (1975). I ask - where is the controlling government interest concerning an article entitled "When My Son Was Born" and having to do with Father's Day. I submit there is none.

In the alternative, if the broad language of the regulation defining "honorarium" is deemed to be correct despite the common definition of the word, a constitutional due process problem is created by the enforcement of such an interpretation. Again, Senator Goldwater on the language of the bill:

> I remind those of my colleagues who are attorneys that one of the first principles of the Constitution rests in the protection of individual rights by the fifth amendment, what is known as the due process clause. In brief, the Supreme Court has said that due process includes "the deepest notions of what is fair and right and just."
>
> Due process, in the context of a criminal statute means that the language of that statute "must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." A statute which forbids "the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its

> application," in the words of the Supreme Court, "violates the first essential of due process of law."
>
> This doctrine has been known as the "vagueness" doctrine and it has been the basis for voiding several legislative statutes. In this instant particularly, where section 327 restricts on its face first amendments freedom of speech, I believe such an unclear statute is a bad one. As the Supreme Court said in the recent case of Buckley against Valeo, where first amendment rights are involved, an even "greater degree of specificity is required." (Congressional Record, pg. 7166, March 18, 1976).

C. Stipend

The relationship between the author and the magazine, and the frequency of publication in this case, defines the type of payment as a "stipend", as defined by 11 C.F.R. §110.12(c)(3). That subparagraph amounts to an exception to the statute. The regulation states that "A stipend is a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events . . . ." (Emphasis Added). The fact that each article was written on a separate contract should not be controlling.

Of particular interest on this point is the Federal Election Commission's own Advisory Opinion, AO 1985-4. In that case, the petitioner asked whether a series of public affairs seminars for undergraduate students would fall under the "stipend" exception. The agreement to teach classes was made on an annual basis, presumably reestablished each year over a period of ten years, and the compensation received was based on the number of seminars actually conducted. This arrangement was viewed by the

Commission to be a "stipend," and outside the limitations of the law.

This cited case is very close to the situation we have with Mr. Webb, where payment was made for each individual article. In both cases, there exists "a continuing compensatory relationship," to use the words of the Federal Election Commission in AO 1985-4. In each case, this relationship extended over a period of years. In each case, the amount of payment was determined by the task and time expended by the respective respondent. In each case, periodic consecutive contracts were involved. The Commission did not require in AO 1985-4 one long-term contract to cover the total series of seminars over the 10 years. A course of conduct in AO 1985-4, forming a regular series of acts, established the "stipend," as it does here with a series of articles with one publisher over a period of many years - a relationship between author and magazine that existed long before the respondent assumed his present duties as the Assistant Secretary of Defense.

The affidavit to which this memorandum is attached provides all of the details on which to base a determination of a "stipend" in this case. Those details include the special and continuing personal relationship between Mr. Webb, the magazine, and that of the magazine's publisher; the fact that the method of contracting for each article individually is the only kind allowed by Parade; and the fact that individual contracts remain the normal method of employment for authors of articles in the magazine industry. As concluded by the Commission in its

previous opinion, AO 1985-4, the fact that one is not strictly a salaried employee of the organization, with all of the benefits accruing to an employee, or that there is not one single contract covering the entire period, does not prevent the compensation involved from being defined as a "stipend." The definition of "stipend" within 11 C.F.R. §110.12(c)(3) allows for this interpretation.

Conclusion:

For the arguments and reasoning presented herein, Mr. James H. Webb should be found not to have violated 2 U.S.C. §441i(a) by the publication of his article "When My Son Was Born" in Parade magazine.

parade

Parade Publications, Inc. • (212) 573-7000
750 Third Avenue, New York, N.Y. 10017

July 1, 1981

Dear Sterling Lord

This letter will serve to confirm our agreement with respect to the article Jim Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for Jim Webb (the "writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1500-2000 words, appropriate for publication in PARADE, on the subject of Letter to My Friends/ Return to Vietnam with the working title same as above. The article will be submitted in final form by 2 weeks after return.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

Writer agrees that the article will be original and accurate and that he will cooperate in the defense of any legal action arising from the article.

PARADE shall pay you the sum of $ 5500 * for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $ 1000 * and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance. *Payable to and in the name of The Sterling Lord Agency, Inc.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Sincerely,

Murray Weiss

Agreed to by: [signature]

Date July 10, 1981

No.

parade

Parade Publications, Inc. • (212) 573-7000
733 Third Avenue, New York, N.Y. 10017

April 21, 1982

Mr. Sterling Lord
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, N.Y. 10021

Dear Sterling Lord:

This letter will serve to confirm our agreement with respect to the article Jim Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for Jim Webb (the "Writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1200-1500 words appropriate for publication in PARADE, on the subject of Vietnam Vets Program with the working title Vietnam Vets Program. The article will be submitted in final form by July 20, 1982.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published and any subsequent reproduction thereof shall credit PARADE as the initial publisher.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

5. The writer agrees that the article will be original and accurate and that he will cooperate in the defense of any legal action arising from the article.

6. PARADE shall pay you the sum of $3000.00 * for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $500.00 * and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance.

*payable to and in the name of The Sterling Lord Agency, Inc.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Sincerely,

Walter Anderson
Editor

Agreed to by:

Date: April 26, 1982

11/81

parade

Parade Publications, Inc. • (212) 573-7000
750 Third Avenue, New York, N.Y. 10017

Mr. Sterling Lord
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, N.Y. 10021

September 20, 1982

1/15/82

Dear Sterling Lord:

This letter will serve to confirm our agreement with respect to the article James H. Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for James H. Webb (the "writer") and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1500 words, appropriate for publication in PARADE, on the subject of Americans in Japanese Prisons with the working title Americans in Japanese Prisons. The article will be submitted in final form by November 8, 1982.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published and any subsequent reproduction thereof shall credit PARADE as the initial publisher.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the advertising and promotion of PARADE Magazine.

