FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3714/3612

DATE FILMED 9-22-93 CAMERA NO. 4

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MUR 3612

COMPLAINT - SEPTEMBER 16, 1992

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FEDERAL ELECTION COMMISSION

William D. White
petitioner,
-vs-

Senator Harris Wofford,
Mr. Richard Thornburg,
Pennsylvania Association of
Broadcasters,
Richard Wyckoff, President,
Fred Friendly,
WPXI television channel 11,
John A. Hallow, III, G.M.,
respondents.

MUR 3612

AMENDED COMPLAINT AND REQUEST FOR INVESTIGATION

The above named respondents produced and distributed a program featuring Senator Harris Wofford and Richard Thornburg, both declared candidates in the 1991 special election held in Pennsylvania for United States Senator. The petitioner believes substantial violations of the Federal Election Campaign Act occurred in relation to this incident. The Commission is requested to investigate and determine the following;

1. Was the program at issue a contribution as defined in §100.7?
2. Was the program at issue under the control of the candidates?
3. Why was equal use of facilities denied to the petitioner?

1. 2 U.S.C. 431(8) - §100.7(a)(1) defines a contribution as "...anything of value made by any person for the purpose of influencing any election for federal office...". Mr. Wyckoff and the Pennsylvania Association of Broadcasters caused to be produced and distributed a program, one hour in length, featuring Senator Harris Wofford and Former Attorney General Richard Thornburg. Mr. Wyckoff specifically excluded as participants in the "dialogue" anyone not of his personal choosing. An unsubstantiated value of $100,000 has been reported in the media as the worth of this program, i.e., it would have cost the candidates $100,000 to produce and distribute the program at issue, had the use of production and broadcast facilities not been provided free to the candidates.

The questions that need to be resolved are;

a) Is providing production and broadcast facilities by the PAB and its member stations a contribution to the campaigns of the candidates selected to receive the use?

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b) If a contribution, was it made as a corporation or by the individuals involved?

c) What is the actual dollar value of the contribution and how is it proportioned among the various participants.

2. Mr. Fred Friendly, appearing in the program as moderator of the dialogue, made several comments that indicate that the content of the dialogue was rehearsed to some degree and that the topics and their presentation was under the control of Senator Wofford and Mr. Thornburg.

a)"... But it's no fantasy that I'm here for you two distinguished gentlemen, and that we're going to talk about politics and the election of which you are both a prominent part. ... This is not a formal debate, it's a dialogue, and I hope you'll be free to talk for as long, as as much, with as much ease, as you did before we started." - Mr. Friendly at beginning of the show.

Further, MR. Wyckoff and Mr. Friendly made specific endorsements of the candidates.

b) "The Pennsylvania Association of Broadcasters is very pleased to present todays discussion of issues between our candidates for the United States Senate." - Richard Wyckoff, President of the Pennsylvania Association of Broadcasters as a preface to the program.

c) "Uh, I think one thing Mr. Thornburg and Mr. Wofford would agree on, to you the voters, is go out there the first Tuesday in November and vote for someone, either for Wofford or Thornburg, that's our job as citizens." Fred Friendly at the end of the show.

No authorization notice appeared at the beginning or end of the program, as required by §110.11(a).

3. The petitioner requested equal use of facilities, as provided for under the Federal Communication Act, and was denied by all broadcasters. See Appendix A.

In general, the petitioner believes that the program at issue amounts to an hour-long political commercial with the express

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purpose of advocating the election of specific candidates. Extensive use of production and broadcast facilities was provided as an illegal, in-kind contribution to the campaigns of Senator Wofford and Mr. Thornburg by numerous broadcasters and the Pennsylvania Association of Broadcasters. The PAB does not appear to be registered as a political organization with the FEC. Equal, indeed any, use of broadcast and production facilities was denied to the petitioner as part of a deliberate and concerted effort to defeat the candidacy of the petitioner.

A suit is pending in the United States District Court for the Western District of Pennsylvania (D.C. No. 92-0979) alleging fraud by Mr. Wyckoff, Mr. Friendly, Mr. Howell, the PAB and WPXI. A continuance has been requested pending the response of the FEC to this complaint. The conclusions and findings of fact by the Federal Election Commission will be submitted to the District Court.

Mr. Wyckoff has refused to respond to my inquires about membership in the PAB and distribution of the program. The media in Pennsylvania is again refusing to announce my candidacy or allow any response to public comments by the other candidates in the current election season.

I, William D. White, swear that the foregoing is correct and true to the best of my knowledge.

William D. White

William D. White, petitioner
16 East Manilla Avenue
Pittsburgh, Pa. 15220
412-922-3834

Subscribed and sworn to before me
on this 14TH day of SEPTEMBER, 1992

Josephine A. Carbone
NOTARY PUBLIC

Notarial Seal
Josephine A. Carbone, Notary Public
Pittsburgh, Allegheny County
My Commission Expires April 15, 1996

23040955132

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1992

William D. White
16 East Manilla Avenue
Pittsburg, PA 15220

RE: MUR 3612

Dear Mr. White:

This letter acknowledges receipt on September 16, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Richard Thornburgh, Harris Wofford, the Pennsylvania Association of Broadcasters, Fred Friendly, and WPXI Television Channell 11. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3612. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

23040955133

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1992

Mr. Richard Thornburgh
320 Ft. Duquesne Blvd.
Pittsburg, PA 15222

RE: MUR 3612

Dear Mr. Thornburgh:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3612. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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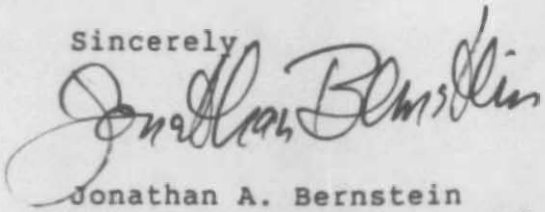
If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

23040955135

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1992

Honorable Harris Wofford
3905 N. Front Street
Harrisburg, PA 17110

RE: MUR 3612

Dear Senator Wofford:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3612. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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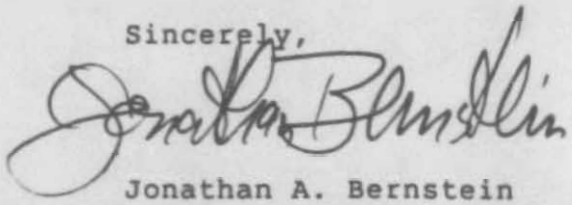
93040955136

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1992

Pennsylvania Association of
Broadcasters
Richard Wyckoff, President
c/o Rothman, Gordon, Forman and
Groudine
Third Floor-Grant Building
Pittsburg, PA 15219

RE: MUR 3612

Dear Mr. Wyckoff:

The Federal Election Commission received a complaint which indicates that the Pennsylvania Association of Broadcasters ("Association") may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3612. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Association in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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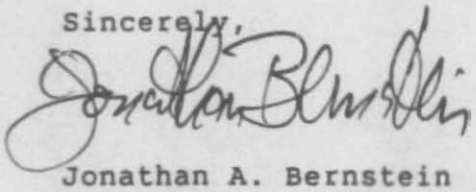
If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1992

Fred Friendly
c/o Rothman, Gordon, Foreman, and
Groudine
Third Floor-Grant Building
Pittsburg, PA 15219

RE: MUR 3612

Dear Mr. Friendly:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3612. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1992

WPXI Television Channell 11
John A. Hallow, III, G.M.
11 Television Hill
Pittsburgh, PA 15214

RE: MUR 3612

Dear Mr. Hallow:

The Federal Election Commission received a complaint which indicates that WPXI Television Channell 11 ("Television Station")may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3612. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Television Station in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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ROTHMAN GORDON

Emil W. Herman
Louis B. Kushner
Mark L. Unatin
Thomas R. Solomich
Arthur J. Smith
Stephen H. Jordan
Frederick A. Polner
James R. Farley

Ronald G. Backer
Shelley W. Elovitz
Carl E. Harvison
June S. Schulberg
Sandra Reiter Kushner
Christopher Rulis
Mark S. Weis
Alan C. Blanco

ATTORNEYS AT LAW
Third Floor, Grant Building
Pittsburgh, Pennsylvania 15219-2203
412 338-1100
412 281-7304 Telefax
412 471-1984 Real Estate Settlement Department

2550 M Street, N.W.
Suite 375
Washington, D.C. 20037
202 728-0880

DIRECT DIAL #

(412) 338-1132

William Roy Crum Jr.
Jeffrey A. Hulton
Richard K. Olson, Jr.
Vito S. Bochicchio
Richard R. Morelli
Cheryl A. Ignasiak
Jeffrey J. Russell
John R. Fielding

Patricia L. Haas

Of Counsel
Norman A. Groudine
Sidney R. Finkel

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT -9 PM 3:24

October 8, 1992

Mr. Richard Zanfardino
Federal Elections Commission
999 "E" Street, N.W.
Washington, D.C. 20463

RE: White v. Pennsylvania Association of Broadcasters, et. al., MUR No. 3612

Dear Mr. Zanfardino:

As per my earlier correspondence to you, enclosed please find the original Statements of Designation of Counsel containing the original signatures of Richard Wyckoff and Fred Friendly and the original Response of Pennsylvania Association of Broadcasters, Richard Wyckoff, and Fred Friendly to Petitioner's Amended Complaint and Request for Investigation, copies of which were filed with you yesterday.

Please contact me at the above number if you have any questions or comments.

Very truly yours,

John R. Fielding

John R. Fielding

JRF:cpc
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Enclosures

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ROTHMAN GORDON

Emil W. Herman
Louis B. Kushner
Mark L. Unatin
Thomas R. Solomich
Arthur J. Smith
Stephen H. Jordan
Frederick A. Polner
James R. Farley

Ronald G. Backer
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202 728-0880

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Cheryl A. Ignasiak
Jeffrey J. Russell
John R. Fielding

Patricia L. Haas

Of Counsel
Norman A. Groudine
Sidney R. Finkel

(412) 338-1132

October 8, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT -9 PM 3:24

Mr. Richard Zanfardino
Federal Election Commission
999 "E" Street, N.W.
Washington, D.C. 20463

RE: White v. Pennsylvania Association of Broadcasters et al., MUR No. 3612

Dear Mr. Zanfardino:

Enclosed please find four (4) copies of the Response of Pennsylvania Association of Broadcasters, Richard Wyckoff, and Fred Friendly to Petitioner's Amended Complaint and Request for Investigation in the above-referenced MUR. Enclosed please also find four (4) copies of Designation of Counsel forms for the Pennsylvania Association of Braodcasters and Mr. Friendly.

Originals of these documents will be sent to your attention by overnight mail.

If any further information should be needed or desired, please feel free to contact me.

Very truly yours,

John R. Fielding

Enclosures

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2304095514 5

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3612

NAME OF COUNSEL: Frederick A. Polner, Esquire
ROTHMAN GORDON
ADDRESS: Third Floor - Grant Building
Pittsburgh, PA 15219

TELEPHONE: (412) 338-1111

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FEDERAL ELECTION COMMISSION
'92 OCT -9 PM 3:24

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10-1-92
Date

Signature

RESPONDENT'S NAME: Richard E. Wyckoff, President
ADDRESS: Pennsylvania Association of Broadcasters
P.O. Box 4669
Harrisburg, PA 17111

HOME PHONE:

BUSINESS PHONE: (717) 534-2504

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TOTAL P.02

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3612

NAME OF COUNSEL: Frederick A. Polner, Esquire
ROTHMAN GORDON

ADDRESS: Third Floor - Grant Building
Pittsburgh, PA 15219

TELEPHONE: (412) 338-1111

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT -9 PM 3:24

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date

Signature
FRIENDLY

RESPONDENT'S NAME: Fred Friendly

ADDRESS: c/o Columbia University Seminars
475 Riverside Drive
New York, NY 10115

HOME PHONE:

BUSINESS PHONE:

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BEFORE THE FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

WILLIAM D. WHITE, Petitioner, v. SENATOR HARRIS WOFFORD, MR. RICHARD THORNBURGH, PENNSYLVANIA ASSOCIATION OF BROADCASTERS RICHARD WYCKOFF, PRESIDENT, FRED FRIENDLY, WPXI TELEVISION CHANNEL 11, JOHN A. HALLOW, III, G.M., Respondents.	)	MUR 3612

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RESPONSE OF PENNSYLVANIA ASSOCIATION OF BROADCASTERS, RICHARD WYCKOFF, AND FRED FRIENDLY TO PETITIONER'S AMENDED COMPLAINT AND REQUEST FOR INVESTIGATION

AND NOW, come the Pennsylvania Association of Broadcasters (hereinafter, "PAB"), Richard Wyckoff, PAB's President (hereinafter, "Mr. Wyckoff"), and Fred Friendly (hereinafter, "Mr. Friendly"), by their attorneys, Frederick A. Polner, Esquire, John R. Fielding, Esquire, and Rothman Gordon Foreman & Groudine, P.C., and hereby files this response to the Petitioner's Amended Complaint and Request for Investigation (hereinafter, the "Amended Complaint").

I. RESPONSE TO SPECIFIC ALLEGATIONS OF THE AMENDED COMPLAINT

First Unnumbered Paragraph: It is admitted that a special election was held in 1991 in Pennsylvania for a vacant seat

in the United States Senate. It is admitted that the PAB produced an hour-length program (hereinafter, the "Program") that featured Mr. Harris Wofford (now Senator) and Mr. Richard Thornburgh. It is admitted that Mr. Wyckoff acted in his capacity as President of the PAB in the production of the Program. It is admitted that the PAB urged its member television stations to broadcast the Program. The remaining allegations of the First Unnumbered Paragraph are not factual allegations and do not require a response. To the extent that a response is deemed necessary, those allegations are denied.

<u>Paragraph 1:</u> It is admitted that the PAB produced the Program, that the Program was an hour in length, and that the Program featured Senator Harris Wofford and Mr. Richard Thornburgh. It is admitted that Mr. Wyckoff acted in his capacity as President of the PAB in the production of the Program. It is admitted that the PAB urged its member (and some non-member) television stations to broadcast the Program. It is denied that Mr. Wyckoff specifically excluded anyone not of his personal choosing from the Program. The PAB, Mr. Wyckoff, and Mr. Friendly are without sufficient knowledge and information to form a belief as to the truth of "unsubstantiated value of $100,000" assigned to the Program in the Amended Complaint, and that allegation is therefore denied. The remaining allegations of Paragraph 1 are not factual allegations and do not require a response. To the extent that a response is deemed necessary, those allegations are denied.

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Paragraph 1(a): It is specifically denied that PAB and/or its member stations provided production or broadcast facilities to the campaigns of Senator Wofford or Mr. Thornburgh. It is specifically denied that PAB and/or its member stations selected Senatorial candidates in the 1991 special election who would be provided production or broadcast facilities. Otherwise, the question stated in Paragraph 1(a) is not a factual allegation and does not require a response. To the extent that a response is deemed necessary, any and all remaining allegations contained in Paragraph 1(a) are denied.

Paragraph 1(b): The question stated in Paragraph 1(b) is not a factual allegation and does not require a response. To the extent that a response is deemed necessary, any allegations contained in Paragraph 1(b) are denied.

Paragraph 1(c): The question stated in Paragraph 1(c) is not a factual allegation and does not require a response. To the extent that a response is deemed necessary, any allegations contained in Paragraph 1(c) are denied.

Paragraph 2: It is admitted that Mr. Friendly appeared on the Program as the moderator. It is admitted that Mr. Friendly made several comments during the Program. It is denied that the dialogue by the Candidates during the Program was rehearsed. It is denied that the topics and/or their presentation in the Program

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were under the control of either Senator Wofford or Mr. Thornburgh. Any and all remaining allegations of Paragraph 2 are denied.

Paragraph 2(a): It is admitted that Mr. Friendly made certain comments at the beginning of the Program. However, the quotation stated in Paragraph 2(a) is denied on the ground that the Program speaks for itself. It is specifically denied that either Mr. Wyckoff or Mr. Friendly made any specific endorsement of any candidate. Any and all remaining allegations contained in Paragraph 2(a) are denied.

Paragraph 2(b): It is admitted that Mr. Wyckoff introduced the Program. However, the quotation stated in Paragraph 2(b) is denied on the ground that the Program speaks for itself. It is specifically denied that either Mr. Wyckoff or Mr. Friendly made any specific endorsement of any candidate. Any and all remaining allegations contained in Paragraph 2(b) are denied.

Paragraph 2(c): The quotation stated in Paragraph 2(c) is denied on the ground that the Program speaks for itself. It is admitted that no authorization notice appeared at the beginning or at the end of the Program. Whether such an authorization is legally required is a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, such allegation is denied. It is specifically denied that either Mr. Wyckoff or Mr. Friendly made any specific

2 3 0 4 0 9 5 5 1 5 1

endorsement of any candidate. Any and all remaining allegations contained in Paragraph 2(c) are denied.

Paragraph 3: The PAB, Mr. Wyckoff, and Mr. Friendly are not broadcast stations and without knowledge and information sufficient to form a belief as to whether Petitioner requested equal use of facilities and was denied by any or all broadcasters, and said allegation is therefore denied.[1] It is denied that the PAB, Mr. Wyckoff, or Mr. Friendly provided the use of production or broadcast facilities to the campaigns of either Senator Wofford or Mr. Thornburgh. It is admitted that the PAB is not registered as a political organization with the Federal Elections Commission. It is denied that the PAB, Mr. Wyckoff, or Mr. Friendly denied Petitioner the use of broadcast and/or production facilities as part of an effort to defeat Petitioner's candidacy. It is admitted that Petitioner filed a suit against Respondents in the United States District Court for the Western District of

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[1] Section 315 of the Communications Act imposes specific "equal opportunities" requirements on broadcast stations licensed by the Federal Communications Commission ("FCC"). The FCC, and not the Federal Election Commission, is responsible for enforcing the Communications Act. The FCC has permitted broadcasters to air debates between two opposing candidates, exempt from "equal opportunities" requirements, provided that the debates are bona fide news events. This is the case even when the debate is sponsored by the broadcaster. In re Petitions of Henry Geller, 95 FCC2d 1236 (1983), affirmed sub nom. League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1984). Even if a broadcaster sponsors a debate, the broadcaster can exercise its discretion to restrict participation to those candidates that the broadcaster, in its good faith judgment, believes are most newsworthy. Sonia Johnson and Richard Walton, 56 RR2d 1533 (1984), affirmed sub nom. Johnson v. FCC, 829 F.2d 157 (D.C. Cir. 1987).

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Pennsylvania at D.C. No. 92-0979. However, by way of further answer, PAB, Mr. Wyckoff, and Mr. Friendly aver that said suit has been dismissed for failure to state a cause of action for which relief could be granted. (See Order attached hereto as Exhibit "A"). It is admitted that Mr. Wyckoff has refused to respond to Petitioner's inquiries concerning the members of the PAB and the distribution of the Program. Any and all other allegations contained in Paragraph 3 are denied.

Any and all remaining allegations contained in Petitioner's Amended Complaint are denied.

II. FURTHER RESPONSE ON BEHALF OF THE PAB, MR. WYCKOFF, AND MR. FRIENDLY

A. THE FACTUAL BACKGROUND OF THIS DISPUTE:

A special election was held in November 1991 in Pennsylvania to fill the seat in the United States Senate that became vacant upon the death of Senator John Heinz. Mr. (now Senator) Harris Wofford was the candidate of the Democratic Party in that election, and Mr. Richard Thornburgh was the candidate of the Republican Party.

The PAB is the oldest statewide trade association of radio and television broadcasters in the country and is the largest trade association of broadcasters in Pennsylvania. The PAB is a

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non-profit unincorporated association, and it does not have benefits that inure to particular members or "shareholders".

As a public service, the PAB invited Senator Wofford and Mr. Thornburgh to participate in an hour-long program (hereinafter, the "Program") in which each of them would have an opportunity to address the issues of the day. Both candidates accepted PAB's invitation. Mr. Friendly, a distinguished television journalist and former Dean of the Columbia School of Journalism, accepted the PAB's invitation to be the Program's moderator. Mr. Friendly volunteered to appear on the Program without compensation; the only monies paid by the PAB to Mr. Friendly were to reimburse Mr. Friendly for his out-of-pocket travel expenses from New York to Philadelphia (where the Program was taped).

In his materials filed with this Commission, the Petitioner has contended that he was a write-in candidate in the special election for the vacant Senate seat. The PAB denied Petitioner's request to participate in the Program, having first received knowledge of Petitioner's candidacy and interest in participating in the program just several hours before the live broadcast.

The Program was produced with PAB's funds. The PAB urged member and non-member television stations to broadcast the Program

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as a public service, but PAB did not actually purchase broadcast time for the Program on any station.

The program opened with an introduction by Mr. Wyckoff. In relevant part, Mr. Wyckoff said, in substance:

> The Pennsylvania Association of Broadcasters is very pleased to present today's discussion of issues between our candidates for the United States Senate."

In his Amended Complaint, the Petitioner characterizes this statement as an endorsement. Amended Complaint, ¶ 2(b). Presumably, the Petitioner interprets the phrase "our candidates" to imply that the PAB was endorsing Mr. Thornburgh and/or Senator Wofford. However, taken in context, the phrase "our candidates" is synonymous with "Pennsylvania's candidates", and it refers to the fact that Senator Wofford and Mr. Thornburgh were, by far, the most prominent senatorial candidates on a statewide basis.