5. You agree that the article will be original and accurate and that you will [illegible] or arising out of the article.

6. PARADE shall pay you the sum of $5,000.00 for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $500.00 and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Sincerely,

Walter Anderson
Editor

Agreed to by:

_____

Date: _____

11/81

parade

Parade Publications, 575-966
750 Third Avenue, New York, N.Y. 10017

April 10, 1985

Ms. Elizabeth Kaplan
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, NY 10021

Dear Ms. Kaplan:

This letter will serve to confirm our agreement with respect to the article James Webb will write for PARADE Magazine. We agree as follows:

1. You represent that you are the agent for James Webb (the "writer"), and are authorized to enter into this agreement on his (her) behalf. (Hereinafter the word "you" will refer collectively to both agent and writer.)

2. The writer will write an article for us of approximately 1200 1500 words, appropriate for publication in PARADE, on the subject of Father's Day with the working title same. The article will be submitted in final form by in-house.

3. Parade Publications, Inc. ("PARADE") shall have exclusive first North American rights to publish the article. You shall not grant any rights in the article to third parties until at least seven days after the issue date of PARADE in which the article is published and any subsequent reproduction thereof shall credit PARADE as the initial publisher.

4. PARADE may use the writer's name, picture and by-line as well as brief extracts or selections from the article in PARADE Magazine and in connection with the promotion of PARADE Magazine.

5. You agree that the article will be original and accurate and that ~~you~~ the writer will cooperate in the defense of any legal action arising from the article.

6. PARADE shall pay you the sum of $ 5000.00* for the rights granted herein upon acceptance of the article for publication. Upon your submission of an article in conformance with the terms hereof, if PARADE chooses not to publish the article, PARADE will pay a "kill" fee of $ 500.00* and will have no further obligation to you. PARADE shall also pay the writer's reasonable expenses which must be approved in writing by PARADE in advance.

*payable to and in the name of The Sterling Lord Agency, Inc.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copy of this letter.

Agreed to by:

Date April 16, 1985

Sincerely,

Larry Smith
Managing Editor

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NLM

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 5, 1986

Lt. Col. Michael B. Lumbard
Office of General Counsel
Office of Legal Counsel
Office of the Secretary of Defense
Pentagon
Washington, D.C. 20301-1600

RE: MUR 2196
James H. Webb, Jr.

Dear Col. Webb:

Pursuant to your client's letter, dated July 28, 1986, this Office is granting you a twenty-day extension of time in which to reply to the reason to believe notification in the above-captioned matter. Your response, therefore, is due on August 22, 1986.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

3 7 0 1 0 4 0 7 5 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lt. Col. Michael B. Lumbard
Office of General Counsel
Office of Legal Counsel
Office of the Secretary of Defense
Pentagon
Washington, D.C. 20301-1600

RE: MUR 2196
James H. Webb, Jr.

Dear Col. Webb:

Pursuant to your client's letter, dated July 28, 1986, this Office is granting you a twenty-day extension of time in which to reply to the reason to believe notification in the above-captioned matter. Your response, therefore, is due on August 22, 1986.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lt. Col. Michael B. Lumbard
Office of General Counsel
Office of Legal Counsel
Office of the Secretary of Defense
Pentagon
Washington, D.C. 20301-1600

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If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

GCC#1056
Levin

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

July 28, 1986

86 JUL 28 P2:28
RECEIVED
GENERAL COUNSEL

Mr. Jonathan Levin
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Levin:

This letter is in reply to General Counsel's Factual and Legal Analysis, dated July 14, 1986.

I hereby request a twenty (20) day extension of time to reply to your analysis. This extension is necessary in order for me to gather documents to show that I was not in violation of 2 U.S.C. §441i(a) when I wrote an article for Parade magazine.

In accordance with 11 C.F.R. §111.23, I hereby designate as my legal representative LtCol Michael B. Lumbard, Office of General Counsel, Office of Legal Counsel, Office of Secretary of Defense, Pentagon, Washington, D.C. 20301-1600 (telephone 695-3272). He may receive any and all notification and other communications from the Commission and to act for me before the Commission. You may also communicate with me directly concerning any aspect of this matter.

Sincerely,

James H. Webb, Jr.

0747 4 0 1 0 7 0

GCC#1056

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

July 28, 1986

RECEIVED
FEDERAL ELECTION
GENERAL COUNSEL
'86 JUL 28 P2:28

Mr. Jonathan Levin
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

MUR 2196

Dear Mr. Levin:

This letter is in reply to General Counsel's Factual and Legal Analysis, dated July 14, 1986.

I hereby request a twenty (20) day extension of time to reply to your analysis. This extension is necessary in order for me to gather documents to show that I was not in violation of 2 U.S.C. §441i(a) when I wrote an article for Parade magazine.

In accordance with 11 C.F.R. §111.23, I hereby designate as my legal representative LtCol Michael B. Lumbard, Office of General Counsel, Office of Legal Counsel, Office of Secretary of Defense, Pentagon, Washington, D.C. 20301-1600 (telephone 695-3272). He may receive any and all notification and other communications from the Commission and to act for me before the Commission. You may also communicate with me directly concerning any aspect of this matter.

Sincerely,

James H. Webb, Jr.

87044771

PARADE

PUBLICATIONS, INC.

Office of the President

MUR 1013

JUL 23 A10:55

MUR 2196

July 18, 1986

86 JUL 23 P3:32

RECEIVED
GENERAL COUNSEL

Mr. Lawrence M. Noble
Deputy General Counsel
Federal Election Commission
Washington, DC 20463

Dear Mr. Noble:

Attached please find my response to the Interrogatories that you requested.

We are glad to be of service.

Sincerely,

Carlo Vittorini

Carlo Vittorini
Publisher

CV/sl
enc.

750 Third Avenue, New York, New York 10017 (212) 573-7111

INTERROGATORY

Mr. James Webb has written three articles for PARADE -- two in 1982 and one in 1985. In each circumstance, PARADE approached Mr. Webb on the basis of his professional expertise.

There were written contracts for each of these articles and they are a standard form used with all our authors.

Each article required its own individual (single) contract and was consistent with our normal author/publisher relationships.

PARADE Publications, Inc.

Carlo Vittorini, Publisher

Sworn to before me
this 18th day of July, 1986

LORI WILLIAMS
Notary Public, State of New York
No. 31-4795760
Qualified in New York County
Commission Expires January 31, 19[illegible]

PARADE

PUBLICATIONS, INC.

711 Third Avenue, New York, New York 10017

Mr. Lawrence M. Noble
Deputy General Counsel
Federal Election Commission
Washington, DC 20463

permanent

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1986

Carlo Vittorini, Publisher
Parade Magazine
750 Third Avenue
New York, New York 10017

Dear Mr. Vittorini:

Pursuant to an investigation being conducted by the Federal Election Commission, the Commission seeks a response from you to the enclosed interrogatories. The Commission is responsible for the enforcement of 2 U.S.C. § 441i, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), which prohibits a federal officer or employee from accepting an honorarium greater than $2,000. The Commission is presenting these interrogatories in connection with a $4,500 payment received by Webb Enterprises for an article written by Assistant Secretary of Defense James H. Webb, Jr., which appeared in Parade in 1985. Mr. Webb has stated that he has written other articles for Parade. The interrogatories pertain to the circumstances surrounding these articles and the article written in 1985 by Mr. Webb.

Please submit a response to these interrogatories within ten days of your receipt of this letter. Your response should be submitted under oath.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A), a section of the Act, will apply. This section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. No such consent has been given in this matter.

27140477

If you have any questions, please contact Jonathan Levin at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Interrogatories

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pl2ma141-

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1986

James H. Webb, Jr.
Assistant Secretary of Defense
(Reserve Affairs)
Room 3E326
Pentagon
Washington, D.C. 20301-1500

RE: MUR 2196
James H. Webb, Jr.

Dear Mr. Webb:

On July 9, 1986, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441i(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter. Statements should be submitted under oath.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel is not authorized to give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form 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.

The investigation now being conducted will be 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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D. Aikens

Joan D.Aikens
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

8 7 4 0 1 7 2 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Carlo Vittorini, Publisher
Parade Magazine
750 Third Avenue
New York, New York 10017

Dear Mr. Vittorini:

Pursuant to an investigation being conducted by the Federal Election Commission, the Commission seeks a response from you to the enclosed interrogatories. The Commission is responsible for the enforcement of 2 U.S.C. § 441i, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), which prohibits a federal officer or employee from accepting an honorarium greater than $2,000. The Commission is presenting these interrogatories in connection with a $4,500 payment received by Webb Enterprises for an article written by Assistant Secretary of Defense James H. Webb, Jr., which appeared in Parade in 1985. Mr. Webb has stated that he has written other articles for Parade. The interrogatories pertain to the circumstances surrounding these articles and the article written in 1985 by Mr. Webb.

Please submit a response to these interrogatories within ten days of your receipt of this letter. Your response should be submitted under oath.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A), a section of the Act, will apply. This section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. No such consent has been given in this matter.

If you have any questions, please contact Jonathan Levin at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Interrogatories

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James H. Webb, Jr.
Assistant Secretary of Defense
(Reserve Affairs)
Room 3E326
Pentagon
Washington, D.C. 20301-1500

RE: MUR
James H. Webb, Jr.

Dear Mr. Webb:

On , 1986, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441i(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter. Statements should be submitted under oath.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel is not authorized to give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form 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.

The investigation now being conducted will be 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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D.Aikens
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
James H. Webb, Jr., Assistant Secretary of Defense (Reserve Affairs)	)	PRE-MUR 159

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 9, 1986, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions with respect to the above-captioned matter:

1. Open a Matter Under Review.

2. Find reason to believe that James H. Webb, Jr., violated 2 U.S.C. § 441i(a).

3. Approve the interrogatories attached to the General Counsel's report dated June 24, 1986.

4. Approve the letters and General Counsel's Factual and Legal Analysis attached to the General Counsel's report dated June 24, 1986.

Commissioners Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

7-10-86
Date

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

Levin

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/CHERYL A. FLEMING

DATE: JUNE 27, 1986

SUBJECT: OBJECTION TO Pre-MUR 159: FIRST GENERAL COUNSEL'S SIGNED JUNE 24, 1986

The above-named document was circulated to the Commission on Thursday, June 26, 1986 at 11:00 A.M.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	
Commissioner Elliott	
Commissioner Harris	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	X (comment)

This matter will be placed on the Executive Session agenda for Wedensday, July 9, 1986.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: June 25, 1986

SUBJECT: Pre-MUR 159 -- First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[xx]	Compliance	[x]
Sensitive	[xx]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
		Other (see distribution below)	[ ]
Other	[ ]		

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SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR 159
STAFF MEMBER: Jonathan Levin

SOURCE OF REFERRAL: Office of Government Ethics

RESPONDENTS' NAMES: James H. Webb, Jr.
Assistant Secretary of Defense (Reserve Affairs)

RELEVANT STATUTE AND REGULATIONS: 2 U.S.C. § 441i(a)
11 C.F.R. § 110.12

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

The Office of the General Counsel has received a letter from the Office of Government Ethics referring to the apparent acceptance by an officer of the federal government of $4,500 for an article written for Parade magazine. The acceptance of this payment may have been in violation of 2 U.S.C. § 441i(a) which prohibits a federal officer from accepting an honorarium greater than $2,000 for any appearance, speech, or article.

FACTUAL AND LEGAL ANALYSIS

On February 19, 1986, this Office received a letter from David H. Martin, Director of the Office of Government Ethics, referring to a situation possibly involving a violation of 2 U.S.C. § 441i. Enclosed with the letter was a memorandum to Mr. Martin from the Office of General Counsel of the Department of Defense. The memorandum asked Mr. Martin to examine whether a

situation described in another attached memorandum amounted to the acceptance of an excessive honorarium in violation of 2 U.S.C. § 441i.