The remainder of the program consisted of a discussion between Senator Wofford and Mr. Thornburgh, moderated by Mr. Friendly. The Program was not a formal debate. Rather, Senator Wofford and Mr. Thornburgh held a dialogue about various issues of public concern. The dialogue did not take place according to a "script". Mr. Friendly did not "rehearse" his role with the candidates. Insofar as the PAB, Mr. Wyckoff, and Mr. Friendly are aware, Senator Wofford and Mr. Thornburgh did not "rehearse" their parts with each other. On the contrary, except for the

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introduction and the conclusion, the Program consisted of a spontaneous exchange of views between the participants.

At the end of the Program, Mr. Friendly closed by saying, in substance:

> Uh, I think one thing Mr. Thornburgh and Mr. Wofford would agree on, to you the voters, is go out there the first Tuesday in November and vote for someone, either for Wofford or Thornburgh, that's our job as citizens.

In his Amended Complaint, the Petitioner characterizes this statement as an endorsement. Amended Complaint, ¶ 2(c). However, taken in context, Mr. Friendly's closing was an appeal to the public to turn out to vote. The language "either for Wofford or Thornburgh" emphasizes the candidates' presumed desire to see high voter participation, regardless of which candidate that might help or hurt.

As noted, the PAB made the Program available to member and non-member television stations and urged them to broadcast it. Whether the Program would be broadcast at all, and what time it would be on the air, were up to each individual station. The PAB did not purchase broadcast time for the Program.

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B. DISCUSSION OF LEGAL ISSUES:

1. The Definition of "Contribution" Applicable to This Case

The term "contribution" is defined in the Federal Election Campaign Act at 2 U.S.C. § 431(8). In relevant part, that definition is:

> (8)(A) The term "contribution" includes -
>
> (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office;
>
> * * *
>
> (B) The term "contribution" does not include -
>
> (i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

This definition applies to limitations upon contributions by individuals (e.g., Mr. Wyckoff and Mr. Friendly) and organizations (e.g., the PAB) to candidates or political committees. 2 U.S.C. § 441a.

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2. The Definition of "Expenditure" Applicable to This Case

The term "expenditure" is defined in the Federal Election Campaign Act at 2 U.S.C. § 431(9). In relevant part, that definition is:

> (9)(A) The term "expenditure" includes -
>
> (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office;
>
> * * *
>
> (B) The term "expenditure" does not include -
>
> (i) any news story, commentary, or editorial distributed through the facilities of any broadcast station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;
>
> (ii) nonpartisan activity designed to encourage individuals to vote or to register to vote; [and]
>
> (iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be

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> reported to the Commission in accordance with [2 U.S.C. § 434(a)(4)(A)(i)], and in accordance with [2 U.S.C. § 434(a)(4)(A)(ii)] with respect to any general election.

This definition applies to limitations upon expenditures by individuals (e.g., Mr. Wyckoff and Mr. Friendly) and organizations (e.g., the PAB) to candidates or political committees. 2 U.S.C. § 441a.

3. The PAB's Producing the Program was not a "Contribution"

For the Program to have been a "contribution", as defined in the Federal Election Campaign Act, the PAB must have produced it "for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). The content and structure of the Program makes it clear that the PAB did not produce it for the purpose of swaying the election one way or another.

First, the Program was produced at the PAB's initiative. In taking the initiative, the PAB did not act at the suggestion of in coordination with either the Wofford or Thornburgh campaigns. Rather, the PAB produced the Program as a non-partisan public service.

Second, PAB's involvement in the Program did not, in itself, help or hurt either the Thornburgh or Wofford campaigns. Rather, the PAB provided a neutral platform from which each

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candidate could air his views directly to the public. Each candidate had approximately equal opportunities for exposure during the Program. If either campaign was helped or hurt by the Program, it was not because of anything that the PAB did. Rather, if either campaign was helped or hurt by the Program, it was because the candidates helped or hurt themselves by how they appeared or by what they said.

Third, although the PAB urged various member and non-member television stations to broadcast the Program as a public service, the PAB did not buy air time on any station. Whether a given station broadcast the Program was up to the independent judgment of that station's management.

Thus, the structure of the Program and the way it was distributed show that the PAB did not produce the Program for the purpose of influencing the special senatorial election. Rather, these things demonstrate the PAB's disinterested, nonpartisan intent to increase public awareness of the positions of the leading candidates and to increase voter turnout.

Further, the Supreme Court of the United States has held that, as a matter of constitutional law, an "expenditure" by a non-profit organization (such as PAB) must expressly advocate the election or defeat of a candidate in order to be an expenditure forbidden under 2 U.S.C. § 441b. FEC v. Massachusetts Citizens for

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Life, 479 U.S. 238 (1986). Section 441b also forbids "contributions", and the Supreme Court's reasoning strongly suggests that the same restriction would apply to contributions. Because the applicable definition of "contributions" and "expenditures" is that contained at 2 U.S.C. § 431, see id., 479 U.S. at 245-251, the Massachusetts Citizens for Life decision strongly suggests that the Program would be a forbidden "contribution" only if it expressly advocated the election or defeat of identifiable candidates.

Taken as a whole, the Program did not state a position of the PAB expressly advocating the election or defeat of any candidate. Rather, the Program was a neutral platform from which Mr. Thornburgh and Senator Wofford expounded their views to the public. The main thrust of Mr. Friendly's closing was to urge citizens to "go out there the first Tuesday in November and vote for someone". Taken as a whole, Mr. Friendly's closing was an appeal for voter turnout, and not for the election or defeat of a specific candidate.

Thus, under Massachusetts Citizens for Life, the Program was not a "contribution" forbidden by the Federal Election Campaign Act.

Finally, to hold that the Program was a contribution would be inconsistent with the intent of Congress. In 1980, in

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approving certain FEC regulations pertaining to candidate debates, Congress directed that a letter be sent to then FEC Chairman Tiernan which said (in relevant part):

> We understand that in approving these regulations, that the regulations will have no effect on present communications policy as expressed in Sections 312 and 315 of the Communications Act. Under no circumstances would a broadcaster in fulfilling his obligation to provide reasonable access to candidates for public office be considered to have made an illegal contribution. Similarly, a broadcaster's coverage of a candidate which is not a "use" under Section 315 of the Communications Act would under no circumstances be considered a contribution by the broadcaster.

126 Cong. Rec. 5408 (1980). This letter is consistent with the broad public policy favoring candidate debates as a way of informing the public of the issues and encouraging a high voter turnout. If debates were required to include <u>all</u> candidates (including write-in candidates), they could become unmanageable. Thus, when the PAB reasonably restricted participation in the Program to the two most prominent senatorial candidates, it was acting consistently with (a) the intent of Congress, (b) the public interest, and (c) the law[2].

4. The PAB's Producing the Program was not an "Expenditure"

Again, under the definition of an "expenditure" contained in 2 U.S.C. § 431 requires that the expenditure be made "for the

---

[2] See Footnote 1, <u>supra</u>.

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purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A). The Supreme Court held in Massachusetts Citizens for Life, supra, that an expenditure by a non-profit organization must expressly advocate the election or defeat of identifiable candidates before it can constitutionally be forbidden. 479 U.S. at 249. As discussed above, the structure of the Program and the circumstances in which it was made demonstrate that the Program was not made for the purpose of influencing the Special Election and that it did not expressly advocate the election or defeat of any candidate.

The Program also was not an "expenditure" for another reason. Because the Program showed Senator Wofford and Mr. Thornburgh, the two leading candidates in the special senatorial election, exchanging views on the issues of the day, the Program was a bona fide news event. Section 431's definition of "expenditure" expressly excludes "any news story, commentary, or editorial distributed through the facilities of any broadcast station, ... unless such facilities are owned or controlled by any political party, political committee, or candidate". 2 U.S.C. § 431(9)(B)(i). Because the PAB distributed the program through independent television stations, which were not "owned or controlled by any political party, political committee, or candidate", the statutory exclusion applies.

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Alternatively, the Program was exempt from being an expenditure as being a "nonpartisan activity designed to encourage individuals to vote or to register to vote". 2 U.S.C. § 431(9)(B)(ii). Because the Program was a neutral platform from which the two most prominent candidates expressed their views, and because the Program did not advocate the election or defeat of a specific candidate, the Program was a non-partisan activity. Further, by giving the two most prominent candidates the opportunity to air their views on the issues, the Program was designed to stimulate the public's interest in the election and awareness of the issues. Thus, the Program was designed to encourage people to vote (or to register to vote), and the statutory exemption applies.

Finally, the PAB's communications with its member television stations urging them to broadcast the program are exempt from being expenditures under 2 U.S.C. § 431(9)(B)(iii), which exempts "any communication by any membership organization ... to its members, ..., if such membership organization is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office". The PAB is a trade organization devoted to promoting the interests of broadcasters. It is not "organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office". Consequently, this exemption applies.

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5. Mr. Friendly's Appearance on the Program was not a "Contribution"

For the reasons set forth above, the structure of the Program and the circumstances of its production show that it was not produced "for the purpose of influencing a federal election" and that it did not expressly advocate the election or defeat of a specific candidate. Thus, Mr. Friendly's appearance on the Program was not a "contribution" on his part.

Further, the statutory definition of a "contribution" excludes "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee". 2 U.S.C. § 431(8)(B)(i). Assuming, purely for the sake of argument, that Mr. Friendly's appearance on the Program should be deemed to have been "on behalf of a candidate or political committee", the value of that appearance would have been exempt from being a "contribution" because Mr. Friendly was not compensated for his appearance.

6. Mr. Friendly's Appearance on the Program was not an "Expenditure"

As explained above, the structure of the Program and the circumstances of its production show that it was not produced "for the purpose of influencing a federal election" and that it did not expressly advocate the election or defeat of a specific candidate.

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Rather, Mr. Friendly's appearance on the Program was part of a non-partisan activity designed to stimulate interest in the special senatorial election and to encourage individuals to vote (or to register to vote). Thus, Mr. Friendly's appearance on the Program was not an "expenditure" on his part.

WHEREFORE, for the foregoing reasons, the Pennsylvania Association of Broadcasters, Mr. Wyckoff, and Mr. Friendly respectfully urge the Commission to dismiss the Amended Complaint.

Respectfully submitted,

ROTHMAN GORDON FOREMAN
& GROUDINE, P.C.

Frederick A. Polner, Esquire

John R. Fielding, Esquire

Attorneys for the Pennsylvania Association of Broadcasters, Mr. Richard Wyckoff, and for Mr. Fred Friendly

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EXHIBIT "A"

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM D. WHITE, Plaintiff, v. PENNSYLVANIA ASSOCIATION OF BROADCASTERS, RICHARD WYCKOFF, President, FRED FRIENDLY, and WPXI TELEVISION CHANNEL 11, JOHN A. HOWELL III, General Manager, Defendants.	)	Civil Action No. 92-0979

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT -9 PM 3:24

ORDER

AND NOW, this 15th day of September, 1992, after consideration of the submissions of the parties,

IT IS ORDERED that the motions of defendants, the Pennsylvania Association of Broadcasters, Richard Wyckoff, Fred Friendly, WPXI Television Channel 11, and John A. Howell III, to dismiss the complaint for failure to state a claim upon which relief can be granted be and hereby is granted.

IT IS FURTHER ORDERED that the pendent state-law claims will be dismissed without prejudice.

IT IS FURTHER ORDERED that the motions of plaintiff for costs, recusal, joinder and investigation of the Federal Elections Commission and joinder of the Federal Communications Commission be and hereby are denied as frivolous, vexatious and without basis in law or fact.

Donald E. Ziegler
United States District Judge

cc: counsel of record

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response of Pennsylvania Association of Broadcasters, Richard Wyckoff, and Fred Freindly to Petitioner's Amended Complaint and Investigation was served upon the following individual via First Class Mail, postage prepaid, this 8th day of October, 1992:

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

John R. Fielding, Esquire

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

Oct 14 11 51 AM '92

11 Television Hill
Pittsburgh, PA 15214-1400
412 237-1100
FAX 412 323-8097

October 5, 1992

Mr. Richard Zanfardino
Federal Election Commission
999 E Street, N.W.
Washington, PA 20463

92 OCT 14 PM 4:
RECEIVED
FEDERAL ELECTION COMMISSION

RE: MUR 3612

Dear Mr. Zanfardino:

By letter of September 21, 1992, I received from Jonathan A. Bernstein, Assistant General Counsel of the Federal Election Commission, a copy of a Complaint filed with the Commission on September 16, 1992 by one William D. White. Names as respondents are Senator Harris Wofford, former Attorney General Richard Thornburg, the Pennsylvania Association of Broadcasters, its president, Richard Wyckoff, journalist Fred Friendly, and WPXI Television. Mr. White also names as a respondent "John A. Hallow, III." Though he does not identify the respondents, he has previously used the name Hallow to refer to me. Mr. White appears to complain of the broadcast of a 1991 debate between Messrs. Wofford and Thornburg, then candidates for the United States Senate. Mr. Bernstein's letter indicates that you are the FEC staff member assigned to this matter.

Mr. White's Complaint appears to be entirely without merit. While WPXI hopes the Commission will see fit to dismiss the Complaint summarily, we stand ready to assist the Commission in any investigation it chooses to undertake.

Attached for your records are copies of the Memorandum Opinion and the Order of United States District Judge Donald E. Ziegler dismissing the lawsuit referenced by Mr. White on page 3 of his Complaint. Also attached is a Statement of Designation of Counsel identifying Jonathan D. Hart of Dow, Lohnes & Albertson, Washington, D.C. as counsel for WPXI. Please contact Mr. Hart at (202) 857-2819 with any further questions you may have on this matter.

I appreciate your assistance.

Sincerely,

John A. Howell, III
Vice President/General Manger

JAH/moc

Enclosures

cc: John Hart
Dow, Lohnes & Albertson

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM D. WHITE, Plaintiff, v. PENNSYLVANIA ASSOCIATION OF BROADCASTERS, RICHARD WYCKOFF, President, FRED FRIENDLY and WPXI TELEVISION CHANNEL 11, JOHN A. HOWELL III, General Manager,[1] Defendants.	)	Civil Action No. 92-0979

MEMORANDUM OPINION

Ziegler, District Judge.

The motions of defendants, Pennsylvania Association of Broadcasters, Richard Wyckoff, Fred Friendly, WPXI Television Channel 11, and John A. Howell III, to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12 (b)(6), will be granted for the following reasons:

(1) Plaintiff's claim that defendants, Richard Wyckoff and the Pennsylvania Association of Broadcasters, violated the Federal Elections Campaign Act will be dismissed because the Federal Elections Commission is vested with exclusive power to initiate civil actions under the Act. 2 U.S.C. §§ 437c (b)(1), &

---

1. The Complaint lists "John A. Hallow III, General Manager" as a defendant. Defendants WPXI and Howell point out that the General Manager of WPXI was John A. Howell III. Plaintiff subsequently amended the caption.

437d (e); see also National Republican Congressional Committee v. Legi-Tech Corp., 795 F.2d 190 (D.C. Cir. 1986). Because no private right of action is provided under the Federal Elections Campaign Act, we will dismiss this claim for failure to state a claim. See Arroyo-Torres v. Ponce Federal Bank, F.B.S., 918 F.2d 276, 280 (1st Cir. 1990).

(2) Plaintiff's claim under 47 U.S.C. § 315 must be dismissed because there is no private cause of action for an alleged violation of the equal time provision of the Communications Act. See DeYoung v. Patten, 898 F.2d 628 (8th Cir. 1990).[2]

(3) Plaintiff's claims based on the First Amendment against defendants Wyckoff, Friendly, Howell, and the Pennsylvania Association of Broadcasters will be dismissed for want of state action. See Public Utilities Comm'n v. Pollak, 343 U.S. 451 (1952). Plaintiff's First Amendment claims against WPXI will also be dismissed for want of state action because a broadcaster is not an instrumentality of the government for First Amendment purposes. See Belluso v. Turner Communications Corp., 633 F.2d 393 (1980). Moreover, White's contention that he has a right of access to the broadcast facilities of WPXI and that because he was denied such access, he and other citizens of Pennsylvania have been "denied the free exercise of the First Amendment Freedom of Association effectively defrauding all of

---

2. Even if the Communications Act did provide a private cause of action, White has not alleged that he is within the class of persons designed to be protected by the statute, i.e. a legally qualified candidate. See generally 25 Pa.C.S.A. § 2911.

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the Right To Vote for the candidate of their choice"[3] fails to state a claim upon which relief can be granted. See Johnson v. F.C.C., 829 F.2d 157 (D.C. Cir. 1987).

(4) Plaintiff's pendent state-law claims for alleged fraud, conspiracy, undue influence, and deceit, have no independent jurisdictional basis and will therefore be dismissed for lack of subject-matter jurisdiction because William White has failed to state any cognizable federal claim. See Lovell Mfg. v. Export-Import Bank of U.S., 843 F.2d 725 (3d Cir. 1988).

Defendants' motions to dismiss will be granted. A written order will follow.

DATED: September 15, 1992

Donald E. Ziegler
United States District Judge

cc: counsel of record

3. See Complaint, page 4.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3612

NAME OF COUNSEL: Jonathan D. Hart

ADDRESS: Dow, Lohnes & Albertson
1255 - 23rd Street, N.W., Suite 500
Washington, D.C. 20037

TELEPHONE: (202) 857-2819

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Oct 5, 92
Date

Signature

RESPONDENT'S NAME: WPXI Television

ADDRESS: 11 Television Hill
Pittsburgh, PA 15214.

HOME PHONE:

BUSINESS PHONE: (412) 237-1110

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

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October 9, 1992

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OFFICE OF GENERAL COUNSEL

92 OCT 15 PM 5:09

Richard M. Zanfardino
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3612

Dear Mr. Zanfardino:

On behalf of Senator Harris Wofford, we request an extension of time to respond to the complaint filed by Mr. William White. Due to the recent designation of Perkins Coie as counsel (attached), we do not have an adequate opportunity to respond. An extension of time is necessary in order to review the record, have an adequate opportunity to discuss the issues with our client, collect factual information, and prepare a comprehensive response. Therefore we are requesting an extension until November 9.

Very truly yours,

B. Holly Schadler

Attachment

BHS:mah

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[16568-0001/DA922830.046]

TELEX: 44-0277 PCSO UI • FACSIMILE: (202) 434-1690
ANCHORAGE • BELLEVUE • LOS ANGELES • PORTLAND • SEATTLE • SPOKANE

STATEMENT OF DESIGNATION OF COUNSEL

MUR MUR 3612

NAME OF COUNSEL: Robert F. Bauer/B. Holly Schadler

ADDRESS: Perkins Coie 607 14th Street 8th Floor
Washington D.C. 20005

TELEPHONE: 202-434-1634

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT 15 PM 5:09

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10-9-92
Date

Signature

RESPONDENT'S NAME: Harris Wofford

ADDRESS: 283 Russell Senate Office Building
Washington, DC 20510

HOME PHONE:

BUSINESS PHONE: 202-224-6324

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 16, 1992

B. Holly Schadler
Perkins Coie
8th Floor
607 14th Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3612

Dear Ms. Schadler:

This is in response to your letter dated October 9, 1992, which we received on October 13, 1992, requesting an extension until November 9, 1992 to respond to the Complaint in MUR 3612. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 9, 1992.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Holly Baker

Holly Baker
Attorney

,3040955177

OGC 7380

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

November 9, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 NOV -9 PM 3:53

Lawrence M. Noble, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Attention: Richard M. Zanfardino

Re: MUR 3612 - Senator Harris Wofford

Dear Mr. Noble:

This letter constitutes the response of Senator Harris Wofford to the complaint filed by Mr. William D. White alleging violations of the Federal Election Campaign Act, as amended. Mr. White requests the Commission to investigate whether the sponsorship of a debate between Senator Harris Wofford and former Attorney General Richard Thornburgh in some manner constituted a violation of the Act.

Pennsylvania Association of Broadcasters ("PAB"), prior to the 1991 special election for United States Senate, sponsored a debate in Pennsylvania. Senator Wofford was invited to participate in the debate by PAB to discuss issues presented by moderators to provide an opportunity for voters to understand more about the candidates prior to voting in the special election. The debate was televised over several stations. Neither candidate was endorsed.

Federal Election Commission regulations expressly provide that nonpartisan tax-exempt organizations and broadcasters may stage nonpartisan candidate debates. 11 C.F.R. §§ 110.13 and 114.4. Such debates must include at least two candidates, and may not involve the promotion or advancement of one candidate over another. 11 C.F.R. § 110.13(b). The PAB's program falls squarely within this provision as a nonpartisan debate. Both Senator Wofford and Attorney General Thornburgh attended the debate and neither candidate was promoted or advanced over the other. Thus, contrary to Complainant's allegations, there was no contribution to either candidate as a result of the program.

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[16568-0001/DA923090.036]

TELEX: 44-0277 PCSO UI • FACSIMILE: (202) 434-1690
ANCHORAGE • BELLEVUE • LOS ANGELES • PORTLAND • SEATTLE • SPOKANE

The final issue raised by Mr. White is whether PAB was required to provide equal time to him as a write-in candidate for the United States Senate. The broadcast of a debate by a station does not constitute a "use", thus it did not trigger any equal time requirement. Moreover, even if the debate had constituted a "use", this is not an issue properly brought before the Federal Election Commission since "uses" of a broadcast station are regulated under the Federal Communications Act.

We ask the Commission to dismiss this complaint with no further action.

Very truly yours,

B. Holly Schadler

BHS:mah

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MUR 3714

COMPLAINT - NOVEMBER 23, 1992

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Nov '23 10 17 AM '92

William D. White
petitioner,

-vs-

Senator Arlen Specter
Lynn Yeakel
Pennsylvania Association of Broadcasters,
KDKA Television Channel 2,
respondents,

MUR 3714

SENSITIVE

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COMPLAINT

The above named respondents produced and distributed a program on behalf of Incumbent Senate Candidate Arlen Specter and Senate candidate Lynn Yeakel which is an in-kind and a prohibited contribution to the campaigns of Mr. Specter and Ms. Yeakel.

2 U.S.C. 431(8) - $100.7(a)(1) defines a contribution as "...anything of value made by any person for the purpose of influencing any election for federal office...".

2 U.S.C. 431(8) - $100.7(a)(E)(iii)(A) defines *anything of value* as including "all in-kind contributions" and that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution." Examples cited in this regulation of goods and services include "facilities, equipment, supplies, personnel, advertising services, membership lists..."

In coordination with the Specter and Yeakel campaigns, KDKA and the Pennsylvania Association of Broadcasters produced a live, hour-long debate format program. This program featured only Arlen Specter and Lynn Yeakel. KDKA provided studio facilities and satellite links, at the request of the Pennsylvania Association of Broadcasters, in order to distribute the program as widely as possible. The intent of the live, satellite distribution was to avoid gathering any information as to who received and further distributed the program. KDKA refused to provide a similar or identical format presentation by the petitioner in spite of numerous requests.

Although KDKA characterizes this broadcast as a news event, it still represents a substantial contribution to the campaign of a clearly identified candidate.

As a news event, there was no attempt made to provide the

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"reasonably equal coverage to all opposing candidates in the circulation or listening area" required under § 100.7(b)(2)(ii) to exempt the event from contribution reporting requirements.

Additionally, KDKA gave substantial numbers of promotional announcements to the event and frequently featured Mr. Specter and Ms. Yeakel in their news reporting of the U.S. Senate campaign while deliberately omitting all mention of the petitioner in news broadcasts about the U.S. Senate campaign.

As an FCC licensee and business organization (Group W Television, Inc.) not registered with the Federal Election Commission as a political organization, KDKA is prohibited from making political contributions to specific candidates under these circumstances.

A knowledgeable employee of KDKA has stated that "free" news coverage of the petitioner would not be provided, as this would "invalidate" the time paid for by other candidates.

The political Account Executive for KDKA, Lonnie Mae Stetz, characterized the use of the studio and satellite link facilities of KDKA as a "contribution" and a "donation" to the Specter and Yeakel campaigns.

The attorney for KDKA stated that the station was prohibited from making "contributions" to the petitioner's campaign and that "nothing" done by way of public appearance or presentation of the petitioner would be considered "news".

The Pennsylvania Association of Broadcasters is not registered as a political organization with the Federal Election Commission and is prohibited from making contributions to specific candidates.

Mr. Richard Wyckoff, the President of the PAB, claiming to be an attorney and having practiced as a attorney at the Federal Communications Commission, has repeatedly refused to allow the petitioner to participate in the events that his organization sponsors. Mr. Wyckoff is well aware of the FCC requirements for "reasonable access" and "equal time" to opposing candidates.

Mr. Wyckoff has repeatedly refused to provide a list of member broadcasters or distributors of his organizations political programming, preferring to conduct this business in secret from

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the public and the petitioner.

Mr. Wyckoff's actions should be investigated for criminal interference with federal elections and fraud. He has taken it upon himself to determine who may or may not be a candidate for federal office and abused his position to deceive the electorate as to its' choices in federal elections, specifically elections for U.S. Senator.

A copy of this complaint has been served, via First Class United States Mail, postage pre-paid, on November 17, 1992 to the following;

Mr. Joe Beranger
Group W Television, Inc.
One Gateway Center
Pittsburgh, Pa. 15222

Senator Arlen Specter
Pittsburgh Area Office
1000 Liberty Avenue
Pittsburgh, Pa. 15230

Lynn Yeakel for U.S.Senate
Pittsburgh Area Office
401 Wood Street
11th floor
Pittsburgh, Pa. 15222

Pennsylvania Association of Broadcasters
Mr. Richard Wyckoff, President
P.O.Box 4669
Harrisburg, Pa. 17111

I, William D. White, swear that the foregoing is correct and true to the best of my knowledge.

William D White

William D. White, petitioner
16 East Manilla Avenue
Pittsburgh, Pa. 15220
412-922-3834

Subscribed and sworn to before me

on this 19th day of November, 1992

Susan P. Kazorowski

Notarial Seal
Susan P. Kazorowski, Notary Public
Fairbury, Allegheny County
My Commission Expires July 26, 1993

Member, Pennsylvania Association of Notaries

9304095518 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

RE: MUR 3714

Dear Mr. White:

This letter acknowledges receipt on November 23, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate, and Sidney Rosenblatt, as treasurer, the Honorable Arlen Specter, Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, KDKA (Channel 2), Richard Wyckoff and the Pennsylvania Association of Broadcasters. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

23040955184

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

The Honorable Arlen Specter
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

RE: MUR 3714

Dear Mr. Specter:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

23040955186

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

Stephen J. Harmelin, Treasurer
Citizens for Arlen Specter
6th & Walnut Streets
Suite 860
Curtis Center
Philadelphia, PA 19106

RE: MUR 3714

Dear Mr. Harmelin:

The Federal Election Commission received a complaint which indicates that Citizens for Arlen Specter ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: The Honorable Arlen Specter

23040955188

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

Lynn Hardy Yeakel
257 S. Ithan Avenue
Rosemont, PA 19010

RE: MUR 3714

Dear Ms. Yeakel:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

Sidney Rosenblatt, Treasurer
Lynn Yeakel for U.S. Senate
304 C Lombard Street
Philadelphia, PA 19147

RE: MUR 3714

Dear Mr. Rosenblatt:

The Federal Election Commission received a complaint which indicates that Lynn Yeakel for U.S. Senate ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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23040955191

If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

23040955192

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

KDKA (Channel 2)
One Gateway Center
Pittsburgh, PA 15222

RE: MUR 3714

Dear Sir of Madam:

The Federal Election Commission received a complaint which indicates that KDKA (Channel 2) may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against KDKA (Channel 2) in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

23040955194

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

Richard Wyckoff
Pennsylvania Association of Broadcasters
P.O. Box 4669
Harrisburgh, PA 17111

RE: MUR 3714

Dear Mr. Wyckoff:

The Federal Election Commission received a complaint which indicates that the Pennsylvania Association of Broadcasters and you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3714. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Pennsylvania Association of Broadcasters and you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa E. Klein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

Dec 15 10 18 AM '92

STEPHEN A. HILDEBRANDT
Chief Counsel

GROUP W

WESTINGHOUSE BROADCASTING COMPANY, INC.
1025 CONNECTICUT AVENUE, N.W., SUITE 506
WASHINGTON, D.C. 20036-5405 (202) 857-5155

December 14, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
92 DEC 15 AM 11:37

Craig D. Reffner, Esquire
Attorney
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3714

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Dear Mr. Reffner:

I am Chief Counsel of Westinghouse Broadcasting Company, Inc., owner of television station KDKA-TV, Pittsburgh, Pennsylvania, and am in receipt of the Federal Election Commission's letter to this station dated November 30, 1992 in the above-referenced matter. Pursuant to Commission procedures, we are responding to a complaint by petitioner William D. White, filed November 19, 1992, in which petitioner claims that the station violated the Federal Election Campaign Act of 1971.

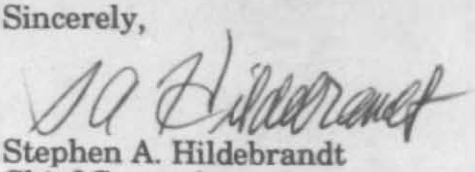
On October 3, 1992, KDKA broadcast and distributed, via satellite to other Pennsylvania television stations, a live debate between the state's Republican and Democratic U.S. Senatorial candidates. The petitioner, a third party candidate for this office, claims that he was denied participation in this debate. He further asserts that KDKA's broadcast of this event constitutes the station's "substantial" contribution to the campaign of "a clearly identified candidate." In actuality, the format of the debate and choice of participants were decisions of the Pennsylvania Association of Broadcasters and the League of Women Voters only.

KDKA's role in this debate was restricted to providing studio production, broadcasting and distributing the debate for the sponsors. This was done as a public service to the voters of Pennsylvania and as part of the station's public service programming requirements under Federal Communications Commission regulations. The station did not represent itself as a sponsor of the debate, nor did it extend invitations to the candidates.

KDKA's decision to telecast this debate was made by its News Department which viewed the debate as a bona fide news event of significant interest to KDKA's viewers. The broadcast provided our audience with important information on the positions of the two leading candidates for the Senate in Pennsylvania. In other words, it clearly served the public interest. If the Commission were to find that news coverage of candidates constituted contribution to those campaigns, the primary source of information to voters would be cut off. This is certainly not the intent of the law, nor could such an interpretation withstand First Amendment scrutiny.

If you have any questions relating to this matter, please feel free to contact me.

Sincerely,



Stephen A. Hildebrandt
Chief Counsel

23040955198

RECEIVED
FEDERAL ELECTION COMMISSION
92 DEC 15 AM 11:43

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3714

NAME OF COUNSEL: Stephen A. Hildebrandt, Chief Counsel

ADDRESS: Westinghouse Broadcasting Company, Inc.
1025 Connecticut Avenue, N.W. Suite 506
Washington, DC 20036-5405

TELEPHONE: (202) 857-5155

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

December 14, 1992
Date

S A Hildebrandt
Signature

RESPONDENT'S NAME: Stephen A. Hildebrandt, Assistant Secretary

ADDRESS: Westinghouse Broadcasting Company, Inc.
1025 Connecticut Avenue, N.W. Suite 506
Washington, D.C. 20036-5405

TELEPHONE: HOME( )
BUSINESS(202) 857-5155

7304095519 9

MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
2000 ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103-6993
TELEPHONE: (215) 963-5000
FAX: (215) 963-5299

PHILADELPHIA
LOS ANGELES
MIAMI
LONDON
FRANKFURT

WASHINGTON
NEW YORK
HARRISBURG
SAN DIEGO
BRUSSELS
TOKYO

GREGORY M. HARVEY
DIAL DIRECT (215) 963-5427

FEDERAL ELECTION COMMISSION
MAIL SERVICE CENTER
DEC 16 1 39 PM '92

December 15, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3714

Greetings:

Enclosed please find a fully-executed Statement of Designation of Counsel regarding the above-captioned matters.

Respectfully yours,

Gregory M. Harvey

GMH:pg
enclosure

92 DEC 16 PM 3:15

93040955200

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3714

NAME OF COUNSEL: GREGORY M. HARVEY

ADDRESS: 2000 ONE LOGAN SQUARE
PHILADELPHIA, PA 19103-6993

TELEPHONE: (215) 963-5427

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12/1/92
Date

Lynn Hardy Yeakel
Signature

RESPONDENT'S NAME: LYNN HARDY YEAKEL

ADDRESS: 1735 MARKET STREET, 35TH FLOOR
PHILADELPHIA, PA 19103

TELEPHONE: HOME(215) 525-3143
BUSINESS(215) 994-1330

92DEC 1 PM 3:13

23040955201

LAW OFFICES

OBERMAYER, REBMANN, MAXWELL & HIPPEL

PACKARD BUILDING - 14TH FLOOR
S.E. CORNER 15TH AND CHESTNUT STREETS
PHILADELPHIA, PA. 19102-2688

(215) 665-3000
FAX (215) 569-1586

MARTIN WEINBERG
PETER M. BREITLING
ROBERT I. WHITELAW***
E. PARRY WARNER
JAMES M. PENNY, JR.
H. CRAIG LEWIS
THORLEY C. MILLS, JR.**
WARREN W. AYRES
CHARLES H. GOLDEN
THOMAS A. LEONARD
LOUIS B. KUPPERMAN
JOSEPH P. DOUGHER
PAUL S. DIAMOND
ANN G. VERBER***
JEFFREY S. BATOFF*
SCOTT E. DENMAN
VICTOR ALAN YOUNG
CATHLEEN C. MYERS
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MICHAEL C. RICHMAN
RUTH RUDBARG WESSEL
DANIEL P. FINEGAN*
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J. ROBERT STOLTZFUS
J. ERIC RATHBURN
BETH GOLDEN FRIEDER
JAMES R. THOMPSON*
JONATHAN H. NEWMAN***
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ROGER P. CAMERON*
JOHN V. O'HARA*
D. MADELAINE MILLER*
JOHN D. BENSON*
KIRSTEN WELTGE*
KATHERINE V. WIANT*

PAUL C. HEINTZ
HUGH C. SUTHERLAND
ROBERT A. MACDONNELL
JEFFREY B. ROTWITT
GREGORY D. SAPUTELLI*
KENNETH L. OLIVER, JR.
JOHN J. EHLINGER, JR.
MARK A. LUBLIN
JAMES W. BAUMBACH
STEPHEN D. SCHRIER*
JOSEPH J. McGOVERN+ + +
JULIUS M. STEINER
LAWRENCE J. TABAS
DOUGLAS A. CROCKETT
W. ATLEE DAVIS, III***
PAUL N. ALLEN
ANASTASIUS EFSTRATIADES +
JERALD S. BATOFF
ALLEN WEINBERG
LARRY BESNOFF
MICHAEL P. WEINSTEIN + +
JOHN E. RYAN
MARJORIE H. GORDON
RONNIE L. BLOOM
JACQUELINE T. SHULMAN*
EDMOND M. GEORGE*
ELIZABETH D. SHEVLIN*
NICHOLAS PODUSLENKO*
THOMAS P. WILD*
STEVEN A. HABER +
DENISE H. CANUSO*
JOEL R. SPIVACK***
SUSAN M. SYGENDA*
CATHERINE C. PYUNE*
JULIE A. WILLIAMSON*

OF COUNSEL
RICHARD W. THORINGTON
FRANK E. HAHN, JR.

204 STATE STREET
HARRISBURG, PA. 17101
(717) 234-9730

TWO KINGS HIGHWAY WEST
HADDONFIELD, NJ 08033
(609) 795-3300

50 TRENTON ROAD
FAIRLESS HILLS, PA. 19030
(215) 949-1488

DIRECT DIAL: 665-

* ALSO MEMBER OF NEW JERSEY BAR
** ALSO MEMBER OF OHIO BAR
*** ALSO MEMBER OF D.C. BAR
\+ ALSO MEMBER OF N.J. BAR AND D.C. BAR
\+ + ALSO MEMBER OF N.J. & FLORIDA BAR
\+ + + ALSO MEMBER D.C. AND MASSACHUSETTS BAR

December 15, 1992

VIA FEDERAL EXPRESS

Craig D. Reffner, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matters Under Review 3714

Dear Mr. Reffner:

As we have discussed, on behalf of Citizens for Arlen Specter ("CAS"), I am submitting this letter response to the "complaints" filed in the above-captioned Matters Under Review. I have also included designation of counsel forms for each matter.

CAS believes that these complaints are frivolous and, indeed, abusive. William White -- apparently an unsuccessful senatorial candidate -- raises the same legal "issue": whether the coverage and participation of the media, the press, and citizens groups respecting Pennsylvania's 1992 Senatorial Election somehow constituted prohibited "in-kind" contributions under the

Federal Election Code. The Federal Election Commission ("the Commission") must reject this plainly frivolous contention, as it would grossly impair constitutionally protected activity. To the extent that CAS is obligated to respond further to each MUR, it incorporates its response in MUR 3710, a copy of which I have included for your convenience. In sum, the Commission should dismiss each matter as to CAS for the following reasons:

MUR 3714. Finally, White alleges that the production, distribution, and coverage of the debate between Senator Specter and Ms. Yeakel constituted a prohibited "in-kind" contribution. Again, the law provides exactly the opposite. 11 CFR §§100.7(b)(2), 100.8(b)(2). See §431(a)(B).

In sum, CAS reiterates that these "complaints," insofar as they are directed against CAS, are frivolous and abusive. It is manifest that the actions complained of are constitutionally protected discussion and debate respecting the Senatorial Election. See generally Bemis Pentecostal Church v. State of Tennessee, 731 S.W.2d 897, 905 (Tenn. 1987). Accordingly, the Commission should dismiss all the complaints as to CAS.

Respectfully,

Paul S. Diamond

Paul S. Diamond

PSD:mem

9304095520 3

LAW OFFICES

OBERMAYER, REBMANN, MAXWELL & HIPPEL

PACKARD BUILDING - 14TH FLOOR

S.E. CORNER 15TH AND CHESTNUT STREETS

PHILADELPHIA, PA. 19102-2688

(215) 665-3000

FAX (215) 665-6666

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STEPHEN G. SCHRIER*
JOSEPH J. McGOVERN+++
JULIUS H. STEINER
LAWRENCE J. TABAS
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W. ATLEE DAVIS, III***
PAUL H. ALLEN
ANASTASIOS G. STRATIADES+
JERALD S. BATOFF
ALLEN WEINBERG
LARRY SEBNOFF
MICHAEL P. WEINSTEIN++
JOHN E. RYAN
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THOMAS P. WILD*
STEVEN A. HABER+
DENISE H. CANUSO*
JOEL R. SPIVACK***
SUSAN M. SYGENDA*
CATHERINE C. PYLINE*
JULIE A. WILLIAMSON*

OF COUNSEL
RICHARD W. THORNINGTON
FRANK E. HAHN, JR.

204 STATE STREET
HARRISBURG, PA. 17101
(717) 234-0730

TWO KINGS HIGHWAY WEST
HADDONFIELD, NJ 08033
(609) 795-3300

90 TRENTON ROAD
FAIRLESS HILLS, PA. 19030
(215) 943-1455

DIRECT DIAL: 665-

* ALSO MEMBER OF NEW JERSEY BAR
** ALSO MEMBER OF OHIO BAR
*** ALSO MEMBER OF D.C. BAR
+ ALSO MEMBER OF N.J. BAR AND D.C. BAR
++ ALSO MEMBER OF N.J. & FLORIDA BAR
+++ ALSO MEMBER D.C. AND MASSACHUSETTS BAR

December 11, 1992

92 DEC 16 PM 3:16

VIA FEDERAL EXPRESS

Lisa E. Klein, Esquire
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3710

Dear Ms. Klein:

On behalf of the Citizens For Arlen Specter ("CAS"), I am writing in response to your November 14, 1992 letter.

William White -- apparently an unsuccessful senatorial candidate -- "complains" that CAS received an "in-kind contribution" purportedly "prohibited" by law when WPXI-TV "produced a live, hour-long telephone interview program" featuring Senator Specter. See 2 U.S.C. §431(8). The Federal Election Commission's ("the Commission's") regulations explicitly provide that the costs incurred by the kind of news program at issue here

are neither "contributions" nor "expenditures" within the meaning of the Federal Election Campaign Act. 11 C.F.R. §§100.7(b)(2), 100.8(b)(2). See 2 U.S.C. §431(9)(B). Indeed, any contrary suggestion would imperil legitimate news coverage and public debate respecting federal elections and thus certainly violate the Constitution. See generally Bemis Pentecostal Church v. State of Tennessee, 731 S.W.2d 897, 905 (Tenn. 1987).

Accordingly, because it is manifest that CAS has complied with the law, the Commission should immediately dismiss the White complaint.

Respectfully,

Paul S. Diamond

Paul S. Diamond

PSD:mem

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3714

NAME OF COUNSEL: Paul S. Diamond, Esquire

ADDRESS: Obermayer, Rebmann, Maxwell & Hippel
14th Floor, Packard Building
Philadelphia, PA 19102-2688

TELEPHONE: (215) 665-3000

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12/1/92
Date

Patrick Meehan
Signature

RESPONDENT'S NAME: Citizens for Arlen Specter
By: Patrick L. Meehan, Esquire
Campaign Manager

ADDRESS: 8th Floor, Curtis Center
Philadelphia, PA 19107

TELEPHONE: HOME(---) ----------
BUSINESS(215) 574-1992

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Dec 24 9 13 AM '92

PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

FEDERAL ELECTION COMMISSION
92 DEC 24 AM 11:56

December 22, 1992

Mr. Craig D. Reffner
Federal Election Commission
999 E. Street NW
Washington, D.C. 20463

RE: White vs. Pennsylvania Association of Broadcasters et al
MUR NO. 3714

Dear Mr. Reffner:

Enclosed please find 4 copies of the Response of Pennsylvania Association of Broadcasters and Richard Wyckoff to Petitioner's Compaint.

If any further information should be needed, please feel free to contact me.

Sincerely,

Richard E. Wyckoff

Richard E. Wyckoff

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BEFORE THE FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

WILLIAM D. WHITE,

Petitioner,

v

SENATOR ARLEN SPECTER,
LYNN YEAKEL,
PENNSYLVANIA ASSOCIATION OF BROADCASTERS,
KDKA TELEVISION CHANNEL 2,

Respondents.