The attached memorandum was written by James H. Webb, Jr., Assistant Secretary of Defense (Reserve Affairs) and sent to the General Counsel of the Department of Defense. In his memorandum, Mr. Webb states that during 1985, Parade magazine paid Webb Enterprises $4,500 for a Father's Day article that Mr. Webb wrote regarding the birth of his son. Mr. Webb states:

> I have not received any of this compensation personally, but am aware that, for purposes of ethical considerations, the payment of a corporation from which I draw no salary nonetheless constitutes remuneration for the product delivered to Parade.

Mr. Webb raises the issue of a possible violation of 2 U.S.C. § 441i and then questions whether the limit of 2 U.S.C. § 441i is applicable to him. Mr. Webb states that this section, which prohibits elected or appointed federal officers of employees from accepting an honorarium in excess of $2,000 for any appearance, speech, or article, may not apply to him because it was meant to prevent circumvention of the limits pertaining to political campaigns and because the payment for the article was "much closer to having been a stipend than it is to being an honorarium." Mr. Webb states:

> I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article

a year) for several years.

Section 441i(a) of Title 2 states that "[n]o person while an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than $2,000 . . . for any appearance, speech, or article." Section 110.12(b) of the Commission Regulations defines the term "honorarium" as

> a payment of money or anything of value received by an officer or employee of the Federal government, if it is accepted as consideration for an appearance, speech, or article. An honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

Section 110.12(b)(1) states that the term "officer or employee of the federal government," or "officer or employee"

> means any person appointed or elected to a position of responsibility or authority in the United States government, regardless of whether the person is compensated for this position; and any other person receiving a salary, compensation, or reimbursement from the United States government, who accepts an honorarium for an appearance, speech, or article. Included within this class is the President; the Vice President; any Member of Congress; any judge of any court of the United States; any Cabinet officer; and any other elected or appointed officer or employee of any branch of the Federal government.

Section 110.12(b)(4) defines the term "article" as "a writing other than a book, which has been or is intended to be

published." According to 11 C.F.R. § 110.12(b)(5), the term "accepted" means "that there has been actual or constructive receipt of the honorarium and that the federal officeholder or employee exercises dominion or control over it and determines its subsequent use."

Section 110.12(c) states what is not included in the term "honorarium." In addition to excluding "[a]n award" and "[a] gift," this subsection excludes "[a] stipend." "Stipend" is defined at 11 C.F.R. § 110.12(c)(3) as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." (Emphasis added.)

It appears that Mr. Webb, an officer of the federal government, has written an article under 11 C.F.R. § 110.12(b)(4). Mr. Webb indicates that Webb Enterprises, which appears to be an alter ego corporation, has accepted payment of $4,500 for the article.

Mr. Webb has raised the question of the application of 2 U.S.C. § 441i(a) to a person who has not campaigned or is not campaigning for federal elective office. In AO 1981-10, the Commission ruled on the application of the limits of § 441i to federal officers and employees who had been hostages in Iran and who were now planning to make public appearances and write articles. In addition to citing the regulation at 11 C.F.R. § 110.12(b)(1), the Commission also cited the following colloquy

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indicating the legislative intent as to the original honorarium provisions:

> MR. BRADEMAS. I would say to my colleague it is very clear what that language means, that means anybody working for the government of the United States who is appointed or elected in the Judicial, Executive or Legislative Branches. That is what it means.
>
> CHAIRMAN HAYS. I think it is clear.

Transcript for the June 5, 1974, Markup Hearings on the Federal Election Campaign Act Amendments of 1974, (Committee on House Administration, 93rd Congress, 2d Session, 397-398, 1974.)

The Commission concluded that the former hostages were subject to the limits of 2 U.S.C. § 441i. It appears, therefore, that Mr. Webb is also subject to those limits.

The question also arises as to whether the payment for the article was in the nature of an honorarium or a stipend. The Commission has issued a number of advisory opinions distinguishing between "honoraria" and "stipends." AO 1980-76 involved arrangements for monthly radio programs and weekly television appearances. AO 1980-140 involved a contract for a five-year series of radio commentaries. AO 1984-56 involved an arrangement whereby a publisher would pay an author in quarterly installments for book promotional appearances over a two-year period. AO 1985-4 involved oral agreements to teach public affairs seminars at a university on a regular basis. The agreements to teach were made on an annual basis and compensation was based on the number of seminars conducted. In each of these advisory opinions, the standard set out for determining if compensation for an appearance, speech, or article is a stipend

is whether the circumstances presented indicate a "continuing compensatory relationship." In each of these opinions, the requestor has presented circumstances involving an arrangement for a number of appearances, lectures, or classes over a period of time, i.e., a continuing relationship. Although Mr. Webb states that he "could" have made an agreement to provide commentary on any subject and that he has written an article a year for Parade over the past several years, no stipendiary agreement was made and there is no evidence of an arrangement whereby Mr. Webb would write articles for Parade on a continuing basis.

Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission open a Matter Under Review and find reason to believe that James H. Webb, Jr., violated 2 U.S.C. § 441i(a). In addition, this Office recommends that interrogatories be sent to Mr. Webb and to Parade magazine. The proposed interrogatories to Mr. Webb will examine his relationship to Webb Enterprises in order to fully examine the acceptance issue and the arrangements surrounding the provision of each of Mr. Webb's articles. The interrogatories to Parade will also examine the arrangements behind the provision of each of the articles.

RECOMMENDATIONS

1. Open a Matter Under Review.

2. Find reason to believe that James H. Webb, Jr., violated 2 U.S.C. § 441i(a).

3. Approve the attached interrogatories.

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4. Approve the attached letters and General Counsel's Factual and Legal Analysis.

Charles N. Steele
General Counsel

6/24/86
Date

By: Lawrence M. Noble
Lawrence M. Noble
Deputy General Counsel

Attachments
1. Referral from the Office of Government Ethics.