MUR 3714

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RESPONSE OF PENNSYLVANIA ASSOCIATION OF BROADCASTERS TO PETITIONER'S

AND NOW, come the Pennsylvania Association of Broadcasters (hereinafter, "PAB") and Richard Wyckoff, PAB President (hereinafter, "Mr. Wyckoff" and hereby files this response to the Petitioner's Complaint (hereinafter, the "Complaint").

I. RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

It is admitted that an election was held in November of 1992 for U.S. Senator of Pennsylvania. It is admitted that the Pennsylvania League of Women Voters (hereinafter, "League") and the PAB coproduced an hour-length debate program (hereinafter, the "Program") that

featured Senator Specter and Ms. Lynn Yeakel. It is admitted that the PAB urged its member television stations to broadcast the Program.

It is specifically denied that the PAB or member stations "produced and distributed a program on behalf of Incumbent Senator Candidate Arlen Specter and Senate Candidate Lynn Yeakel." The debate was produced on behalf of the voters of Pennsylvania so that they might better understand the issues.

The PAB and Mr. Wyckoff are not broadcast stations and without knowledge and information sufficient to form a belief as to whether Petitioner requested reasonable access or equal use of facilities and was denied by any or all broadcasters, and said allegation is therefore denied. 1/ It is admitted that the PAB is not

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1/ Section 315 of the Communications Act imposes specific "equal opportunities" requirements on broadcast stations licensed by the Federal Communications Commission ("FCC"). The FCC, and not the Federal Election Commission, is responsible for enforcing the Communications Act. The FCC has permitted broadcasters to air debates between two opposing candidates, exempt from "equal opportunities" requirements, provided that the debates are bona fide news events. This is the case even when the debate is sponsored by the broadcaster. In re Petitions of Henry Geller, 95 FCC2d 1236 (1983), affirmed sub nom. League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1984). Even if a broadcaster sponsors a debate, the broadcaster can exercise its discretion to restrict participation to those candidates that the broadcaster, in its good faith judgment, believes are most newsworthy. Sonia Johnson and Richard Walton, 56 RR2d 1533 (1984), affirmed sub nom. Johnson v. FCC, 829 F. 2d 157 (D.C. Cir. 1987).

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registered as a political organization with the Federal Elections Commission. It is denied that the PAB or Mr. Wyckoff has "repeatedly refused to allow the Petitioner to participate in the events that organization sponsors." It is admitted that Mr. Wyckoff refused to respond to Petitioner's sole inquiry concerning PAB membership and the distribution of the program. Any and all other allegations concerning PAB's preferences "to conduct this business in secret from the public and petitioner" are denied. It is denied that Mr. Wyckoff has "taken it upon himself to determine who may or may not be a candidate for federal office and abused his position to deceive the electorate as to its choices in federal elections, specifically elections for U.S. Senator."

Any and all remaining allegations contained in Petitioner's Complaint are denied.

II. FURTHER RESPONSE ON BEHALF OF THE PAB AND MR. WYCKOFF

A. THE FACTUAL BACKGROUND OF THE DISPUTE:

An election was held in November 1992 in Pennsylvania to fill the seat for United States Senator from Pennsylvania. Senator Arlen Specter was the candidate of the Republican Party in that election, and Mrs. Lynn Yeakel was the candidate of the Democratic Party.

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The PAB is the oldest statewide trade association of radio and television broadcasters in the country and is the major trade association of broadcasters in Pennsylvania. The PAB is a non-profit unincorporated association, and it does not have benefits that inure to particular members or "shareholders".

As a public service, Pennsylvania League of Women Voters and the PAB invited Senator Specter and Ms Yeakel to participate in an hour-long debate (hereinafter, the "Program"). Both candidates accepted PAB/League's invitation.

Petitioner contends PAB has "repeatedly refused to allow him to participate in events..." PAB has spoken with Petitioner only once, one hour before a 1991 PAB sponsored debate/discussion between Mr. Richard Thornburgh and Harris Wofford to fill the seat vacated by the death of Senator Heinz. PAB had no knowledge of Mr. White's candidacy prior to the hour before the program.

Mr. White subsequently filed suit against PAB and Mr. Wyckoff in the United States District Court for the Western District of Pennsylvania at D.C. No. 92-0279, alleging similar complaints expressed herein. That suit was dismissed for failure to state a course of action for which relief could be granted. (See order attached hereto as Exhibit "A").

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Petitioner also filed and has pending an almost identical complaint to the present one against Wyckoff and the PAB before the Federal Election Commission concerning PAB's 1991 senatorial program featuring Messers. Wofford and Thronburgh (see MUR 3612).

As for the complaint before us now, the Specter/Yeakel program was produced by PAB. PAB urged member and non-member stations to broadcast the Program as a newsworthy service to the public. The PAB did not purchase broadcast time for the program on any station.

The program was a debate moderated by Mr. Malcomb Poindexter, (KYW-TV, Philadelphia). As noted, while PAB encouraged stations to cover this program as newsworthy, whether the program would be aired, at what time and by whom was all left up to each individual station.

The Petitioner made no contact with PAB or Mr. Wyckoff prior to the program. Mr. Wyckoff and PAB had no knowledge of Mr. White's candidacy and is still uncertain as to whether Petitioner has met the necessary requirements to run for the Senatorial seat either on the ballot or as a writein. Had Petitioner requested an opportunity to participate, he would have had to meet the requirements established by the Pennsylvania League of Women Voters and PAB to ensure the candidate has qualified to run and is electable. Petitioner never contacted PAB regarding the PAB Senate Debate in question. Mr. Wyckoff and PAB had no knowledge of Mr. White's candidacy, if in fact it ever existed.

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B. DISCUSSION OF LEGAL ISSUES:

1. The Definition of "Contribution" Applicable to This Case

The term " contribution" is defined in the Federal Election Campaign Act at 2 U.S.C. 431 (8). In relevant part, that definition is:

> (8) (A) The term "contribution" includes -
>
> (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office;
>
> * * *
>
> (B) The term "contribution" does not include -
>
> (i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

This definition applies to limitations upon contributions by individuals (e.q., Mr. Wyckoff) and organizations (e.q., The PAB) to candidates or political committees. 2 U.S.C. 441 a.

2. The Definition of "Expenditure" Applicable to This Case

The term "expenditure" is defined in the Federal Election Campaign Act at 2 U.S.C. 431 (9). In relevant part, that definition is:

> (9) (A) The term "expenditure" includes -

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(i) any purchase, payment, distribution, loan, advance, deposit, or gift or money or anything of value, made by any person for the purpose of influencing any election for Federal office:

* * *

(B) The term "expenditure" does not include -

(i) any news story, commentary, or editorial distributed through the facilities of any broadcast station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) nonpartisan activity designed to encourage individuals to vote or to register to vote; [and]

(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization is not organized primarily for the purpose of influencing the nomination for election, or election of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be reported to the Commission in accordance with [2 U.S.C. 434 (a) (4) (A) (i)], and in accordance with [2 U.S.C. 434(a) (4) (A) (ii)] with respect to any general election.

This definition applies to limitations upon expenditures by individuals (e.g., Mr. Wyckoff) and organizations (e.g., the PAB) to candidates or political committees. 2 U.S.C. 441a.

3. The PAB's Producing the Program was not a "Contribution"

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For the Program to have been a "contribution", as defined in the Federal Election Campaign Act, the PAB must have produced it "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8) (A). The content and structure of the Program makes it clear that the PAB did not produce it for the purpose of swaying the election one way or another.

First, the Program was produced at the PAB's initiative. In taking the initiative, the PAB did not act at the suggestion of, or in, coordination with either the Specter or Yeakel campaigns. Rather, the PAB produced the Program as a non-partisan public service.

Second, PAB's involvement in the Program did not, in itself, help or hurt either the Yeakel and Specter campaigns. Rather, the PAB provided a neutral platform from which each candidate could air his views directly to the public. Each candidate had approximately equal opportunities for exposure during the Program. If either campaign was helped or hurt by the Program, it was not because of anything that the PAB did. Rather, if either campaign was helped or hurt by the Program, it was because the candidates helped or hurt themselves by how they appeared or by what they said.

Third, although the PAB urged various member and non-member television stations to broadcast the Program as a public service, the PAB did not buy air time on any station. Whether a given

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station broadcast the Program was up to the independent judgment of that station's management.

Thus, the structure of the Program and the way it was distributed show that the PAB did not produce the Program for the purpose of influencing the senatorial election. Rather, these things demonstrate the PAB's disinterested, nonpartisan intent to increase public awareness of the positions of the leading candidates and to increase voter turnout.

Further, the Supreme Court of the United States has held that, as a matter of constitutional law, an "expenditure" by a non-profit organization (such as PAB) must expressly advocate the election or defeat of a candidate in order to be an expenditure forbidden under 2 U.S.C. 441b. FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). Section 441b also forbids "contributions", and the Supreme Court's reasoning strongly suggests that the same restriction would apply to contributions. Because the applicable definition of "contributions" and "expenditures" is that contained at 2 U.S.C. 431, see id., 479 U.S. at 245-251, the Massachusetts Citizens for Life decision strongly suggests that the Program would be a forbidden "contribution" only if it expressly advocated the election or defeat of identifiable candidates.

Taken as a whole, the Program did not state a position of the PAB expressly advocating the election or defeat of any

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candidate. Rather, the Program was a neutral platform from which Ms. Yeakel and Senator Specter debated their views to the public.

Thus, under Massachusetts Citizens for Life, the Program was not a "contribution" forbidden by the Federal Election Campaign Act.

Finally, to hold that the Program was a contribution would be inconsistent with the intent of Congress. In 1980, in approving certain FEC regulations pertaining to candidate debates, Congress directed that a letter be sent to then FEC Chairman Tiernan which said (in relevant part):

> We understand that in approving these regulations, that the regulations will have no effect on present communications policy as expressed in Sections 312 and 315 of the Communications Act. Under no circumstances would a broadcaster in fulfilling his obligation to provide reasonable access to candidates for public office be considered to have made an illegal contribution. Similarly, a broadcaster's coverage of a candidate which is not a "use" under Section 315 of the Communications Act would under no circumstances be considered a contribution by the broadcaster.

126 Cong. Rec. 5408 (1980). This letter is consistent with the broad public policy favoring candidate debates as a way of informing the

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public of the issues and encouraging a high voter turnout. If debates were required to include all candidates, (including write-in candidates), they could become unmanageable. Thus, when the PAB reasonably restricted participation in the Program to the two most prominent senatorial candidates, it was acting consistently with (a) the intent of Congress, (b) the public interest, and (c) the law.2

4. The PAB's Producing the Program was not an "Expenditure"

Again, under the definition of an "expenditure" contained in 2 U.S.C. 431 requires that the expenditure be made "for the purpose of influencing any election for Federal office." 2 U.S.C. 431 (9) (A). The Supreme Court held in Massachusetts Citizens for Life, supra, that an expenditure by a non-profit organization must expressly advocate the election or defeat of identifiable candidates before it can constitutionally be forbidden. 479 U.S. at 249. As discussed above, the structure of the Program and the circumstances in which it was made demonstrate that the Program was not made for the purpose of influencing the election and that it did not expressly advocate the election or defeat of any candidate.

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2 See Footnote 1, supra.

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The Program also was not an "expenditure" for another reason. Because the Program showed Senator Specter and Ms. Yeakel, the two leading candidates in the senatorial election, debating the issues of the day, the Program was a bona fide news event. Section 431's definition of "expenditure" expressly excludes "any news story, commentary, or editorial distributed through the facilities of any broadcast station, . . . unless such facilities are owned or controlled by any political party, political committee or candidate". 2U.S.C. 431(9) (B) (i). Because the PAB distributed the program through independent television stations, which were not "owned or controlled by any political party, political committee, or candidate", the statutory exclusion applies.

Alternatively, the Program was exempt from being an expenditure as being a "nonpartisan activity designed to encourage individuals to vote or to register to vote". 2 U.S.C. 431 (9) (B) (ii). Because the Program was a neutral platform from which the two most prominent candidates expressed their views, and because the Program did not advocate the election or defeat of a specific candidate, the Program was a non-partisan activity. Further, by giving the two most prominent candidates the opportunity to air their views on the issues, the Program was designed to stimulate the public's interest in the election and awareness of the issues. Thus, the Program was designed to encourage people to vote (or to register to vote), and the statutory exemption applies.

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Finally, the PAB's communications with its member television stations urging them to broadcast the program are exempt from being expenditures under 2 U.S.C. 431 (9) (B) (iii), which exempts "any communication by any membership organization ... to its members, if such membership organization is not organized primarily for the purpose of influencing the nomination for election, or election of any individual to Federal office". The PAB is a trade organization devoted to promoting the interests of broadcasters. It is not "organized primarily for the purpose of influencing the nomination for election, or election of any individual to Federal office". Consequently, this exemption applies.

WHEREFORE, for the foregoing reasons, the Pennsylvania Association of Broadcasters and Mr. Wyckoff, respectfully urge the Commission to dismiss the Complaint.

Respectfully submitted,

Richard E. Wyckoff, PAB President

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EXHIBIT "A"

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM D. WHITE, Plaintiff, v. PENNSYLVANIA ASSOCIATION OF BROADCASTERS, RICHARD WYCKOFF, President, FRED FRIENDLY, and WPXI TELEVISION CHANNEL 11, JOHN A. HOWELL III, General Manager, Defendants.	)	Civil Action No. 92-0979

ORDER

AND NOW, this 15th day of September, 1992, after consideration of the submissions of the parties,

IT IS ORDERED that the motions of defendants, the Pennsylvania Association of Broadcasters, Richard Wyckoff, Fred Friendly, WPXI Television Channel 11, and John A. Howell III, to dismiss the complaint for failure to state a claim upon which relief can be granted be and hereby is granted.

IT IS FURTHER ORDERED that the pendent state-law claims will be dismissed without prejudice.

IT IS FURTHER ORDERED that the motions of plaintiff for costs, recusal, joinder and investigation of the Federal Elections Commission and joinder of the Federal Communications Commission be and hereby are denied as frivolous, vexatious and without basis in law or fact.

Donald E. Ziegler
United States District Judge

cc: counsel of record

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response of Pennsylvania Association of Broadcasters and Richard Wyckoff, to Petitioner's Complaint was served upon the following individual via First Class Mail, postage prepaid, this 22nd day of December, 1992:

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

Richard E. Wyckoff

Richard E. Wyckoff, PAB President

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MURs: 3612 & 3714
DATES COMPLAINTS RECEIVED:
9-16-92; 11-23-92
DATES OF NOTIFICATION:
9-21-92; 11-30-92
STAFF MEMBER: Xavier K. McDonnell

COMPLAINANTS: William D. White

RESPONDENTS: Richard Thornburgh
Senator Harris Wofford
Pennsylvania Association of Broadcasters and
Richard Wyckoff, President
Fred Friendly
WPXI Television and
John A. Howell, III,
Vice President/General Manager
Senator Arlen Specter
Citizens for Arlen Specter
and Stephen J. Harmelin, as treasurer
Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
KDKA-TV
League of Women Voters of Pennsylvania
and Diane Edmundson, Chair

RELEVANT STATUTES: 2 U.S.C. § 431(8)
2 U.S.C. § 431(9)
2 U.S.C. § 441a(a)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d(a)
11 C.F.R. § 100.7(b)(2)
11 C.F.R. § 100.8(b)(2)
11 C.F.R. § 110.13(a)(1)
11 C.F.R. § 114.4(e)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

These two matters were generated by complaints filed by William White alleging election law violations by the Pennsylvania Association of Broadcasters ("PAB"), debate moderator Fred Friendly, KDKA and WPXI Television in connection with a 1991

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debate between U.S. Senate candidates Richard Thornburgh and Harris Wofford, and a 1992 debate between U.S. Senate candidates Arlen Specter and Lynn Yeakel, and their authorized committees.[1] The PAB, a trade association, produced the 1991 debate and urged its members and non-member television stations to broadcast it. The PAB's response indicates that it "coproduced" the 1992 debate with the League of Women Voters of Pennsylvania ("League"), although the League's involvement was not apparent from the complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no corporation, except through a separate segregated fund, may make a contribution or expenditure in

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1. This complainant has filed numerous complaints challenging the activities of various persons in connection with Pennsylvania's 1991 and 1992 Senate elections, including MURs 3706, 3709, 3710, which the Commission closed with findings of no reason to believe on May 25, 1993. This Office recently circulated a First General Counsel's Report in MUR 3713, another matter generated by Mr. White. Complainant also filed suit in the U.S. District Court against some of these respondents, alleging the same election law violations presented in these two matters. His suit was dismissed, inter alia, for lack of jurisdiction. William D. White v. Pennsylvania Association of Broadcasters, Civ. No. 92-0979 (W.D. Pa. September 15, 1992).

In addition, complainant has filed several civil actions in U.S. District Court, including a suit challenging the constitutionality of the statute in which this agency was a party, White v. United States, Case No. 92-1202 (W.D. Pa. January 7, 1992), and others challenging Pennsylvania's method of conducting special and general elections, all of which were dismissed for lack of standing or failure to state a claim for which relief could be granted. White v. Commonwealth of Pennsylvania, Case No. 91-1059 (W.D. Pa. December 10, 1991) White v. Commonwealth of Pennsylvania, Case No. 91-1060 (W.D. Pa. October 18, 1991) affirmed, 968 F.2d 15 (3d Cir. 1992); White v. Commonwealth of Pennsylvania, Case No. 92-0710 (W.D. Pa June 24, 1992) affirmed, 983 F.2d 1054 (3d Cir. 1992). Finally, complainant has filed suit pursuant to 2 U.S.C. § 437g(a)(8)(A) in U.S. District Court with respect to the enforcement matters pending before the Commission.

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connection with any Federal election. 2 U.S.C. § 441b. Federal candidates and their authorized committees are prohibited from accepting corporate contributions. 2 U.S.C. § 441b(a). The Act states that no person shall make a contribution to any candidate and his or her authorized political committees with respect to any Federal election, which, in the aggregate, exceeds $1,000. 2 U.S.C. § 441a(a)(1)(A). Candidates and their political committees are prohibited from accepting any contributions which exceed the limitations of the Act. 2 U.S.C. § 441a(f).

The Act and the Commission's regulations exclude from the definitions of "contribution" and "expenditure," under certain conditions, costs associated with the production or dissemination of news stories, commentaries or editorials, unless the facility is owned or controlled by a political party, political committee, or candidate. 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2); see also Readers' Digest Ass'n. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981) (court, interpreting the Act, states that the media exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate).

The regulations specifically provide that candidate debates may be staged by nonprofit organizations exempt from federal taxation under 26 U.S.C. § 501(c)(3), and organizations exempt under 26 U.S.C. § 501(c)(4) which do not endorse, support or

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oppose political candidates. 11 C.F.R. § 110.13(a)(1).[2] Candidate debates may also be staged by broadcasters, bona fide newspapers, magazines or other periodical publications. 11 C.F.R. § 110.13(a)(2). The Commission's regulations exempt from the definition of "contribution" and "expenditure" "funds used to defray costs incurred in staging nonpartisan candidate debates staged in accordance with" the debate regulations set forth at 11 C.F.R. §§ 110.13 and 114.4(e). 11 C.F.R. §§ 100.7(b)(21) and 100.8(b)(23). Corporations and labor organizations may donate funds to qualified nonprofit organizations to stage candidate debates and such qualified organizations may accept such funds to defray the costs of debates staged in accordance with the applicable Commission regulations. 11 C.F.R. §§ 114.4(e)(1),(3).

Broadcasters may cover candidate debates they sponsor and debates sponsored by nonprofit corporations set forth at 11 C.F.R.

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2. A section 501(c)(3) organization is defined, in part, as a corporation, community chest, fund or foundation "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in (including the publishing or distributing of any statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3).

A section 501(c)(4) organization is defined, in part, as a civic league or organization "not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." 26 U.S.C. § 501(c)(4). The applicable regulations provide that the "promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii). In transmitting the debate regulations to Congress, the Commission stated that by permitting Section 501(c)(3) and (c)(4) organizations which are nonpartisan to stage candidate debates, "the integrity and fairness of the debate process in insured." 44 Fed. Reg. at 76,734.

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§ 110.13(a)(1) as bona fide news stories. See e.g. MUR 2567. According to the Explanation and Justification ("E&J") for the debate regulations, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ["FCC"], as well as networks." 44 Fed. Reg. 76,735 (1979). The structure of debates is left to the discretion of the staging organization, provided that they include at least two candidates, and that they are nonpartisan to the extent that they do not promote or advance one candidate over another. 11 C.F.R. § 110.13(b).

B. SUMMARY OF COMPLAINTS AND RESPONSES

In MUR 3612, complainant, who claims to have been a candidate in the 1991 Senate election in Pennsylvania, asserts that by sponsoring and broadcasting a candidate debate between only the Democratic and Republican nominees, the PAB, various broadcasters including WPXI, and debate moderator Fred Friendly, may have made a prohibited in-kind contribution to 1991 Senate candidates Richard Thornburgh and Harris Wofford, and their campaigns.

The complainant contends that he requested but was denied equal access to the broadcasting facilities "as part of a deliberate and concerted effort by the PAB," television stations and others to defeat him. Complaint in MUR 3612 at page 3. He claims that the 1991 debate "amounted to an hour long political commercial with the express purpose of advocating the election of specific candidates." Id. at pages 2-3. He also asserts that comments made by Messrs. Friendly and Wyckoff during the debate, i.e., "this is not a formal debate, its a dialogue and I hope you'll be free to talk . . . with as much ease, as you did before

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we started," a reference to the two major party candidates present at the debates as "our candidates," and their urging viewers to "vote for someone, either for Wofford or Thornburgh" are evidence that the debates were staged and that the PAB endorsed and advocated the election of the two candidates. Id. at page 2. Complainant claims "an unsubstantiated value of $100,000 has been reported in the media as the worth of this program." Id. at page 1.

In MUR 3714, complainant, who claims he was also a candidate in the 1992 Senate elections in Pennsylvania, raises allegations substantially the same as those raised in MUR 3612 against the PAB and various broadcasters, including television station KDKA, in connection with the sponsoring and broadcast of the 1992 debate between Senator Arlen Specter and Lynn Yeakel.

The PAB states that it is a non-profit trade association of radio and television broadcasters in Pennsylvania, and that no benefits inure to its members or stockholders. Attachment 1 at page 4.[3] The PAB claims to have undertaken the production and distribution of the debates as a "public service." The PAB

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3. The PAB states in its response that it is an "unincorporated" association. Attachment 1 at page 7; Attachment 2 at page 4. The Internal Revenue Service indicated during a telephone call with an FEC staff member that the PAB is listed as a Section 501(c)(6) association, not as a corporation. The Corporate Division in Pennsylvania, however, indicates that a corporation with the name PAB has been registered there since 1988. Even if the PAB is not incorporated, it would appear that its members are incorporated, and thus pay their dues to PAB using corporate funds. We additionally note that although the members of PAB are broadcasters and are thus permitted to stage and cover candidate debates themselves, the media exemption would not extend to membership dues given by broadcasters to a trade association for the purpose of promoting their corporate-business interests. See footnote 6.

asserts that it is not a broadcaster, and that it did not "actually purchase broadcast time" for the debates. Attachment 1 at page 8; Attachment 2 at page 5. The PAB further states that it "urged member and non-member television stations to broadcast" the debates as a "public service," but that whether and when the program was broadcast was up to each individual station. Attachments 1 at pages 7-8; Attachment 2 at page 5.

The PAB indicates that it "produced" the one hour long Thornburgh-Wofford debate "with its own funds," but that it is "without sufficient knowledge and information to form a belief" as to the truth of whether the airing of the debate had a value of $100,000. Attachment 2 at page 2. It is unclear from the responses whose equipment and facilities were used in connection with the staging of the 1991 debate. The PAB does not indicate what criteria it used to determine which candidates would participate in the 1991 debate, but acknowledges that it was contacted by the complainant an hour before that debate, and refused to permit him to appear. The PAB denies that the 1991 debate was "staged" and denies the candidates controlled the topics of discussion. Attachment 1 at pages 3-4. The PAB indicates that Fred Friendly acted as a volunteer when he moderated the 1991 debate, and that the PAB only paid his transportation costs. Id. at pages 3-4.

With respect to the Specter-Yeakel debate, the PAB states that it coproduced that 1992 debate with the League of Women Voters of Pennsylvania, and the debate was moderated by Malcomb Poindexter from KYW-TV. Attachment 2 at pages 1 and 5. The PAB states that it urged members and nonmembers to broadcast that debate. Id. at pages 4 and 5. The costs incurred by the PAB and

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the League in connection with the production of the 1992 debate are unknown. The response indicates that the PAB had no contact with the complainant in connection with the 1992 debate prior to that debate. Id. at page 4. The PAB asserts that it and the League set specific requirements regarding candidate participation in the 1992 debate to ensure the candidates were "qualified to run" and "electable." Id. at page 5. It appears that television station KDKA provided its studios and equipment for the 1992 debate, and broadcast the hour long debate via satellite to other Pennsylvania stations. Attachment 3 at page 1.

In both responses, the PAB denies that it coordinated with or endorsed any of the candidates, and additionally asserts that its activities are exempt from the definition of "expenditure" as either nonpartisan activities designed to encourage voting, membership communications or news stories. See 2 U.S.C. §§ 431(9)(B)(i), (ii) and (iii). The PAB also claims that its sponsorship of the debates did not constitute contributions because they were not made in coordination with candidates, and did not constitute either contributions or expenditures because the debates were not for the purpose of influencing federal elections and did not expressly advocate any candidates' election or defeat. The candidates and committees acknowledge attending the debates, but deny they violated the Act, while the broadcasters assert that coverage of the debates was permissible under the "news story" exemption. See Attachments 3 and 4.

C. **ANALYSIS**

As an initial matter, the complainant was not on the Pennsylvania ballot in connection with the 1991 or 1992 U.S. Senate elections, and he does not appear to have been a

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"candidate" within the meaning of Section 431(2) of the Act.[4] Moreover, even if Mr. White had been on the ballot and a "candidate" within the meaning of the Act, the Commission's regulations require only that debates include at least two candidates and that they be nonpartisan in that they not promote or advance one candidate over another. 11 C.F.R. § 110.13(b). Thus, there is no evidence that the PAB or the League improperly excluded complainant. In fact, the Explanation and Justification for the debate regulations explicitly states that a sponsor may invite only major party candidates. See 44 Fed. Reg. at page 76,735 (1979).[5]

Regarding the sponsorship of the debates, the Commission's regulations explicitly provide that candidate debates may be staged only by Section 501(c)(3) and (c)(4) organizations which do not endorse, support or oppose political candidates. The League

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4. As noted in footnote 1, complainant challenged Pennsylvania's candidate nomination and election process, but was unsuccessful and his name did not appear on the election ballot in either year. It is thus questionable whether complainant sought nomination for election within the meaning of Section 431(2). We also note that he indicated in a letter to the Commission that the only contribution of any significance that his authorized committee received was a $500 loan from Ruth White and that expenditures totaled "around $1,000." In addition, he filed a statement of candidacy for the 1991, but not for the 1992 election.

5. We note that a U.S. District Court has concluded that certain candidate selection criteria used by the League of Women Voters in the 1992 Presidential Primaries was not objective and calls into question the League's 501(c)(3) status. Fulani v. Brady, 809 F. Supp. 1112, 1125-1126 (S.D.N.Y. 1993); see also Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988) cert denied, 490 U.S. 1030 (1989). The objectionable criteria included whether the candidate was a "significant candidate for the Democratic party nomination," whether the candidate had obtained "recognition by national media," and "other factors" that in the "League's good faith judgment may provide substantive evidence of voter interest." Fulani, 809 F. Supp. at 1125-1126. The suit was dismissed, however, because the court could not grant the relief sought; namely to revoke the League's tax exempt status.

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of Women Voters of Pennsylvania, a nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code, would appear to be qualified to sponsor the 1992 candidate debate.

The PAB, on the other hand, is apparently tax exempt under Section 501(c)(6) of the Internal Revenue Code ("Code").[6] Whether the PAB is incorporated or unincorporated, it is not the type of nonprofit organization permitted by the Commission's regulations to sponsor candidate debates. In addition, the PAB acknowledges that it is not a broadcaster and there is no evidence that it is a network: it is not licensed with the FCC, and it is not in the business of producing or distributing television or radio programs, other than the two debates at issue.

With regard to the PAB's assertions that its sponsorship of the debates was "exempt" under Section 431(9)(B)(ii) as

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6. Section 501(c)(6) organizations include "business leagues, chambers of commerce, real-estate boards, boards of trade ... not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual." 26 U.S.C. § 501(c)(6). Such an organization is also defined as an "an association of persons having some common business interest, the purpose of which is to promote such common interest." 26 C.F.R. § 1.501(c)(6)-1. Thus, as a Section 501(c)(6) association, the PAB's apparent purpose is to promote the interests of its member stations, not, for example, to promote the "social welfare," or to carry out an "educational" purpose. Compare 26 U.S.C. § 501(c)(3) ("organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes"); 26 U.S.C. § 501(c)(4) ("operated exclusively for social welfare"). See footnote 2.

In addition, the political activities of a Section 501(c)(6) organization, such as the PAB, are not prohibited by the Internal Revenue Code, as are the political activities of Section 501(c)(3)'s, or restricted as are the political activities of Section 501(c)(4)'s. See footnote 2. In fact, the PAB is apparently an affiliate of the National Association of Broadcasters ("NAB"), which has a political action committee ("PAC") registered with the Commission. Association Index, page 271-72. See A.O.'s 1989-28, 1984-17. Disclosure reports reveal that the NAB's PAC contributed to numerous candidates during the time in question, including Senators Specter and Wofford. See Attachment 5.

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"nonpartisan activity designed to encourage individuals to vote," the Commission has set forth specific requirements which directly pertain to the debate activity at issue here. 11 C.F.R. §§ 110.13 and 114.4(e). Nor is the "membership communications" exemption applicable to these candidate debates, as Respondents suggest. The PAB admittedly targeted the debates for dissemination to the general public through its member and nonmember broadcasters. These televised broadcasts simply do not fall within the membership communication exemption. In addition, although the PAB acknowledges that it is not a broadcaster, it claims its sponsorship of the debates was permitted under the "news story" exemption. However, that exemption applies, inter alia, to broadcasters which Respondents concede the PAB is not.[7]

Finally, although it asserts that it is "unincorporated," the PAB claims the Supreme Court's holding in FEC v. Massachusetts Citizens for Life ("MCFL"), 479 U.S. 238 (1986) may extend to contributions and is applicable to candidate debates. In MCFL, however, the Supreme Court clearly limited its holding to independent expenditures, noting that it has "consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." FEC v. MCFL, 479 U.S. at 259-260.

While it appears the PAB "produced" the 1991 debate on its own, the response indicates that it "coproduced" the 1992 debate

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7. As noted, broadcasters and other media are permitted to sponsor, as well as cover, candidate debates. At the time the applicable debate regulations were transmitted to Congress, the Commission stated that it believed "sufficient safeguards as to nonpartisanship of debates staged by broadcasters are set forth in the Communications Act, most particularly at 47 U.S.C. § 315" et. seq. and because "fundamental principals of journalism" require nonpartisanship. 44 Fed. Reg. 76,735 (1979).

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with the League. The Commission's regulations provide that a corporation or labor union may donate funds to organizations qualified to stage debates, and that such qualified organizations may accept such funds to defray costs incurred in staging candidate debates. 11 C.F.R. §§ 114.4(e)(1) and (3). Although it is not clear if the PAB is in fact incorporated, if it were it would be permitted to donate funds to the League to defray costs incurred in connection with a candidate debate, and the League would be permitted to accept such funds. On the other hand, nothing in the regulations would permit the PAB to coproduce a candidate debate, or permit the League to coproduce a debate with an unqualified debate sponsor such as the PAB.[8]

The response in MUR 3714 does not describe what activities were undertaken by the PAB in connection with the 1992 debate, other than setting the criteria for candidate selection with the League, and contacting member and nonmember broadcasters. In any event, as the PAB was admittedly a "coproducer" of the 1992 debate, it appears to have been involved in "staging" that debate, which it cannot do, as opposed to donating funds to defray the costs of the debate, as permitted by 11 C.F.R. § 114.4(e)(3).

The information at hand leaves unanswered questions about the PAB's role as "producer" of the 1991 debate, and "coproducer"

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8. By contrast, under 11 C.F.R. § 114.4(c) corporations may, with a qualified 501(c) or state or local agency, jointly sponsor voter registration drives and may donate funds to sponsors of such activities (emphasis added); see also Advisory Opinion 1980-55 (limited corporate involvement in state sponsored voter drive approved). The E&J for the Commission's voter registration regulation provides that to meet the requirement that the activities be "conducted" by the qualified groups "one or more persons from such cosponsors must participate in the administration of the drive," but that it "does not preclude" corporate personnel or members from assisting "in the activity." 48 Fed. Reg. 50504 (1983).

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of the 1992 debate and about the costs incurred by the PAB in connection with the two debates. Given the foregoing, this Office recommends that the Commission find reason to believe that the PAB and Richard Wyckoff, as President, violated 2 U.S.C. § 441b(a) by making corporate contributions, or, in the alternative, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions.

In addition, the Commission's regulations did not permit the League to cosponsor the 1992 Specter-Yeakel debate with the PAB, a Section 501(c)(6) organization. The Office of the General Counsel therefore also recommends that the Commission find reason to believe that the League of Women Voters of Pennsylvania, and Diane Edmundson, Chair, violated 11 C.F.R. § 114.4(e)(1).[9]

With regard to the broadcasters, although the identity of all the stations which broadcast the two debates has not been provided, it appears that these entities were qualified broadcasters, and thus the coverage of the debates was exempt as a "news story." See 2 U.S.C. § 431(9)(B)(i).[10] As for the moderator of the 1991 debate, Mr. Friendly, it appears that he was not paid for his services, although we know at this point that the PAB apparently paid his transportation costs. In addition, even if the moderator's involvement is viewed as an in-kind contribution, the Act exempts volunteer services, so that from the facts

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9. As noted at the outset, the League's involvement in this matter was not set forth in the complaint, but was first brought to light by the PAB's response. As such, the League will be an internally generated respondent.

10. The complainant also asserts that coverage of the debates was not "reasonably equal" as required by 11 C.F.R. § 100.7(b)(2)(ii). However, that regulation is applicable to media owned or controlled by a political party, political committee or candidate, and there is no evidence of such ownership or control here.

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presently at hand, it appears Mr. Friendly was permitted to moderate the debate as a volunteer. 2 U.S.C. § 431(8)(B)(i); see also MUR 1617 (debate moderators and broadcasters did not violate the Act when debate sponsorship was permissible). It is presently unclear whether Mr. Poindexter, who moderated the 1992 debate and who is not a respondent in this matter, was paid by the PAB or also volunteered, but we note that he is apparently employed as, and may have been acting as, a broadcaster.

Finally, there is presently nothing in the record which suggests that the candidates and committees had any knowledge of the PAB's status or that they knowingly accepted any prohibited and/or excessive contribution. Accordingly, this Office recommends that the Commission take no action at this time with respect to Fred Friendly, KDKA-TV, WPXI Television and John A. Howell, III, Vice President/General Manager, Senator Arlen Specter, Citizens for Arlen Specter, and Stephen J. Harmelin, as treasurer, Richard Thornburgh, Senator Harris Wofford, Lynn Yeakel, and Lynn Yeakel for U. S. Senate Committee and Sidney Rosenblatt, as treasurer.

III. RECOMMENDATIONS

1. Merge MURs 3612 and 3714, and hereafter refer to this matter as MUR 3714.

2. Find reason to believe that the Pennsylvania Association of Broadcasters, and Richard Wyckoff, President, violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. § 441a(a)(1)(A).

3. Find reason to believe that the League of Women Voters of Pennsylvania, and Diane Edmundson, Chair, violated 11 C.F.R. § 114.4(e)(1).

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4. Take no action at this time against:

Richard Thornburgh
Senator Harris Wofford
Fred Friendly
WPXI Television and
John A. Howell, III,
Vice President/General Manager
Senator Arlen Specter
Citizens for Arlen Specter
and Stephen J. Harmelin, as treasurer
Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
KDKA-TV

5. Approve attached Factual and Legal Analyses (2) and the appropriate letters.

Lawrence M. Noble
General Counsel

Date 7/7/93 BY: Lois G. Lerner
Associate General Counsel

Attachments
1. PAB response to MUR 3612
2. PAB response to MUR 3714
3. KDKA-TV response
4. Additional responses
5. PAB info. and NAB disclosure reports
6. Factual and Legal Analyses (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: JULY 12, 1993

SUBJECT: MURs 3612 & 3714 - FIRST GENERAL COUNSEL'S REPORT DATED JULY 7, 1993.

The above-captioned document was circulated to the Commission on Thursday, July 8, 1993 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, July 20, 1993.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 3612
Richard Thornburgh;	)	and 3714
Senator Harris Wofford;	)	
Pennsylvania Association of Broadcasters	)	
and Richard Wyckoff, President;	)	
Fred Friendly;	)	
WPXI Television and John A. Howell, III,	)	
Vice President/General Manager;	)	
Senator Arlen Specter;	)	
Citizens for Arlen Specter and	)	
Stephen J. Harmelin, as treasurer;	)	
Lynn Yeakel;	)	
Lynn Yeakel for U.S. Senate Committee	)	
and Sidney Rosenblatt, as treasurer;	)	
KDKA-TV;	)	
League of Women Voters of Pennsylvania	)	
and Diane Edmundson, Chair	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 20, 1993, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions with respect to the above-captioned matters:

1. Merge MURs 3612 and 3714, and hereafter refer to this matter as MUR 3714.

2. Find reason to believe that the Pennsylvania Association of Broadcasters, and Richard Wyckoff, President, violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. § 441a(a)(1)(A).

(continued)

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3. Reject recommendation 3 in the General Counsel's report dated July 7, 1993.

4. Take no action at this time against:

   Richard Thornburgh;
   Senator Harris Wofford;
   Fred Friendly;
   WPXI Television
     and John A. Howell, III, Vice President/General Manager;
   Senator Arlen Specter;
   Citizens for Arlen Specter
     and Stephen J. Harmelin, as treasurer;
   Lynn Yeakel;
   Lynn Yeakel for U.S. Senate Committee
     and Sidney Rosenblatt, as treasurer;
   KDKA-TV.

5. Approve the appropriate Factual and Legal Analyses and the appropriate letters.

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

Attest:

7-23-93
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JULY 28, 1993

John R. Fielding, Esquire
Rothman Gordon Foreman & Groudine, P.C.
Third Floor, Grant Building
Pittsburgh, PA 15219-2203

RE: MUR 3714
Pennsylvania Association of
Broadcasters and Richard Wyckoff,
as President

Dear Mr. Fielding:

On September 21 and November 30, 1992, the Federal Election Commission notified the Pennsylvania Association of Broadcasters and Richard Wyckoff, as President ("your clients") of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints, designated matters under review ("MURs") 3612 and 3714, were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaints, and information supplied by your clients, the Commission, on July 20, 1993, found that there is reason to believe they violated 2 U.S.C. § 441b(a), or, in the alternative 2 U.S.C. § 441a(a)(1)(A), provisions of the Act. On the same date, the Commission voted to merge MUR 3612 into MUR 3714. Therefore, from hereafter please refer to this matter as MUR 3714. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

Under the Act, your clients have an opportunity to demonstrate that no action should be taken against them. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

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

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If your clients 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, the Commission will not entertain requests for pre-probable cause conciliation 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 ordinarily will not give extensions beyond 20 days.

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

If you have any questions, please contact Xavier K. McDonnell, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Scott E. Thomas
Chairman

Enclosure
Factual & Legal Analysis

cc: Richard Wyckoff, President
Pennsylvania Association of Broadcasters
P.O. Box 4669
Harrisburg, PA 17111

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 3714

RESPONDENTS: Pennsylvania Association of Broadcasters and Richard Wyckoff, President

I. GENERATION OF MATTER

This matter was generated by complaints filed by William White alleging election law violations by the Pennsylvania Association of Broadcasters ("PAB") and Richard Wyckoff, as President ("respondents").

II. FACTUAL AND LEGAL ANALYSIS

A. THE LAW

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no corporation, except through a separate segregated fund, may make a contribution or expenditure in connection with any Federal election. 2 U.S.C. § 441b. Federal candidates and their authorized committees are prohibited from accepting corporate contributions. 2 U.S.C. § 441b(a). The Act states that no person shall make a contribution to any candidate and his or her authorized political committees with respect to any Federal election, which, in the aggregate, exceeds $1,000. 2 U.S.C. § 441a(a)(1)(A). Candidates and their political committees are prohibited from accepting any contributions which exceed the limitations of the Act. 2 U.S.C. § 441a(f).

The Act and the Commission's regulations exclude from the definitions of "contribution" and "expenditure," under certain conditions, costs associated with the production or dissemination

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of news stories, commentaries or editorials, unless the facility is owned or controlled by a political party, political committee, or candidate. 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2); see also Readers' Digest Ass'n. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981) (court, interpreting the Act, states that the media exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate).

The regulations specifically provide that candidate debates may be staged by nonprofit organizations exempt from federal taxation under 26 U.S.C. § 501(c)(3), and organizations exempt under 26 U.S.C. § 501(c)(4) which do not endorse, support or oppose political candidates. 11 C.F.R. § 110.13(a)(1). Candidate debates may also be staged by broadcasters, bona fide newspapers, magazines or other periodical publications. 11 C.F.R. § 110.13(a)(2). The Commission's regulations exempt from the definition of "contribution" and "expenditure" "funds used to defray costs incurred in staging nonpartisan candidate debates staged in accordance with" the debate regulations set forth at 11 C.F.R. §§ 110.13 and 114.4(e). 11 C.F.R. §§ 100.7(b)(21) and 100.8(b)(23). Corporations and labor organizations may donate funds to qualified nonprofit organizations to stage candidate debates and such qualified organizations may accept such funds to defray the costs of debates staged in accordance with the applicable Commission regulations. 11 C.F.R. §§ 114.4(e)(1),(3).

Broadcasters may cover candidate debates they sponsor and

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debates sponsored by nonprofit corporations set forth at 11 C.F.R. § 110.13(a)(1) as bona fide news stories. See e.g. MUR 2567. According to the Explanation and Justification ("E&J") for the debate regulations, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ["FCC"], as well as networks." 44 Fed. Reg. 76,735 (1979). The structure of debates is left to the discretion of the staging organization, provided that they include at least two candidates, and that they are nonpartisan to the extent that they do not promote or advance one candidate over another. 11 C.F.R. § 110.13(b).