2. Letter, factual and legal analysis, and interrogatories to Mr. Webb.

3. Letter and interrogatories to Parade magazine.

PM 159

GCC# 9768

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

FEB 14 1986

Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

Dear Mr. Steele:

We recently received a memorandum from the Office of General Counsel of the Department of Defense, dated January 17, 1986, requesting an interpretation of the honorarium ceiling of 2 U.S.C. § 441i as it applies to a Department of Defense official's acceptance of payment for a magazine article that he wrote. Since the FEC is responsible for interpreting section 441i, we are forwarding the memorandum and its attachment to you for a response, although we feel that the Department of Defense official's conduct was consistent with the principles of Executive Order 11222 and 5 U.S.C.§ 210. We would appreciate it if you would provide us with a copy of your response.

Sincerely,

David H. Martin
Director

Enclosure

Attachment 1 - p 1 of 4

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

January 17, 1986

MEMORANDUM FOR DAVID H. MARTIN, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: Question re Application of Honorarium Ceiling

One of our officials has raised a question concerning the propriety of his acceptance of payment for a magazine article he wrote that was published last year. The payment exceeded the $ 2,000 ceiling prescribed by section 441i of title 2, United States Code. In his memorandum of January 9, 1986, copy attached, he challenged the application of the ceiling to this transaction. We share his misgivings.

I have discussed the question with Mr. Gary Davis of your staff. He invited me to submit the matter for consideration by your Office. Closely related issues were covered in your general advisory memorandum of October 28, 1985, Subject: "Participating in Privately Sponsored Seminars or Conferences for Compensation." Additional guidance in this area, and specifically, an interpretation of the issue raised by the attached inquiry, would be appreciated.

David W. Ream
Office, Assistant General Counsel
Office of Legal Counsel

Attachment

1-p 2 of 4

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

9 January 1986

MEMORANDUM FOR GENERAL COUNSEL

SUBJECT: Office of Government Ethics Memorandum of 28 October 1985 entitled, "Participating in Privately-Sponsored Seminars or Conferences for Compensation"

The Office of Government Ethics Memorandum of 28 October 1985, which addresses participation in privately sponsored seminars or conferences for compensation, notes, on page 7, that 2 U.S.C. S 441(i) prohibits an elected or appointed officer or employee of the federal government from accepting an honorarium or more than $2,000 for any appearance or article. During 1985, Parade magazine paid Webb Enterprises $4,500 for a Father's Day article I wrote regarding the birth of my son. I have not received any of this compensation personally, but am aware that, for purposes of ethical considerations, the payment of a corporation from which I draw no salary nonetheless constitutes remuneration for the product delivered to Parade.

The amount paid falls within the ten percent limitation on outside income stipulated for political appointees, and is the only taxable outside income generated by me during the year. The question is whether the remuneration paid by Parade constitutes an "honorarium" within the meaning of 2 U.S.C. S 441(i). I believe that certain exclusionary language contained in the CFR but not mentioned in the Office of Government Ethics memorandum applies to my situation with Parade, and would like the General Counsel's opinion on this matter.

1. 2 U.S.C. S 441(i) was passed by the Congress in 1976 as part of the Federal Election Campaign Act, and was part of several changes in that bill designed to "restrict, within the constitutional limitations set by the Supreme Court, the flow of excessive sums of money into political campaigns," according to the language of the Senate Report. Thus, the intention of the legislation was to preclude exorbitant payments for appearances and minimal speaking or writing efforts that would circumvent existing legal limitations. I do not believe my situation was one that could have been contemplated, either under the statute or under the memorandum, particularly given the subject addressed in the memorandum.

1- p. 3 of 4

2. The 2,000 dollar limitation on honoraria paid government officials for "any appearance, speech, or article" was not absolute. 11 CFR S 110.12, which interprets 2 U.S.C. S 441(i), excludes awards, gifts, and stipends from the definition of honorarium. A stipend is defined in the CFR as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." Under this definition, I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article a year) for several years.

I believe that the fee (the proper term) paid for the article I wrote is much closer to having been a stipend than it is to being an honorarium. I also believe my situation was not one considered in the formulation of either the law or the memorandum, and involves absolutely no ethical questions whatsoever. I wrote one article about the birth of my son for a national publication which has a circulation of 25 million, and received a fair price for it. My total outside income was well within the ten percent limitation. The legislature, seeking to curb abuses by certain lobby groups, could not have comprehended the unusual situation of a professional writer who can demand top dollar for a literary product. So long as I do not exceed the ten percent income overage which is the clearest restriction to my outside activities, I do not see how my situation could in any way be relevant to a question of ethical violation.

James H. Webb, Jr.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James H. Webb, Jr.
Assistant Secretary of Defense
(Reserve Affairs)
Room 3E326
Pentagon
Washington, D.C. 20301-1500

RE: MUR
James H. Webb, Jr.

Dear Mr. Webb:

On , 1986, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441i(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within fifteen days of your receipt of this letter. Statements should be submitted under oath.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entered after briefs on probable cause have been mailed to the respondent.

Attachment 2 - p 1 of 10

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel is not authorized to give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form 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.

The investigation now being conducted will be 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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D.Aikens
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO.
STAFF MEMBER & TEL. NO.
Jonathan Levin (202) 376-5690

RESPONDENT James H. Webb, Jr.

SUMMARY OF ALLEGATIONS

The Office of the General Counsel has received a letter from the Office of Government Ethics referring to the apparent acceptance by an officer of the federal government of $4,500 for an article written for Parade magazine. The acceptance of this payment may have been in violation of 2 U.S.C. § 441i(a) which prohibits a federal officer from accepting an honorarium greater than $2,000 for any appearance, speech, or article.

FACTUAL BASIS AND LEGAL ANALYSIS

On February 19, 1986, this Office received a letter from David H. Martin, Director of the Office of Government Ethics, referring to a situation possibly involving a violation of 2 U.S.C. § 441i. Enclosed with the letter was a memorandum to Mr. Martin from the Office of General Counsel of the Department of Defense. The memorandum asked Mr. Martin to examine whether a situation described in another attached memorandum amounted to the acceptance of an excessive honorarium in violation of 2 U.S.C. § 441i.