B. SUMMARY OF COMPLAINTS AND RESPONSES

In MUR 3612, complainant, who claims to have been a candidate in the 1991 Senate election in Pennsylvania, asserts that by sponsoring and broadcasting a candidate debate between only the Democratic and Republican nominees, the PAB, various broadcasters including WPXI, and debate moderator Fred Friendly, may have made a prohibited in-kind contribution to 1991 Senate candidates Richard Thornburgh and Harris Wofford, and their campaigns.

The complainant contends that he requested but was denied equal access to the broadcasting facilities "as part of a deliberate and concerted effort by the PAB," television stations and others to defeat him. Complaint in MUR 3612 at page 3. He claims that the 1991 debate "amounted to an hour long political commercial with the express purpose of advocating the election of specific candidates." Id. at pages 2-3. He also asserts that

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comments made by Messrs. Friendly and Wyckoff during the debate, i.e., "this is not a formal debate, its a dialogue and I hope you'll be free to talk . . . with as much ease, as you did before we started," a reference to the two major party candidates present at the debates as "our candidates," and their urging viewers to "vote for someone, either for Wofford or Thornburgh" are evidence that the debates were staged and that the PAB endorsed and advocated the election of the two candidates. Id. at page 2. Complainant claims "an unsubstantiated value of $100,000 has been reported in the media as the worth of this program." Id. at page 1.

In MUR 3714, complainant, who claims he was also a candidate in the 1992 Senate elections in Pennsylvania, raises allegations substantially the same as those raised in MUR 3612 against the PAB and various broadcasters, including television station KDKA, in connection with the sponsoring and broadcast of the 1992 debate between Senator Arlen Specter and Lynn Yeakel.

The PAB states that it is a non-profit trade association of radio and television broadcasters in Pennsylvania, and that no benefits inure to its members or stockholders.[1] The PAB claims to have undertaken the production and distribution of the debates as a "public service." The PAB asserts that it is not a broadcaster, and that it did not "actually purchase broadcast time" for the

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1. The PAB states in its response that it is an "unincorporated" association. The Corporate Division in Pennsylvania, indicates that a corporation with the name PAB has been registered there since 1988. However, even if the PAB is not incorporated, it would appear that its members are incorporated, and thus pay their dues to PAB using corporate funds.

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debates. The PAB further states that it "urged member and non-member television stations to broadcast" the debates as a "public service," but that whether and when the program was broadcast was up to each individual station.

The PAB indicates that it "produced" the one hour long Thornburgh-Wofford debate "with its own funds," but that it is "without sufficient knowledge and information to form a belief" as to the truth of whether the airing of the debate had a value of $100,000. It is unclear from the responses whose equipment and facilities were used in connection with the staging of the 1991 debate. The PAB does not indicate what criteria it used to determine which candidates would participate in the 1991 debate, but acknowledges that it was contacted by the complainant an hour before that debate, and refused to permit him to appear. The PAB denies that the 1991 debate was "staged" and denies the candidates controlled the topics of discussion. The PAB indicates that Fred Friendly acted as a volunteer when he moderated the 1991 debate, and that the PAB only paid his transportation costs.

With respect to the Specter-Yeakel debate, the PAB states that it coproduced that 1992 debate with the League of Women Voters of Pennsylvania, and the debate was moderated by Malcomb Poindexter from KYW-TV. The PAB states that it urged members and nonmembers to broadcast that debate. The costs incurred by the PAB and the League in connection with the production of the 1992 debate are unknown. The response indicates that the PAB had no contact with the complainant in connection with the 1992 debate prior to that debate. The PAB asserts that it and the League set

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specific requirements regarding candidate participation in the 1992 debate to ensure the candidates were "qualified to run" and "electable." It appears that television station KDKA provided its studios and equipment for the 1992 debate, and broadcast the hour long debate via satellite to other Pennsylvania stations.

In both responses, the PAB denies that it coordinated with or endorsed any of the candidates, and additionally asserts that its activities are exempt from the definition of "expenditure" as either nonpartisan activities designed to encourage voting, membership communications or news stories. See 2 U.S.C. §§ 431(9)(B)(i),(ii) and (iii). The PAB also claims that its sponsorship of the debates did not constitute contributions because they were not made in coordination with candidates, and did not constitute either contributions or expenditures because the debates were not for the purpose of influencing federal elections and did not expressly advocate any candidates' election or defeat.

C. **ANALYSIS**

As an initial matter, the complainant was not on the Pennsylvania ballot in connection with the 1991 or 1992 U.S. Senate elections, and he does not appear to have been a "candidate" within the meaning of Section 431(2) of the Act. Moreover, even if Mr. White had been on the ballot and a "candidate" within the meaning of the Act, the Commission's regulations require only that debates include at least two candidates and that they be nonpartisan in that they not promote or advance one candidate over another. 11 C.F.R. § 110.13(b).

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Thus, there is no evidence that the PAB or the League improperly excluded complainant. In fact, the Explanation and Justification for the debate regulations explicitly states that a sponsor may invite only major party candidates. See 44 Fed. Reg. at page 76,735 (1979).

Regarding the sponsorship of the debates, the Commission's regulations explicitly provide that candidate debates may be staged only by Section 501(c)(3) and (c)(4) organizations which do not endorse, support or oppose political candidates. The League of Women Voters of Pennsylvania, a nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code, would appear to be qualified to sponsor the 1992 candidate debate.

The PAB, on the other hand, is apparently tax exempt under Section 501(c)(6) of the Internal Revenue Code ("Code"). Whether the PAB is incorporated or unincorporated, it is not the type of nonprofit organization permitted by the Commission's regulations to sponsor candidate debates. In addition, the PAB acknowledges that it is not a broadcaster and there is no evidence that it is a network: it is not licensed with the FCC, and it is not in the business of producing or distributing television or radio programs, other than the two debates at issue.

With regard to the PAB's assertions that its sponsorship of the debates was "exempt" under Section 431(9)(B)(ii) as "nonpartisan activity designed to encourage individuals to vote," the Commission has set forth specific requirements which directly pertain to the debate activity at issue here. 11 C.F.R. § 110.13 and 114.4(e). Nor is the "membership communications" exemption

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applicable to these candidate debates, as Respondents suggest. The PAB admittedly targeted the debates for dissemination to the general public through its member and nonmember broadcasters. These televised broadcasts simply do not fall within the membership communication exemption. In addition, although the PAB acknowledges that it is not a broadcaster, it claims its sponsorship of the debates was permitted under the "news story" exemption. However, that exemption applies, inter alia, to broadcasters which Respondents concede the PAB is not.[2]

Finally, although it asserts that it is unincorporated, the PAB claims that the holding in FEC v. Massachusetts Citizens for Life ("MCFL"), 479 U.S. 238 (1986) may extend to contributions, and is applicable to candidate debates. In MCFL, however, the Supreme Court clearly limited its holding to independent expenditures, noting that it has "consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." FEC v. MCFL, 479 U.S. at 259-260.

While it appears the PAB "produced" the 1991 debate on its own, the response indicates that it "coproduced" the 1992 debate with the League. The Commission's regulations provide that a corporation or labor union may donate funds to organizations

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2. As noted, broadcasters and other media are permitted to sponsor, as well as cover, candidate debates. At the time the applicable debate regulations were transmitted to Congress, the Commission stated that it believed "sufficient safeguards as to nonpartisanship of debates staged by broadcasters are set forth in the Communications Act, most particularly at 47 U.S.C. § 315" et. seq. and because "fundamental principles of journalism" require nonpartisanship. 44 Fed. Reg. 76,735 (1979).

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qualified to stage debates, and that such qualified organizations may accept such funds to defray costs incurred in staging candidate debates. 11 C.F.R. §§ 114.4(e)(1) and (3). Although it is not clear if the PAB is in fact incorporated, if it were it would be permitted to donate funds to the League to defray costs incurred in connection with a candidate debate, and the League would be permitted to accept such funds. On the other hand, nothing in the regulations would permit the PAB to coproduce a candidate debate.[3]

The response does not describe what activities were undertaken by the PAB in connection with the 1992 debate, other than setting the criteria for candidate selection with the League, and contacting member and nonmember broadcasters. As the PAB was admittedly a "coproducer" of the 1992 debate, it appears to have been involved in "staging" that debate, which it cannot do, as opposed to donating funds to defray the costs of the debate, as permitted by 11 C.F.R. § 114.4(e)(3).

In sum, the information at hand leaves unanswered questions about the PAB's role as "producer" of the 1991 debate, and "coproducer" of the 1992 debate, and about the costs incurred by

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3. By contrast, under 11 C.F.R. § 114.4(c) corporations may, with a qualified 501(c) or state or local agency, jointly sponsor voter registration drives and may donate funds to sponsors of such activities (emphasis added); see also Advisory Opinion 1980-55 (limited corporate involvement in state sponsored voter drive approved). The E&J for the Commission's voter registration regulation provides that to meet the requirement that the activities be "conducted" by the qualified groups "one or more persons from such cosponsors must participate in the administration of the drive," but that it "does not preclude" corporate personnel or members from assisting "in the activity." 48 Fed. Reg. 50504 (1983).

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the PAB in connection with the two debates. Given the foregoing, there is reason to believe that the PAB and Richard Wyckoff, as President, violated 2 U.S.C. § 441b(a) by making corporate contributions, or, in the alternative, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions.

3 0 4 0 9 5 5 2 5 3

ROTHMAN GORDON

Emil W. Herman
Louis B. Kushner
Mark L. Unatin
Thomas R. Solomich
Stephen H. Jordan
Frederick A. Pulner
James R. Farley

Ronald G. Backer
Shelley W. Elovitz
Carl E. Harvison
June S. Schulberg
Martha A. Zatezalo
Sandra Reiter Kushner
Christopher Rulis

ATTORNEYS AT LAW
Third Floor, Grant Building
Pittsburgh, Pennsylvania 15219-2203
412 338-1100
412 281-7304 Telefax
412 471-1984 Real Estate Settlement Department

1120 Connecticut Avenue, N.W.
Suite 440
Washington, D.C. 20036-3902

Mark S. Weis
H. Brian Peck
Alan C. Blanco
Bernadette L. Puzzuole
Vito S. Bochicchio
Richard R. Morelli
Cheryl A. Ignasiak

Jeffrey J. Russell
John R. Fielding
Patricia L. Haas
Clare M. Wuest

Of Counsel
Norman A. Groudine

DIRECT DIAL #
(412) 338-1111

August 20, 1993

RECEIVED
93 AUG 20 PM 3:21

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL SUPT ROOM
AUG 20 2 29 PM '93

93040955254

Scott E. Thomas, Chairman
Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

RE: FEDERAL ELECTION COMMISSION: MUR 3714

Dear Mr. Thomas:

This is in response to your letter, dated July 28, 1993, and your staff's informal request for additional information.

Respondents, Pennsylvania Association of Broadcasters ("PAB") and Richard Wyckoff accept your invitation to engage in pre-probable cause conciliation, pursuant to 11 C.F.R. Section 111.18(d). The information furnished herewith is transmitted as a prelude to such conciliation, the Respondents reserving all rights of legal argument and appeal.

Please note, in the discussion that follows, the activities and conduct described concerning Mr. Wyckoff are activities and conduct which he took as president of the PAB. Further, it should be observed that the PAB runs only on a skeletal staff comprised of Mr. Wyckoff and one secretary.

RE: <u>BOTH "THORNBURGH/WOFFORD" AND SPECTER/YEAKEL</u>

<u>1-A</u> Is the PAB a corporation?

No. The PAB is an unincorporated association. Attached hereto as Exhibit 1 is a copy of the registration which the PAB filed with the Commonwealth of Pennsylvania to register its name as an unincorporated association.

<u>1-B</u> Of the stations which carried the debates, are any considered corporations? If so, identify.

The PAB served as a facilitator to make the programs available for broadcast by individual stations. Although the PAB encouraged stations to broadcast the program, it did not and does not now have a record of which stations actually

broadcast the program. Consequently, the PAB is unable to answer this question.

RE: THORNBURGH/WOFFORD

2 Please identify: A Whose idea; B Who contacted the moderator; C Who contacted the candidates; D Who produced; E Who contacted the broadcasters; were any agreements made.

A Whose idea:
The idea for the debate was generated by the PAB as an effort to provide a public service, educate the electorate, and demonstrate that the broadcasting industry in Pennsylvania can serve a useful function in that regard.

B Who contacted the moderator:
In choosing a moderator, the primary criteria were experience and credibility. Fred Friendly, the former president of CBS news, with impeccable credentials, was the PAB's first choice. Richard Wyckoff contacted Mr. Friendly and extended the invitation to serve as moderator. Mr. Wyckoff then served as the liaison with Mr. Friendly. (See Exhibits 4 and 5)

C Who contacted the candidates:
Mr. Wyckoff contacted both the Thornburgh organization and the Wofford organization. (See Exhibits 2 and 3) David Wofford called Mr. Wyckoff and accepted PAB's invitation. Michelle Davis called on Mr. Thornburgh's behalf and accepted. A meeting was arranged by Mr. Wyckoff for each camp to sit down and work out the details of the program. That meeting was held in Philadelphia at WPVI-TV. David Wofford (Wofford), Frank Ursomarso (Thornburgh), Charles Bradley (WPVI) and Mr. Wyckoff attended. Mr. Bradley was there to explain lighting, seating, microphones, building security, makeup rooms, etc. Mr. Wyckoff attended only to write down the understanding which would result from the exchange between Mr. Wofford and Mr. Ursomarso. At no time did Mr. Wyckoff impose judgment or make decisions, other than to say the PAB would like the candidates seated informally at a table with Fred Friendly seated between them. Mr. Wofford and Mr. Ursomarso discussed and agreed to who would be introduced first, height of table, kind of chairs, lighting, order of closing remarks, use of visual aids, etc.

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D Who Produced:

Mr. Wyckoff contacted WPVI-TV in Philadelphia to request that station to actually produce the debate broadcast. From the moment WPVI-TV became involved, it was their show. Makeup, seating, lighting, camera selection, taping, security, press coverage and satellite distribution all were done by WPVI-TV.

E Who contacted the broadcasters; were any agreements made?

Mr. Wyckoff wrote to general managers of television stations in Pennsylvania and to the Radio Pennsylvania Network, alerting them to the scheduled debate program. (See Exhibits 6 and 7) Mr. Wyckoff urged them to cary the program, if they found it to be newsworthy. In prior years, WPVI would produce such public affairs programming and only the public stations carried them. The PAB wanted to provide a public service by allowing more people to see and hear the debate. This was accomplished by arranging for distribution of the program to commercial stations (in addition to the public stations), and by encouraging such stations to actually broadcast it.

No station was under any obligation to carry the program live, taped, or at all. Some did, some did not. Some carried it multiple times. PAB had no control over broadcast coverage or by whom.

3 Who formulated the debate structure?

The candidates' representatives decided on everything from opening to closing remarks. PAB suggested early to each candidate that it would like an informal, moderated type of show; and, they agreed. Had either insisted on a more formal "debate", with podium and a panel of questioners, it would have complied.

A Who prepared the questions? Fred Friendly did on his own. PAB had confidence in Mr. Friendly as a seasoned professional. He knew from his background what to ask.

B How was the studio time arranged and paid for? The PAB asked WPVI-TV if PAB could hold the debate at its studio and whether it would agree to produce the program for the PAB. WPVI said "yes"; and offered to do it all. No one paid for studio time; and, no station that carried

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the program was paid. This was a public service to the citizens of Pennsylvania.

4 What was the role of the League of Women Voters? The League was not involved in the Thornburgh/Wofford debate program.

5 Did PAB incur any expenses; and, if so what were they?

A The PAB offered to reimburse Mr. and Mrs. Friendly's train travel and taxi expenses to and from New York City to the studio and back. These payments were made to Mr. and Mrs. Friendly. No other payments were made to anyone.

B What was the hourly wage and time devoted of Richard Wyckoff, Fred Friendly, and other PAB staff?

1. PAB did not budget any money for the moderator (other than reimbursement for travel expenses in the amount of $303.00). Thus, no money was offered as a talent fee and Mr. Friendly did not request any. Mr. Friendly presumably accepted the engagement because he believed it was a worthwhile venture and would constitute a public service to educate the electorate.

2. Mr. Wyckoff estimates he spent less than 8 hours in writing PAB's letters inviting the candidates to get together, contacting Mr. Friendly, preparing a news release, attending the meeting of campaign representatives, and contacting the stations notifying them of the coverage opportunity. Secretarial time is estimated to be 4-6 hours. Based on these estimates, the PAB incurred expenses of $288.00 for Mr. Wyckoff and $40-$60 for secretarial service.

RE: SPECTER/YEAKEL

2A Did the PAB contact the League of Women Voters?

Mr. Wyckoff approached the League of Women Voters because of its experience in doing such candidate exchanges. Diane Edmundson, Linda Trowbridge, and Tam St. Clair were the League's representatives. A meeting then was held, attended

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by Mr. Wyckoff and the League's representatives, at which time it was agreed to invite Specter/Wofford to meet and exchange views.

2B Who arranged?

Both the PAB and the League made the arrangements. The PAB took the lead with Sen. Specter. The League took the lead with Mrs. Yeakel. As you can see from the letters appearing as Exhibits 8 and 9, the intent was to schedule and facilitate negotiations between the candidates' representatives to determine a format and necessary procedural details. The PAB did not arrange anything other than working to get both sides together to agree on how they wanted the program to run. As with the Thornburgh/Wofford debate, the PAB had no editorial control.

2C Who produced?

Mr. Wyckoff contacted KDKA-TV in Pittsburgh to request that station to actually produce the debate broadcast. From the moment KDKA-TV became involved, it was their show. They oversaw security, makeup, visitor seating, lighting, camera selection, satellite distribution, press conference, etc. KDKA-TV put it up on a satellite for all to carry or not, as they chose. KDKA-TV did this as a public service, at no charge.

2D Who contacted the moderator? The Specter/Yeakel representatives each provided a list of 10 people whom they would accept to be moderator. Malcomb Poindexter (KYW-TV) was the only name to appear on both lists and thus was chosen. Mr. Poindexter was contacted by Mr. Wyckoff and he agreed to moderate the program. The PAB offered to reimburse his travel and hotel expenses to Pittsburgh. No fee was paid.

2E Who contacted the broadcasters? Mr. Wyckoff did a joint release from the League and the PAB, explaining the date, time, satellite coordinates, audio coverage, etc. (See Exhibit 11) Mr. Wyckoff contacted managers of television stations in Pennsylvania to notify them of the program and encouraged them to carry the program. No agreements were made with the broadcasters. The program was free for the taking if they felt it to be newsworthy.

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3 Who formulated the debate structure? The representatives from each campaign office formatted the debate structure. Shanin Specter (Specter) and Ms. Ruether (Yeakel) met with League representatives to find areas of agreement as to length of program, order of introduction and closing remarks, the use of podiums and who stood where. Visual aids, water glasses and length of time to answer a question or rebut a response were all agreed upon by the two camps. The League and the PAB sought no influence in these issues as it was neither's role to decide these issues. (See Exhibits 12 and 13)

3B Who prepared the questions? Mr. Poindexter did. The League and the PAB said it hoped he would ask something on Environment, Health Care, Taxes, Employment, Education, etc. What he asked, when, and how were all up to him.

3C How was the studio time arranged and paid for? KDKA-TV accepted the PAB's request and took responsibility for all details concerning the production and distribution. No charge was made for this service.

4 What was the League's role? From the outset, the PAB believed the League's strength was in detailing and facilitating the negotiations between the two candidates. (See Exhibit 10) The PAB's role was to find a location for the event and to see that the media were aware and willing to cover the program. Mr. Wyckoff wrote to TV managers, urging them to carry the newsworthy program and offered it to Radio Pennsylvania for their network coverage.

5 Did PAB incur any expense? The PAB paid Malcomb Poindexter's expenses to and from Pittsburgh and a hotel room. The total was $517.03 (See Exhibit 14) No other costs were incurred other than postage, telephone calls, and Mr. Wyckoff's lodging and travel by car to attend the program.

As for an hourly wage, Mr. Poindexter volunteered his time. Mr. Wyckoff estimates he spent 10-12 hours on the program; and, his secretary spent approximately 6 hours. This would result in $432.00 for Mr. Wyckoff and $60.00 for secretarial.

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CONCLUSION

As may be apprehended from the above recitation, the PAB is not a corporation. It's role in both debate programs was, for the most part, limited to serving merely as a facilitator. The cost to the PAB for each program was very modest; for Thornburgh/Wofford only $631.00; and for Specter/Yeakel only $1,129.03. Mr. Wyckoff incurred no personal expenses and his time was paid for as part of his normal compensation for his duties as president of the PAB.

In view of the above, it is respectfully requested that no further action be taken in the referenced matter, other than dismissing the consolidated complaint.

Very truly yours,

Frederick A. Polner

FAP/jo
Enclosures

cc: Xavier McDonnell, Esquire

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DECLARATION

I hereby declare and affirm under penalty of perjury that the statements made in the foregoing letter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 USC, Section 1001.

PENNSYLVANIA ASSOCIATION OF BROADCASTERS

Dated: August 16, 1993

By: Richard Wyckoff
Richard Wyckoff, President

RICHARD WYCKOFF

Dated: August 16, 1993

Richard Wyckoff
Signature

88631669

(Line for numbering)
105720

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

Filed this _____ day of _____ AUG 23 1988 _____, 19__
Commonwealth of Pennsylvania
Department of State

Secretary of the Commonwealth

(Box for Commissioner)

In compliance with the requirements of 54 Pa. S. 1508(b) relating to certain additions to registered, the undersigned nonprofit unincorporated association, desiring to register with the Department of State the name under which it is doing business or operating, does hereby certify that:

1. The name to be registered is:

Pennsylvania Association of Broadcasters

2. The address of the association is:

314 Fourth Street
(Street) (Number)

Harrisburg, PA 17101
(City) (County) (Zip Code)

3. The length of time, if any, during which the name has been used by the applicant is:

38 years

IN TESTIMONY WHEREOF, the undersigned association has caused this application to be signed by two duly authorized officers thereof this 19th day of August, 1988.

Pennsylvania Association of Broadcasters
(Name of Association)

By: [signature]
(Signature)

President — Richard Bradley
(Title President, Vice President)

By: [signature]
(Signature)

Secretary — Charles Finnerty
(Title Secretary, Assistant Sec.)

INSTRUCTIONS FOR COMPLETION OF FORM:

1. Any necessary copies of Form DCB-17.2 (Consent to Appropriation of Name or Name [illegible]) or Consent and Similar Name) shall accompany this form.

1

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PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

October 4, 1991

Mr. David Wofford
Citizens for Senator Wofford

Dear David,

I would like to propose that PAB host an exchange between the Senator and Richard Thornburgh on **OCTOBER 18th** between **7:00 - 8:00 p.m.** in **Pittsburgh**. The format would be a three person exchange with Mr. Fred Friendly serving as moderator and questioner. It is hoped that this format will be less confrontational and permit a greater information exchange.

I have today also made this proposal to Mr. Thornburgh's campaign committee. If this date, time and place is convenient for both, I would appreciate your letting me know.

Thank you for your kindness and I look forward to hearing from you.

Sincerely,

Richard E. Wyckoff

REW/cp

cc: Fred Friendly

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2

PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

October 4, 1991

Ms. Michele Davis
Thornburgh for Senate Committee

Dear Michele,

I would like to propose that PAB host an exchange between the Mr. Thornburgh and Senator Wofford on **OCTOBER 18th** between **7:00 - 8:00 p.m.** in Pittsburgh. The format would be a three person exchange with Mr. Fred Friendly serving as moderator and questioner. It is hoped that this format will be less confrontational and permit a greater information exchange.

I have today also made this proposal to Senator Wofford's campaign committee. If this date, time and place is convenient for both, I would appreciate your letting me know.

Thank you for your kindness and I look forward to hearing from you.

Sincerely,

Richard E. Wyckoff

REW/cp

cc: Fred Friendly

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PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

10-4

Dear Mr. Friendly

If it was anyone else but you, I would be embarrassed with the uncertainty of our sevotional "exchange" but because you appreciate the political workings involved....

If the program is to run it will be Oct 18 to permit your kind participation. It will be 7-8 from Pittsburgh. However, until the Thornburgh camp says yes, we need to stand by. I think they will do it but with very little notice.

Thank you sir

Rich

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PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

October 14, 1991

Professor Fred Friendly
Graduate School of Journalism
Columbia University

Dear Mr. Friendly,

I met with representatives of both campaigns on Friday and the following was worked out regarding the event:

SCHEDULE:

October 18

1:00 p.m.: Please arrive at WPVI-TV no later than this time. You are most welcome earlier depending on details you need to attend to.

A staff person will meet you at the front door of WPVI-TV. A seperate dressing room, with food and drink is reserved for you.

Make-up will be provided by WPVI-TV.

There will be time for you to visit the set, check the lighting, sound, etc.

1:45 p.m.: Everyone is asked to be in the studio for still and video pictures. No sound will be presented.

1:55 p.m.: All seated, (media leaves.) Anyone traveling with you is invited to sit in the studio with guests from both campaigns.

2:00:30 p.m.: WPVI will begin its introduction

2:01:30 p.m.: I will welcome our audience and introduce you.

2:20 p.m.: There may be a 60 second PAB message.

2:40 p.m.: There may be a 60 second PAB message
CLOSING: Each candidate gets a one minute close
WOFFORD FIRST

5.

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THORNBURGH CLOSE

Friendly 30 second close

2:56:15 p.m. OUT

2:57 p.m.: The media will be held out of the studio for a few minutes to allow the 3 of you to get up, remove mics and to prepare to meet their questions.

As for the debate itself, allow me to explain what WPVI-TV and each campaign agreed to:

The program is to be treated as a live show. No one is to stop tape except for ill health or technical problems decided by WPVI-TV.

OPENING you are to make whatever remarks you want to open and set stage.

MR. THORNBURGH is to be introduced <u>first</u> by you.

MR. WOFFORD is to be introduced <u>second</u> by you.

MR. WOFFORD is to then receive the <u>first</u> question from you.

PROPS: All are to stay seated throughout the program. Only extras will be a pad, pen, 3 x 5 notecards, and water. NO NEWSPAPER CLIPPINGS, POSTERS, ETC.

INTERRUPTIONS: Or Candidate Questions
Either candidate may, in an answer or at its end, raise a question concerning it of the other candidate. Neither is sure they wish to do that for the risks involved and may desire to pose questions through you.

FORMAT: It is your show. Its flow and where it goes is up to you. Wofford's people would prefer a quicker pace.

CONCLUSION: Again, each candidate would prefer 60 seconds to wrap up.

FIRST WOULD BE WOFFORD

LAST WOULD BE THORNBURGH

Both realize that due to the program and its pace or how it is going, that there may not be time for each to have a 60 second close. It is up to your discretion as to how you want to end the program.

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The chairs are comfortable and will not swivel or tip. They have arm rests. There is no lip on the table so arms can be rested there also. The chairs are covered in fabric so no one will slip down while seated. Cameras are at eye level. The table is on a 9 - 12 " riser and is center-posted so no problem with your legs.

REPRESENTATIVES:

FRANK URSOMARSO FOR THORNBURGH
302- 573-5202
Michele Davis - Campaign Manager
412-928-5960

DAVID WOFFORD FOR SENATOR WOFFORD
215-893-1102
Campaign Manager -- Same

I hope this is of help to you. We are so very pleased that you will be moderating. Please let me know your travel schedule so we may have someone meet and transport you to WPVI-TV.

Rick

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PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

TO: Television General Managers

FROM: Richard Wyckoff

RE: PAB SENATORIAL FORUM

DATE: October 18, 1991

We are very pleased to be hosting the meeting of candidates Wofford and Thornburgh on October 18, 2 - 3 p.m. in Philadelphia. WPVI-TV has offered to produce and distribute the program via satellite for your later broadcast.

Our industry and PAB stand to gain considerable recognition before the legislature and state agencies by taking the lead in offering and broadcasting a first rate program. Our competition, the Cable Television Association, strongly sought to host and distribute the debate claiming it would receive live and extensive replay by all the cable systems. We could not and did not let that happen.

We need as many stations as possible to air the program from 7 - 8 p.m. on the 18th. If you cannot, please run it before 12:30 that night or between noon and 8 p.m. on Saturday the 19th.

I can not emphasize enough my concern for our industry's potential embarrassement should a large number of our stations either not carry it or do so at a weaker time period. Our cable and print friends will severly critize us in the newspaper and in the legislature, by questioning our public service obligation and good intentions. In short, we each need to fully weigh what is at risk here.

Complete details regarding satellite and transponder will come to you later in the week. However, just so you know, the feed will begin at 7:01:30 on October 18 and end at 7:56:15. During the program PAB's Foundation is going to run possible public relations messages to help fund our scholarship and continuing education fund.

As you know, the legislature is back in session, I am working on our October 27 - 29, Hershey Convention and am now trying to carry off this important program on the 18th. While that is a lot to do, it helps a great deal knowing I can count on your understand- ing of what is at stake and your help. Please try to clear the show for 7 p.m. on the 18th.

I'll be back to you,

Rich

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AP TELEVISION RELEASE

PAB'S "A CONVERSATION WITH PENNSYLVANIA SENATORIAL CANDIDATES"
Featuring Mr. Thornburgh and Mr. Wofford

The Wofford/Thornburgh forum is offered live on tape to all Pennsylvania Television stations for immediate or taped delay broadcast. There is no panel, rather, Mr. Fred Friendly will be moderator. (Former President. CBS News, Now Professor Emeritus, Columbia University, Graduate School of Jounalism)

DATE: October 18, 1991

PROGRAM DISTRIBUTOR: WPVI is producing and distributing the program

SATELLITE: G Star 2

TRANSPONDER: 8 FULL

TIME: 6:50 P.M. Satellite is up until 8 p.m.
7:00 P.M. You have 90 seconds to run messages and to do your own opening to set up the program

For your opening, please credit the Pennsylvania Association of Broadcasters for hosting this meeting of the candidates.

Please tag your opening:

"Here is the President of the Pennsylvania Association of Broadcasters, Richard Wyckoff (Y - koff)".

7:01:30 Wyckoff will welcome and introduce Fred Friendly

7:56:15 Program ends

Excerpts: The program will be taped at 2 p.m. on the 18th. So as to protect stations donating valuable time to show the program during the 7 - 8 p.m. slot, Television managers have agreed to delay the satellite feed until 7:01:30 p.m.

ENDING: Please credit the Pennsylvania Association of Broadcasters with hosting the forum.

For further information about the satellite feed please contact;

Irv Ross
WPVI-TV
215-878-9700

For further information regarding the program please contact;

Richard Wyckoff
PAB
717-+ -2504

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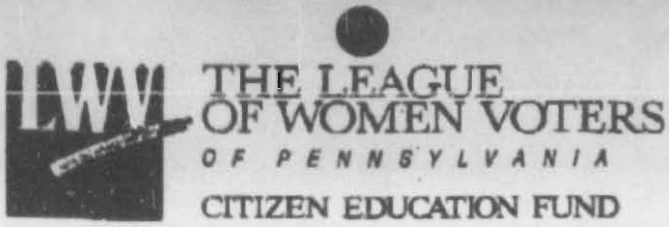


May 12, 1992

Ms. Lynn Yeakel
1314 Chestnut Street
11th Floor
Philadelphia, PA 19107

Dear Ms. Yeakel:

The League of Women Voters of Pennsylvania Citizen Education Fund and the Pennsylvania Association of Broadcasters would like to invite you to debate Mr. Arlen Specter this Fall before a statewide radio and television audience.

In our role as sponsors, the LWVPA/CEF and PAB will schedule and facilitate negotiations between the candidates' representatives to determine format and necessary procedural details. These negotiations and all informa- tion exchanged in meetings with the League and PAB are confidential and private. We reserve the right to make the first public announcement of the debate.

Enclosed is a copy of the criteria for inviting candidates to partici- pate in the debate. The criteria was adopted January 18, 1992.

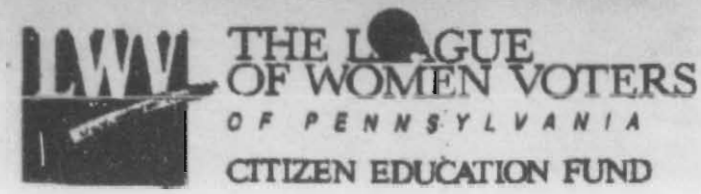
We look forward to working with you this election season. Tam St. Claire will contact your office to schedule a meeting, or she may be reached at 215/794-5475.

Sincerely,

Richard E. Wyckoff
President PAB

Diane Edmundson
Chair-LWVPA-CEF

226 FORSTER STREET • HARRISBURG, PA 17102-3220 • (717) 234-1576



May 12, 1992

Hon. Arlen Specter
Curtis Center #126
6th & Walnut Streets
Philadelphia, PA 19106

Dear Senator Specter:

The Pennsylvania Association of Broadcasters and the League of Women Voters of Pennsylvania Citizen Education Fund would like to invite you to debate Ms. Lynn Yeakel this Fall before a statewide radio and television audience.

In our role as sponsors, the PAB/LWVPA-CEF will schedule and facilitate negotiations between the candidates' representatives to determine format and necessary procedural details. These negotiations and all information exchanged in meetings with the League and PAB are confidential and private. We reserve the right to make the first public announcement of the debate.

Enclosed is a copy of the criteria for inviting candidates to participate in the debate. The criteria was adopted January 18, 1992.

We look forward to working with you this election season. Tam St. Claire will contact your office to schedule a meeting, or she may be reached at 215/794-5475.

Sincerely,

Diane Edmundson

Diane Edmundson
Chair-LWVPA-CEF

Richard E Wyckoff

Richard E Wyckoff
President PAB

9

226 FORSTER STREET • HARRISBURG, PA 17102-3220 • (717) 234-1576

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LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA
SENATORIAL DEBATE
GENERAL ELECTION 1992

ADOPTED: January 18, 1992

GOALS

The goals for the 1992 Senatorial General Election debate include educating the voters in a nonpartisan manner about candidates' views on issues important to Pennsylvania and the nation, and stimulating voter interest and participation in the election.

CRITERIA FOR PARTICIPATION IN THE 1992 GENERAL ELECTION SENATORIAL DEBATE SPONSORED BY THE LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA CITIZEN EDUCATION FUND

1. A candidate for the office of United States Senator must meet the requirements for United States Senator specified in the U.S. Constitution.

2. A candidate must meet all requirements to appear on the ballot according to state election laws.

3. A candidates' party must have received at least 10% of the vote in the last Special Election for U.S. Senator or must be able to demonstrate via a public opinion poll conducted by a nonpartisan professional pollster, the media, or a university research center that 10% of the registered voters support her/his candidacy. The results of the poll must be made public by September 22, 1992.

4. A candidate must demonstrate legitimate efforts to wage a statewide campaign through development of a statewide campaign and fundraising organization.

5. In the campaign, a candidate must address the full range of issues affecting the electorate to be served.

6. In determining eligibility using these criteria, the burden of proof is on the candidate, not on the League of Women Voters of Pennsylvania. The League may require a candidate to provide information to show that she/he meets the criteria.

7. The League of Women Voters of Pennsylvania will exercise "good faith judgement" in considering factors that determine whether a candidate has met these criteria.

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PENNSYLVANIA ASSOCIATION OF BROADCASTERS
P.O. Box 4669, Harrisburg, Pennsylvania 17111
(717) 534-2504 FAX (717) 533-1119

Richard E. Wyckoff
President

NEWS RELEASE

DECISION '92 - A SENATORIAL DEBATE

A statewide radio and television debate between candidates Specter and Yeakel will be held October 3, 1992 at the studios of KDKA-TV, Pittsburgh. This is the only debate between these candidates and is being co-sponsored by the Pennsylvania Association of Broadcasters and the Pennsylvania League of Women Voters. Malcolm Poindexter, KYW-TV, will be moderating.

Radio coverage will be provided by Radio Pennsylvania. Radio stations may also take the direct feed, which will begin at

7:01:10 pm.

SAT COM C-5 139 West

Transponder 21 Narrow Band (3 to 1)

Frequency Number 59.0

SCPC Analogue with no pre-emphasis

All questions regarding radio coverage should be directed to;
RADIO PENNSYLVANIA at 717-232-8400.

TELEVISION coverage will be available over commerical satellite or PPTN. Pertinent satellite and transponder information is:

DATE: October 3, 1992

TIME: 6:45 pm - 8 pm

KU BAND: SBS6 Satellite

Transponder 14 full

C BAND: Galaxy 6 Satellite

Transponder 8

Feed time is 7:01:10 - 7:58 p.m.

Inquiries regarding Media credentials to attend the Debate should be directed to;

Ms. Sue Kosy		PA League of Women Voters
412/781-2221	or	717/234-1576

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Draft ①

PENNSYLVANIA UNITED STATES SENATORIAL DEBATE
FALL 1992

NEGOTIATED AGREEMENTS

SPONSORSHIP

1. Candidates Lynn Yeakel and Arlen Specter agree to one debate under the sponsorship of the League of Women Voters (LWV) and the Pennsylvania Association of Broadcasters (PAB).

2. Responsibility of sponsors:

   A. Negotiate agreement with host television station.

   B. Make all reasonable efforts to market the debate to television stations throughout the state.

   C. Select a moderator. The moderator will have the responsibility for enforcing the ground rules and format that were agreed to by both candidates.

   D. Media contact: The PAB and LWVPA will be the first to announce the outcome of these negotiations.

3. Confidentiality: The debate negotiations and all information exchanged in meetings with LWVPA and PAB are confidential and private

LOCATION

The debate will be broadcast live from KDKA-TV Channel 2 ~~(address)~~, Pittsburgh. There will be no commercial interruptions.

DATE AND TIME

The debate will take place on Saturday, October 3, 1992, from 7:00 p.m. to 8:00 p.m.

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Draft (2)

BROADCAST AVAILABILITY

The debate will be available for live broadcast on Saturday, by any television or radio station that wishes to do so. Stations may also tape the debate to air within seven hours of the live ?

USE OF DEBATE TAPE

No part of any recording of this debate may be used by either candidate for any purpose whatsoever. After the election, the LWV may use parts or all of the tape in organizational training.

NOTES

1. The candidates may take notes during the debate.

2. The candidates may not use charts, briefing books, notebooks, or "visual aids" of any kind during the debate. Prepared note cards may be used by the candidates during the debate.

NAME DRAW

There will be coin tosses to determine the following unless the candidates agree without a coin toss:

1. Choice of podium (to the left or right of the moderator)

2. Choice of order of speaking for opening question.

3. Choice of order of speaking for closing statement.

4. Choice of order for meeting with the press immediately following the debate.

TIMEKEEPING

The League will keep time for the closing statement. The moderator will interrupt when the time limit has been exceeded.

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Draft (3)

FORMAT

1. The PAB and LWV will open and close the debate.

2. Each candidate will prepare a 15 to 20 word strictly factual biography for the moderator to use in the introductory segment.

3. There will be a series of question-and-answer issue segments of approximately six minutes each. The questions will be posed by the moderator who will also handle response transitions between the candidates. The candidates will not question one another directly.

The opening response for the first issue segment will be determined by a coin toss. After that, the candidates will alternate the first response for each issue segment.

The moderator will call upon each candidate in turn for responses to questions or follow up comments until the time allotted for each issue segment is used (6 minutes) or until the candidates have no further comments/responses on that issue.

With the assistance of a League timekeeper, the moderator will exercise judgement and control to assure that each candidate is given equal opportunity to participate in each segment.

Candidates will have an opportunity to clarify disputed facts at the discretion of the moderator.

0:30 Moderator introduction to segment
0:30 Moderator states question
5:00 Candidate A* responds first to the question and then the candidates respond in turn until the end of the segment. (Candidate B will respond first in the second segment)

4. The closing segment (4:45 minutes)

0:15 Moderator introduce segment
2:00 Candidate A statement
2:00 Candidate B statement
0:30 LWVPA/PAB closing

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2 3 0 4 0 9 5 5 2 7 7

Draft (4)

(* Names will be substituted for A & B after the drawings)

This agreement is accepted by the following:

For Arlen Specter_____ Date_____

For Lynn Yeakel_____ Date_____

For PAB_____ Date_____

For LWVPA_____ Date_____

(the candidates will sign the final, retyped, negotiated agreement)

Note to Diane, Richard, et al: I will work on the second part that Tam has titled "Debate Details and Tips". This will include the details on the press rooms after the debate, etc.

Please look with a critical eye & make any comment, no matter how minor.

Don't worry about the page format. I will take care that when we get all changes made.

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-D

So

Richard Wyckoff Susan Kosy
Co. [redacted] Co. LWV-PA

SENATORIAL DEBATE
CHECKLIST

LEAGUE OF WOMEN VOTERS CONTACTS:

SITE COORDINATOR - SUSAN KOSY
(412) 781-8046
(412) 781-3068 FAX

DEBATE CHAIR - LINDA TROWBRIDGE
(215) 664-7750
(PHONE & FAX)

LWV PRES. - DIANE EDMUNDSON
(215) 642-7922
(215) 642-1049 FAX

PENNSYLVANIA ASSOCIATION OF BROADCASTERS CONTACT:

RICHARD WYCKOFF
(717) 534-2504
(717)533-1119

STUDIO/SET ARRANGEMENTS: ?

1. There will be an audience of approximately ~~25~~ people. Is it possible to have seating in bleachers rather than chairs on the floor?

Bell needs 10 + KDKA
PAB needs 10 + League

2. There will be one still photographer who will take pictures during the debate.

3. Set Layout -

a. What layout is possible? What are the options? The candidates require podia, but the moderator can be seated and should have some desk/podium for notes.

I think we need to ask Moderator if he wants to sit or stand -

b. Can the moderator be "wired" for sound? There needs to be some arrangement for a League time-keeper to keep him posted on whether candidates have received approximately equal time.

c. What are the backdrop options?

d. Will KDKA be able to provide a sign listing the sponsors (League of Women Voters of Pennsylvania & Pennsylvania Association of Broadcasters)?

[redacted] 13-A

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e. LWV will p[illegible] podium signs for candidates and moder[illegible]

4. Lighting: There will need to be a lighting check the afternoon of the debate for candidate stand-ins. What time should we give candidates for this?