The attached memorandum was written by James H. Webb, Jr., Assistant Secretary of Defense (Reserve Affairs) and sent to the General Counsel of the Department of Defense. In his memorandum, Mr. Webb states that during 1985, Parade magazine paid Webb Enterprises $4,500 for a Father's Day article that Mr. Webb wrote regarding the birth of his son. Mr. Webb states:

> I have not received any of this compensation personally, but am aware that, for purposes of ethical considerations, the payment of a corporation from which I draw no salary nonetheless constitutes remuneration for the product delivered to Parade.

Mr. Webb raises the issue of a possible violation of 2 U.S.C. § 441i and then questions whether the limit of 2 U.S.C. § 441i is applicable to him. Mr. Webb states that this section, which prohibits elected or appointed federal officers of employees from accepting an honorarium in excess of $2,000 for any appearance, speech, or article, may not apply to him because it was meant to prevent circumvention of the limits pertaining to political campaigns and because the payment for the article was "much closer to having been a stipend than it is to being an honorarium." Mr. Webb states:

> I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article a year) for several years.

Section 441i(a) of Title 2 states that "[n]o person while an elected or appointed officer or employee of any branch of the

Federal Government shall accept any honorarium of more than $2,000 . . . for any appearance, speech, or article." Section 110.12(b) of the Commission Regulations defines the term "honorarium" as

> a payment of money or anything of value received by an officer or employee of the Federal government, if it is accepted as consideration for an appearance, speech, or article. An honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

Section 110.12(b)(1) states that the term "officer or employee of the federal government," or "officer or employee"

> means any person appointed or elected to a position of responsibility or authority in the United States government, regardless of whether the person is compensated for this position; and any other person receiving a salary, compensation, or reimbursement from the United States government, who accepts an honorarium for an appearance, speech, or article. Included within this class is the President; the Vice President; any Member of Congress; any judge of any court of the United States; any Cabinet officer; and any other elected or appointed officer or employee of any branch of the Federal government.

Section 110.12(b)(4) defines the term "article" as "a writing other than a book, which has been or is intended to be

published." According to 11 C.F.R. § 110.12(b)(5), the term "accepted" means "that there has been actual or constructive receipt of the honorarium and that the federal officeholder or employee exercises dominion or control over it and determines its subsequent use."

Section 110.12(c) states what is not included in the term "honorarium." In addition to excluding "[a]n award" and "[a] gift," this subsection excludes "[a] stipend." "Stipend" is defined at 11 C.F.R. § 110.12(c)(3) as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." (Emphasis added.)

It appears that Mr. Webb, an officer of the federal government, has written an article under 11 C.F.R. § 110.12(b)(4). Mr. Webb indicates that Webb Enterprises, which appears to be an alter ego corporation, has accepted payment of $4,500 for the article.

Mr. Webb has raised the question of the application of 2 U.S.C. § 441i(a) to a person who has not campaigned or is not campaigning for federal elective office. In AO 1981-10, the Commission ruled on the application of the limits of § 441i to federal officers and employees who had been hostages in Iran and who were now planning to make public appearances and write articles. In addition to citing the regulation at 11 C.F.R. § 110.12(b)(1), the Commission also cited the following colloquy

indicating the legislative intent as to the original honorarium provisions:

> MR. BRADEMAS. I would say to my colleague it is very clear what that language means, that means anybody working for the government of the United States who is appointed or elected in the Judicial, Executive or Legislative Branches. That is what it means.
>
> CHAIRMAN HAYS. I think it is clear.

Transcript for the June 5, 1974, Markup Hearings on the Federal Election Campaign Act Amendments of 1974, (Committee on House Administration, 93rd Congress, 2d Session, 397-398, 1974.)

The Commission concluded that the former hostages were subject to the limits of 2 U.S.C. § 441i. It appears, therefore, that Mr. Webb is also subject to those limits.

The question also arises as to whether the payment for the article was in the nature of an honorarium or a stipend. The Commission has issued a number of advisory opinions distinguishing between "honoraria" and "stipends." AO 1980-76 involved arrangements for monthly radio programs and weekly television appearances. AO 1980-140 involved a contract for a five-year series of radio commentaries. AO 1984-56 involved an arrangement whereby a publisher would pay an author in quarterly installments for book promotional appearances over a two-year period. AO 1985-4 involved oral agreements to teach public affairs seminars at a university on a regular basis. The agreements to teach were made on an annual basis and compensation was based on the number of seminars conducted. In each of these advisory opinions, the standard set out for determining if compensation for an appearance, speech, or article is a stipend

is whether the circumstances presented indicate a "continuing compensatory relationship." In each of these opinions, the requestor has presented circumstances involving an arrangement for a number of appearances, lectures, or classes over a period of time, i.e., a continuing relationship. Although Mr. Webb states that he "could" have made an agreement to provide commentary on any subject and that he has written an article a year for Parade over the past several years, no stipendiary agreement was made and there is no evidence of an arrangement whereby Mr. Webb would write articles for Parade on a continuing basis.

Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission open a Matter Under Review and find reason to believe that James H. Webb, Jr., violated 2 U.S.C. § 441i(a).

TO: James H. Webb, Jr.
Assistant Secretary of Defense (Reserve Affairs)

INTERROGATORIES

1. Describe your relationship with Webb Enterprises at the time that Webb Enterprises was compensated for the Father's Day article written by you and published by Parade in 1985.

   a. State your ownership interest in Webb Enterprises at the time it was compensated for the article. Describe your access, if any, to funds and payments received by Webb Enterprises.

   b. If you were not the sole owner of Webb Enterprises at the time it was compensated for the article, list the other owners and each of their ownership interests in Webb Enterprises.

   c. State whether or not your interest in Webb Enterprises was held in trust for you when Webb Enterprises was compensated for the article. If so, briefly describe the trust arrangement including a description of your access to funds and payments received by Webb Enterprises.