6:30 6:45

BACKSTAGE ARRANGEMENTS:

1. CANDIDATES-

a. No media/campaign advisors will be allowed in the preasroom. Can a monitor be placed in each candidate's dressing room? How many people will each dressing room hold?

b. Will KDKA be able to provide water for the candidates--both on-stage and in the dressing rooms?

NO ice in glasses ~~[illegible]~~

c. OTHER?

2. PRESS-

a. How many press can KDKA accomodate--need a back-stage facility with monitor, tables/chairs. MALT BOW -

b. Are there any outside phone lines that the press can use following the debate?

c. Press Interviews - Each candidate will meet with press representatives following the debate. They will flip a coin to ascertain order. Are there two separate rooms that would accomodate both press and a candidate? Does the interview need to be done either in the press room or in the studio?

d. Determine best procedure for checking press credentials and letting press into press room.

BROADCAST:

1. Can the introduction & closing by Richard Wyckoff & Diane Edmundson be taped after 4:00 p.m. on Oct. 3?

2. I will forward a copy of the format as agreed on by the candidates as soon as they've returned the signed agreements.

---END---

~~[illegible]~~ 13-3

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KYW-TV 3
INDEPENDENCE MALL EAST
PHILADELPHIA, PENNSYLVANIA 19106

GROUP W
WESTINGHOUSE BROADCASTING COMPANY INC.

IN ACCOUNT WITH

Pa. Assn. of Broadcasters
Box 4669
Harrisburg PA 17111

Att: Richard Wycoff

NO. 15-977122
DATE 10/23/92
OUR ORDER NO.
TERMS: NET ON PRESENTATION

		$
Expenses incurred by Malcom Poindexter as Moderator of the Specter/Yeakel debate in Pittsburgh 10/3/92		
10/3	Ground transportation Phila	9.75
	US Air round trip ticket	313.00
	Lodging Pittsburgh Hilton	107.67
	Snack	3.50
10/4	Breakfast	10.48
	Taxi Pittsburgh Hilton to airport	28.00
	Telephone	3.20
	Total tips (2 days Phila & Pittsburgh	25.00
	Meal	16.43
		517.03

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SHEARSON LEHMAN BROTHERS

PENNSYLVANIA ASSN
OF BROADCASTERS
P.O. BOX 4669
HARRISBURG, PA 17111

1436

October 30 1992 5-123/110

Pay to the Order of KYW - TV - 3 $ 517.03

Five hundred seventeen and 03/100 Dollars

083 FINANCIAL MANAGEMENT ACCOUNT
Boston Safe Deposit and Trust Company
One Boston Place, Boston, MA 02108

Rich Wycoff

For ☐ Expenses of Malcolm Poindexter Debate

Signature on file

14

RECEIVED
F.E.C.
SECRETARIAT
93 SEP -3 PM 4:13

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3714
Pennsylvania Association of Broadcasters and Richard Wyckoff, as President	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 20, 1993, the Federal Election Commission found reason to believe that the Pennsylvania Association of Broadcasters ("PAB") and Richard Wyckoff, as President, violated 2 U.S.C. § 441a(a)(1)(A), or, in the alternative, 2 U.S.C. § 441b(a). The bases for the Commission's findings is the PAB's purported role as a producer in a debate between U.S. Senate candidates Richard Thornburgh and Harris Wofford, and as co-producer of a debate between U.S. Senate candidates Arlen Specter and Lynn Yeakel. In response to the Commission's findings, the PAB now more fully describes the debates in a sworn statement, indicating its role was limited to facilitating, rather than actually producing or co-producing the debates, asserting that the costs it incurred were "very modest," and requesting that the Commission take no further action and close the file in this matter. See Attachment at pages 1 and 7.

II. ANALYSIS

a. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits corporations from making contributions in connection with federal elections, and prohibits candidates and

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political committees from knowingly accepting any such contributions. 2 U.S.C. § 441b(a). The Act provides that no person shall make contributions with respect to any Federal election, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). The costs for news stories distributed through the facilities of any broadcast station are generally exempt from the prohibitions and limitations of the Act, and the Commission's regulations explicitly permit broadcasters to stage and cover candidate debates. 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 110.13(a)(1); and 11 C.F.R. § 114.4(e)(2). The Commission's regulations also exempt from the Act's prohibitions and limitations debates staged by certain nonprofit organizations, specifically those tax exempt under 26 U.S.C. § 501(c)(3)(religious, charitable) and 26 U.S.C. § 501(c)(4)(civic leagues, etc.) which do not endorse, support or oppose political candidates. See 11 C.F.R. §§ 110.13(a)(1) and 114.4(e); see also First General Counsel's Report, dated July 7, 1993, at pages 4-5, and 10, and footnotes 2, 3 and 6.

b. Additional Information

We initially note that the PAB asserts that it is not a corporation, but an unincorporated association registered with the Corporation Bureau, Department of State, in the Commonwealth of Pennsylvania. See Attachment at page 9. The PAB is nevertheless a trade association, tax exempt under 26 U.S.C. § 501(c)(6), and it does not dispute that its broadcaster members are incorporated.

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See First General Counsel's Report, dated July 7, 1993.[1]

Thornburgh-Wofford Debate

With respect to the Thornburgh-Wofford debate, which was held on October 18, 1991, the response reveals that the PAB/Mr. Wyckoff generated the idea for the debate on its own. In a meeting arranged by Mr. Wyckoff, representatives of each campaign and an official from television station WPVI-TV in Philadelphia apparently worked out the details of the debate format. Attachment at pages 2-3. According to the PAB, the candidate's representatives "decided on everything from opening to closing remarks." Id. at page 3. Mr. Wyckoff attended the meeting so he could "write down the understanding" of the exchange between the two campaigns, which included such details as the order in which the candidates were to be introduced, the order of the opening and closing statements, etc.[2] The response further indicates that Mr. Wyckoff did not "impose judgment or make decisions" at the meeting, although he expressed a desire that "the candidates be seated informally, with Fred Friendly seated between them." Attachment at pages 2-3. The campaigns apparently

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1. Among the questions this Office informally posed to the PAB was verification that its members are incorporated. The PAB has apparently misconstrued the question; in response it asserts that it does not know which broadcasters carried the debates, and thus it is unable to inform the Commission which are incorporated. In any event, our review of the Gale Directory of Publications and Broadcast Media/1993 discloses that televisions stations in Pennsylvania are incorporated.

2. The PAB's assertion is supported by an October 14, 1991 letter, submitted with the attached response, in which Mr. Wyckoff provides the debate's moderator with a "schedule" which he asserts "was worked out regarding the event" at a meeting with representatives of both campaigns. See Attachment at page 13.

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adopted that informal approach.

The response indicates that WPVI-TV, rather than the PAB, actually produced and broadcast the debate. The broadcast station did so at the PAB's request. The PAB asserts it had "no editorial control," and that "[f]rom the moment WPVI-TV became involved, it was their show." Attachment at pages 2-3. The debate was held at WPVI-TV's studio, which additionally distributed the debate to other television stations via satellite and transponder. The PAB further asserts that it did not pay WPVI-TV for any costs it incurred in connection with the event.

The PAB solicited and arranged for the assistance of the debate moderator Fred Friendly. Mr. Friendly is reported to have prepared the debate questions "on his own." Attachment at page 3.[3] No fee was paid for the services of the debate moderator, but the PAB did pay costs for Mr. and Mrs. Friendly's transportation from New York to Philadelphia. Id. at page 4.

In addition to making arrangements with the candidates, WPVI-TV and the moderator, the PAB wrote to general managers of unidentified television stations within the state, apparently both PAB members and nonmembers, encouraging them to broadcast the debate as a public service, and notifying them how they could arrange to receive the debate broadcast from WPVI-TV.[4]

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3. A document enclosed in the response indicates that Fred Friendly is a former president of CBS, and Professor Emeritus, Columbia Graduate School of Journalism.

4. Included with the response is a form letter addressed to "Television General Managers" in which Mr. Wyckoff urges these television stations to broadcast the debate, noting that "[o]ur industry and PAB stand to gain considerable recognition before the

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The response indicates that the PAB's objective was to have commercial stations rather than only public stations carry the debates, and the PAB asserts that the stations were not paid to broadcast the debate and that the stations contacted were under no obligation to carry the program, either live or taped. Id. at page 3.[5]

The PAB estimates the costs incurred in connection with the 1991 debate are approximately $630-$650, including $303 in travel costs paid to Mr. and Mrs. Friendly, $288 for an estimated 8 hours of labor by Mr. Wyckoff, and $40-$60 for secretarial services. Attachment at pages 6-7. This estimate does not include costs for postage and supplies for mailings or telephone and any transportation costs which may have been incurred by Mr. Wyckoff.

Specter-Yeakel Debate

Regarding the Specter-Yeakel debate, which was held on October 3, 1992, the PAB, along with the League of Women Voters of Pennsylvania ("League") arranged that debate. The PAB states that it believed the League's strength was in detailing and

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(Footnote 4 continued from previous page)
legislature and state agencies by taking the lead" in broadcasting the debate, and expressing concern about the "industry's potential embarrassment" and criticism by "cable and print friends" should the television stations not broadcast the debate, or do so "at a weaker time." Attachment at page 16. It appears that by its involvement in the debate, the PAB was representing the interests of its trade association members, in keeping with its functions as a Section 501(c)(6) organization. See First General Counsel's Report, dated July 7, 1993, at footnotes 3 and 6.

5. It appears from documents produced that the PAB was credited at the opening and closing of the 1991 debate for "hosting the forum," and that there may have been a sixty second PAB message, apparently to help its scholarship fund. See Attachment at pages 13-14, 16-17.

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facilitating the negotiations between the two candidates, while the PAB's own role was "to find a location for the event and to see that the media were aware and willing to cover the program." Attachment at page 6.

The response indicates that the PAB "took the lead" with Senator Specter, while the League "took the lead" with Mrs. Yeakel. Attachment at page 5. Copies of the letters inviting the candidates to debate are provided, and contain the logos of both the PAB and the League. Id. at pages 18-19. The PAB's and the League's described roles were to "schedule and facilitate negotiations between the candidates' representatives to determine a format and necessary procedural details." Attachment at pages 5 and 18-19.

The candidate committees evidently negotiated a written agreement regarding the format of the 1992 debate. A copy of a draft agreement has been produced by the PAB. Attachment at pages 22-25. The agreement states that the "sponsors" (the PAB and the League) must arrange for the broadcast and market of the debate, etc. Most of the agreement relates to subjects such as the use of the debate tape, the timing and order of candidate introductions and closing statements, the amount of time given for answering questions and making responses, etc. The agreement contains unsigned signature lines for the PAB and the League, as well as for each of the candidates. It is unclear whether the draft agreement was ever signed/executed. A copy of the League's

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1992 criteria for candidate participation in debates is also provided. Attachment at page 20.[6]

The response indicates that KDKA in Pittsburgh produced and broadcast the 1992 debate via satellite, at Richard Wyckoff's request. As with the 1991 debate, the PAB asserts that from the time the television station "agreed to broadcast the event, it was their show." Attachment at page 5. KDKA "took responsibility for all details concerning the production and distribution" of the 1992 debate, and [n]o charge was made for this service." Id at page 6. The PAB notes that it had no "editorial control" over the debate format. Id. at page 5.

Malcolm Poindexter from KYW-TV moderated the 1992 debate. The response indicates that Mr. Poindexter was apparently the one person on each committees' list of ten acceptable moderators. Attachment at page 5. The PAB made the arrangements with Mr. Poindexter and paid for his transportation and accommodations. The payment was made to the moderator's employer, KYW-TV-3. Attachment at page 28. Mr. Poindexter moderated the debate on his own time, and no fee was paid to him. The response reveals that Mr. Poindexter prepared the debate questions, although the League and PAB conveyed that they "hoped he would ask something on [the] Environment, Heath Care, Taxes, Employment, Education, etc." Attachment at page 6. The PAB asserts, however, that what

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6. As noted in the First General Counsel's Report, the criteria used for candidate selection regarding both debates was permissible. See 11 C.F.R. § 110.13(b); see also First General Counsel's Report, dated July 7, 1993, at pages 8-9, and footnote 4.

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Mr. Poindexter asked at the debate was "up to him." Id.

With respect to the 1992 debate, the PAB/Mr. Wyckoff again wrote to TV managers, urging them to carry the broadcast. The PAB also arranged for the debate to be broadcast by radio, and the PAB and the League made a "News Release," informing broadcasters about the program, and how to receive it. Attachment at pages 6 and 21.

The PAB estimates the costs incurred by it to include a $517.03 payment for Mr. Poindexter's transportation/lodging, $432 for Mr. Wyckoff's 10-12 hours of time, and an estimated $60 for secretarial services. The PAB thus estimates the total costs to be $1,129.03. Attachment at pages 6-7. Again, this estimate does not include costs for postage and supplies for mailings and telephone calls and costs for Mr. Wyckoff's transportation and lodging.

III. CONCLUSION

The PAB is a Section 501(c)(6) trade association representing the interests of its members, and is not within the scope of 11 C.F.R. §§ 110.13(a)(1) and 114.4(e). Consequently, the costs incurred by PAB for the debates constitute contributions to the four candidates involved, subject to the limitations and prohibitions of Sections 441a and 441b. The response makes clear, however, that the vast majority of the costs of the debates were borne by the broadcasters, which, as noted, the Act and regulations explicitly sanction. In fact, the costs incurred by the PAB for the 1991 debate do not appear to have exceeded the Act's limitations and it is questionable whether the costs did so

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with respect to the 1992 debate.[7] In addition, although PAB's members include incorporated entities which raises questions concerning the applicability of Section 441b, given the amount at issue here and the Commission's ongoing rulemaking proceeding involving candidate debates, see 57 Fed. Reg. 33,561-66, further use of this agency's limited resources on this matter is not recommended. See Heckler v. Chaney, 470 U.S. 821 (1985). Accordingly, this Office recommends that the Commission take no further action against the Pennsylvania Association of Broadcasters and Richard Wyckoff, as President, and close the file.

IV. RECOMMENDATIONS

1. Take no further action against the Pennsylvania Association of Broadcasters and Richard Wyckoff as President.

2. Close the file.

3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 9/3/93

BY: Lois G. Lerner
Associate General Counsel

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7. As noted, the PAB estimates it spent $631 on the 1991 debate and $1,129.03 on the 1992 debate, although it did not provide estimates for postage for the 1991 and 1992 mailings to broadcasters and candidates, nor costs for Mr. Wyckoff's transportation and accommodations during the 1992 debate. Yet even if these costs were included, the PAB would not appear to have exceeded the limitations in 1991, and the costs for the 1992 debate do not appear to have exceeded the limitations unless the total costs involved are fully attributed to each candidate which participated instead of divided evenly between them. See 2 U.S.C. § 441a(a)(1)(A).

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Attachment
PAB response

Staff assigned: Xavier K. McDonnell

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Pennsylvania Association of Broadcasters and Richard Wyckoff, as President.	)	MUR 3714
	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 10, 1993, the Commission decided by a vote of 5-0 to take the following actions in MUR 3714:

1. Take no further action against the Pennsylvania Association of Broadcasters and Richard Wyckoff, as President.

2. Close the file.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated September 3, 1993.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

9-10-93
Date

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

Received in the Secretariat: Fri., Sept. 03, 1993 4:13 p.m.
Circulated to the Commission: Tues., Sept. 07, 1993 11:00 a.m.
Deadline for vote: Fri., Sept. 10, 1993 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Frederick A. Polner, Esquire
Rothman Gordon Foreman & Groudine, P.C.
Third Floor, Grant Building
Pittsburgh, Pennsylvania 15219-2203

RE: MUR 3714
Pennsylvania Association of Broadcasters
and Richard Wyckoff, as President,

Fred Friendly

Dear Mr. Polner:

By letter dated July 28, 1993, you were notified that the Federal Election Commission had found reason to believe that your clients the Pennsylvania Association of Broadcasters, and Richard Wyckoff, as President, violated 2 U.S.C. § 441a(a)(1)(A) or, in the alternative, 2 U.S.C. § 441b(a). Also on July 20 1993, the Commission determined to take no action against Fred Friendly, the moderator of the 1991 debate. On August 20, 1993, you submitted a response to the Commission's reason to believe findings.

After considering the circumstances of the matter, the Commission determined on September 10, 1993, to exercise its prosecutorial discretion and to take no further action against the Pennsylvania Association of Broadcasters, and Richard Wyckoff, as President, and closed the file. The file will be made public within 30 days.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell
Attorney

Enclosure:
General Counsel's Report

93040955293

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Jonathan D. Hart, Esquire
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

RE: MUR 3714
(Formerly MUR 3612)

WPKI Television
and John A. Howell, III,
as Vice President

Dear Mr. Hart:

By letter dated September 21, 1992, your clients in the above-captioned matter were notified of a complaint indicating that they may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was provided to your client at that time. A response to the complaint was submitted on October 14, 1992. On July 20, 1993, the Federal Election Commission voted to take no action against your clients at that time. By same date, the Commission merged MUR 3612 into MUR 3714.

On September 10, 1993, the Commission closed the file in this matter. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

93040955294

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Robert Bauer, Esquire
B. Holly Schadler, Esquire
Perkins Coie
607 Fourteenth Street N.W.
Washington, D.C. 20005-2011

RE: MUR 3714
(formerly MUR 3612)
Senator Harris Wofford

Dear Mr. Bauer and Ms. Schadler:

On September 21, 1992, your client was notified of a complaint indicating that he may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was provided to your client at that time. You submitted a response to the complaint on November 9, 1992. On July 20, 1993, the Federal Election Commission voted to merge MUR 3612 into MUR 3714, and voted take no action against your client at that time.

On September 10, 1993, the Commission closed the file in this matter. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Mr. Richard Thornburgh
c/o Thornburgh for Senate Committee
P.O. Box 22070
Pittsburgh, Pennsylvania 15222

RE: MUR 3714
(formerly MUR 3612)

Dear Mr. Thornburgh:

On September 21, 1992, you were notified of a complaint indicating that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was provided to you at that time. On July 20, 1993, the Federal Election Commission voted to merge MUR 3612 into MUR 3714, and voted take no action against you at that time with respect to this matter.

On September 10, 1993, the Commission closed the file in this matter. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Stephen A. Hildebrandt, Chief Counsel
Westinghouse Broadcasting Company, Inc.
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036-5405

RE: MUR 3714
KDKA-TV

Dear Mr. Hildebrandt:

By letter dated November 30, 1992, your client in the above-captioned matter was notified of a complaint indicating that it may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was provided to your client at that time. You submitted a response to the complaint on December 15, 1992. On July 20, 1993, the Federal Election Commission voted to take no action against your client at that time.

On September 10, 1993, the Commission closed the file in this matter. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Gregory M. Harvey, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

RE: MUR 3714
Lynn Yeakel for U.S. Senate
and Sidney Rosenblatt, as treasurer

Lynn Yeakel

Dear Mr. Harvey

By letter dated November 30, 1992, your clients in the above-captioned matter were notified of a complaint indicating that they may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was provided to your clients at that time. A response to the complaint was submitted on December 14, 1992. On July 20, 1993, the Federal Election Commission voted to take no action against your clients at that time.

On September 10, 1993, the Commission closed the file in this matter. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

93040955298

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Paul S. Diamond, Esquire
Obermayer, Rebmann, Maxwell & Hippel
14th Floor, Packard Building
Philadelphia, Pennsylvania 19102-2688

RE: MUR 3714
Citizens for Arlen Specter
and Steven J. Harmelin, as treasurer

Senator Arlen Specter

Dear Mr. Diamond:

By letter dated November 30, 1992, your clients in the above-captioned matter were notified of a complaint indicating that they may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaint were provided to your clients at that time. You submitted a response to the complaint on December 16, 1992. On July 20, 1993, the Federal Election Commission voted to take no action against your clients at that time.

On September 10, 1993, the Commission closed the file in this matter. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William D. White
16 East Manilla Avenue
Pittsburgh, Pennsylvania 15220

RE: MUR 3714

Dear Mr. White:

This is in reference to the complaints you filed with the Federal Election Commission on September 16, 1992 (MUR 3612) and November 23, 1992 (MUR 3714), concerning the 1991 debate between Senator Harris Wofford and Richard Thornburgh and the 1992 debate between Senator Arlen Specter and Lynn Yeakel.

Based on those complaints, on July 20, 1993, the Commission found that there was reason to believe that the Pennsylvania Association of Broadcasters, and Richard Wyckoff, as President, violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. § 441a(a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation. By same date, the Commission voted to merge MUR 3612 into MUR 3714, and determined to take no action at that time against Richard Thornburgh, Senator Harris Wofford, Fred Friendly, WPXI Television, and John A. Howell, III, Senator Arlen Specter, Citizens for Arlen Specter and Steven Harmelin, as treasurer, Lynn Yeakel, Lynn Yeakel for U.S. Senate Committee and Sidney Rosenblatt, as treasurer and KDKA-TV.

After investigating this matter, the Commission determined to exercise its prosecutorial discretion and to take no further action against the Pennsylvania Association of Broadcasters, and Richard Wyckoff, as President, and closed the file in this matter on September 10, 1993. See Heckler v. Chaney, 470 U.S. 821 (1985). This matter will become part of the public record within

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30 days. The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3714/3612

DATE FILMED 9-23-93 CAMERA NO. 4

CAMERAMAN JMH

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