2. For each of the articles you have written for Parade, state the arrangements between you and Parade for the writing and publication of the article and for remuneration.

   a. State whether you approached Parade with the articles or Parade approached you to write the articles.

b. State whether there was a written contract(s) for each of the articles. Provide copies of all such contracts.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Carlo Vittorini, Publisher
Parade Magazine
750 Third Avenue
New York, New York 10017

Dear Mr. Vittorini:

Pursuant to an investigation being conducted by the Federal Election Commission, the Commission seeks a response from you to the enclosed interrogatories. The Commission is responsible for the enforcement of 2 U.S.C. § 441i, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), which prohibits a federal officer or employee from accepting an honorarium greater than $2,000. The Commission is presenting these interrogatories in connection with a $4,500 payment received by Webb Enterprises for an article written by Assistant Secretary of Defense James H. Webb, Jr., which appeared in Parade in 1985. Mr. Webb has stated that he has written other articles for Parade. The interrogatories pertain to the circumstances surrounding these articles and the article written in 1985 by Mr. Webb.

Please submit a response to these interrogatories within ten days of your receipt of this letter. Your response should be submitted under oath.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A), a section of the Act, will apply. This section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. No such consent has been given in this matter.

Attachment 3 - p 1 of 3

If you have any questions, please contact Jonathan Levin at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure
Interrogatories

TO: Carlo Vittorini, Publisher
Parade

INTERROGATORIES

1. For each of the articles written for Parade by James H. Webb, Jr., describe the arrangements between Mr. Webb and Parade for the writing and publication of the article and for remuneration.

   a. State whether Mr. Webb approached Parade with the articles or whether Parade approached Mr. Webb to write the articles.

   b. State whether there were written contracts for each of these articles. Describe briefly the provisions of these contracts.

   c. State whether there was any single contractual arrangement providing for the writing of more than one article. Describe all such arrangements.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 14, 1986

David H. Martin, Director
Office of Government Ethics
Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

Re: Pre-MUR 159

Dear Mr. Martin:

This is to acknowledge receipt of your letter dated February 14, 1986, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended, in connection with the acceptance of payment by Assistant Secretary of Defense James H. Webb, Jr. for a magazine article written by him. We are currently reviewing the matter and will advise you of the Commission's determination when the matter is closed.

If you have any questions, please call Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690. Our file number for this matter is Pre-MUR 159.

Pursuant to 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), the Commission's review of this matter shall remain confidential.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SENSITIVE

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/ ARNITA D. HESSION

DATE: APRIL 8, 1986

SUBJECT: Pre-MUR 159

The attached has been circulated for your information.

Attachment

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GCC# 9768

159

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

SENSITIVE

FEB 14 1986

Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

Dear Mr. Steele:

We recently received a memorandum from the Office of General Counsel of the Department of Defense, dated January 17, 1986, requesting an interpretation of the honorarium ceiling of 2 U.S.C. § 441i as it applies to a Department of Defense official's acceptance of payment for a magazine article that he wrote. Since the FEC is responsible for interpreting section 441i, we are forwarding the memorandum and its attachment to you for a response, although we feel that the Department of Defense official's conduct was consistent with the principles of Executive Order 11222 and 5 U.S.C.§ 210. We would appreciate it if you would provide us with a copy of your response.

Sincerely,

David H. Martin
Director

Enclosure

86 FEB 19 P2:35

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

January 17, 1986

MEMORANDUM FOR DAVID H. MARTIN, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: Question re Application of Honorarium Ceiling

One of our officials has raised a question concerning the propriety of his acceptance of payment for a magazine article he wrote that was published last year. The payment exceeded the $ 2,000 ceiling prescribed by section 441i of title 2, United States Code. In his memorandum of January 9, 1986, copy attached, he challenged the application of the ceiling to this transaction. We share his misgivings.

I have discussed the question with Mr. Gary Davis of your staff. He invited me to submit the matter for consideration by your Office. Closely related issues were covered in your general advisory memorandum of October 28, 1985, Subject: "Participating in Privately Sponsored Seminars or Conferences for Compensation." Additional guidance in this area, and specifically, an interpretation of the issue raised by the attached inquiry, would be appreciated.

David W. Ream
Office, Assistant General Counsel
Office of Legal Counsel

Attachment

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

9 January 1986

MEMORANDUM FOR GENERAL COUNSEL

SUBJECT: Office of Government Ethics Memorandum of 28 October 1985 entitled, "Participating in Privately-Sponsored Seminars or Conferences for Compensation"

The Office of Government Ethics Memorandum of 28 October 1985, which addresses participation in privately sponsored seminars or conferences for compensation, notes, on page 7, that 2 U.S.C. S 441(i) prohibits an elected or appointed officer or employee of the federal government from accepting an honorarium or more than $2,000 for any appearance or article. During 1985, Parade magazine paid Webb Enterprises $4,500 for a Father's Day article I wrote regarding the birth of my son. I have not received any of this compensation personally, but am aware that, for purposes of ethical considerations, the payment of a corporation from which I draw no salary nonetheless constitutes remuneration for the product delivered to Parade.

The amount paid falls within the ten percent limitation on outside income stipulated for political appointees, and is the only taxable outside income generated by me during the year. The question is whether the remuneration paid by Parade constitutes an "honorarium" within the meaning of 2 U.S.C. S 441(i). I believe that certain exclusionary language contained in the CFR but not mentioned in the Office of Government Ethics memorandum applies to my situation with Parade, and would like the General Counsel's opinion on this matter.

1. 2 U.S.C. S 441(i) was passed by the Congress in 1976 as part of the Federal Election Campaign Act, and was part of several changes in that bill designed to "restrict, within the constitutional limitations set by the Supreme Court, the flow of excessive sums of money into political campaigns," according to the language of the Senate Report. Thus, the intention of the legislation was to preclude exorbitant payments for appearances and minimal speaking or writing efforts that would circumvent existing legal limitations. I do not believe my situation was one that could have been contemplated, either under the statute or under the memorandum, particularly given the subject addressed in the memorandum.

2. The 2,000 dollar limitation on honoraria paid government officials for "any appearance, speech, or article" was not absolute. 11 CFR S 110.12, which interprets 2 U.S.C. S 441(i), excludes awards, gifts, and stipends from the definition of honorarium. A stipend is defined in the CFR as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." Under this definition, I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article a year) for several years.

I believe that the fee (the proper term) paid for the article I wrote is much closer to having been a stipend than it is to being an honorarium. I also believe my situation was not one considered in the formulation of either the law or the memorandum, and involves absolutely no ethical questions whatsoever. I wrote one article about the birth of my son for a national publication which has a circulation of 25 million, and received a fair price for it. My total outside income was well within the ten percent limitation. The legislature, seeking to curb abuses by certain lobby groups, could not have comprehended the unusual situation of a professional writer who can demand top dollar for a literary product. So long as I do not exceed the ten percent income overage which is the clearest restriction to my outside activities, I do not see how my situation could in any way be relevant to a question of ethical violation.

James H. Webb, Jr.

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OGC Docket

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/ ARNITA D. HESSION

DATE: APRIL 8, 1986

SUBJECT: Pre-MUR 159

The attached has been circulated for your information.

Attachment

GCC# 9768

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

SENSITIVE

FEB 14 1986

Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

Dear Mr. Steele:

We recently received a memorandum from the Office of General Counsel of the Department of Defense, dated January 17, 1986, requesting an interpretation of the honorarium ceiling of 2 U.S.C. § 441i as it applies to a Department of Defense official's acceptance of payment for a magazine article that he wrote. Since the FEC is responsible for interpreting section 441i, we are forwarding the memorandum and its attachment to you for a response, although we feel that the Department of Defense official's conduct was consistent with the principles of Executive Order 11222 and 5 U.S.C.§ 210. We would appreciate it if you would provide us with a copy of your response.

Sincerely,

David H. Martin
Director

Enclosure

CON 132-64-0
March 1985

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

January 17, 1986

MEMORANDUM FOR DAVID H. MARTIN, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: Question re Application of Honorarium Ceiling

8704 064 2817 1/2

One of our officials has raised a question concerning the propriety of his acceptance of payment for a magazine article he wrote that was published last year. The payment exceeded the $ 2,000 ceiling prescribed by section 441i of title 2, United States Code. In his memorandum of January 9, 1986, copy attached, he challenged the application of the ceiling to this transaction. We share his misgivings.

I have discussed the question with Mr. Gary Davis of your staff. He invited me to submit the matter for consideration by your Office. Closely related issues were covered in your general advisory memorandum of October 28, 1985, Subject: "Participating in Privately Sponsored Seminars or Conferences for Compensation." Additional guidance in this area, and specifically, an interpretation of the issue raised by the attached inquiry, would be appreciated.

David W. Ream
Office, Assistant General Counsel
Office of Legal Counsel

Attachment

GCCH 9768
#207

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

FEB 14 1986

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General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

86 FEB 19 P2:36

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Office, Assistant General Counsel
Office of Legal Counsel

Attachment

2. The 2,000 dollar limitation on honoraria paid government officials for "any appearance, speech, or article" was not absolute. 11 CFR S 110.12, which interprets 2 U.S.C. S 441(i), excludes awards, gifts, and stipends from the definition of honorarium. A stipend is defined in the CFR as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." Under this definition, I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article a year) for several years.

I believe that the fee (the proper term) paid for the article I wrote is much closer to having been a stipend than it is to being an honorarium. I also believe my situation was not one considered in the formulation of either the law or the memorandum, and involves absolutely no ethical questions whatsoever. I wrote one article about the birth of my son for a national publication which has a circulation of 25 million, and received a fair price for it. My total outside income was well within the ten percent limitation. The legislature, seeking to curb abuses by certain lobby groups, could not have comprehended the unusual situation of a professional writer who can demand top dollar for a literary product. So long as I do not exceed the ten percent income overage which is the clearest restriction to my outside activities, I do not see how my situation could in any way be relevant to a question of ethical violation.

James H. Webb, Jr.

James H. Webb, Jr.

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

RESERVE AFFAIRS

9 January 1986

MEMORANDUM FOR GENERAL COUNSEL

SUBJECT: Office of Government Ethics Memorandum of 28 October 1985 entitled, "Participating in Privately-Sponsored Seminars or Conferences for Compensation"

The Office of Government Ethics Memorandum of 28 October 1985, which addresses participation in privately sponsored seminars or conferences for compensation, notes, on page 7, that 2 U.S.C. S 441(i) prohibits an elected or appointed officer or employee of the federal government from accepting an honorarium or more than $2,000 for any appearance or article. During 1985, Parade magazine paid Webb Enterprises $4,500 for a Father's Day article I wrote regarding the birth of my son. I have not received any of this compensation personally, but am aware that, for purposes of ethical considerations, the payment of a corporation from which I draw no salary nonetheless constitutes remuneration for the product delivered to Parade.

The amount paid falls within the ten percent limitation on outside income stipulated for political appointees, and is the only taxable outside income generated by me during the year. The question is whether the remuneration paid by Parade constitutes an "honorarium" within the meaning of 2 U.S.C. S 441(i). I believe that certain exclusionary language contained in the CFR but not mentioned in the Office of Government Ethics memorandum applies to my situation with Parade, and would like the General Counsel's opinion on this matter.

1. 2 U.S.C. S 441(i) was passed by the Congress in 1976 as part of the Federal Election Campaign Act, and was part of several changes in that bill designed to "restrict, within the constitutional limitations set by the Supreme Court, the flow of excessive sums of money into political campaigns," according to the language of the Senate Report. Thus, the intention of the legislation was to preclude exorbitant payments for appearances and minimal speaking or writing efforts that would circumvent existing legal limitations. I do not believe my situation was one that could have been contemplated, either under the statute or under the memorandum, particularly given the subject addressed in the memorandum.

2. The 2,000 dollar limitation on honoraria paid government officials for "any appearance, speech, or article" was not absolute. 11 CFR S 110.12, which interprets 2 U.S.C. S 441(i), excludes awards, gifts, and stipends from the definition of honorarium. A stipend is defined in the CFR as "a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." Under this definition, I could have made an agreement with Parade or other news media to provide commentary on virtually any subject, and have been exempted from the "honorarium" rubric. I have in fact written for Parade on a continuing basis (an article a year) for several years.

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 2196

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