FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4521

DATE FILMED 12-24-97 CAMERA NO. 2

CAMERAMAN Jmu

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
OCT 2 12 07 PM '96

William A. White
19 Biscayne Place
Sterling, VA
21064 - 1106
703 - 430 1695
September 30,1996

Federal Election Commission
Office of the General Counsel
999 E Street N W
Washington, DC 20463

To the General Counsel

A local radio station (WMAL 630AM) was broadcasting the Bernie Ward program Saturday Sept 28th. The talk host, Bernie Ward was discussing the political race in the state of Texas between Sen. Phil Gramm and his opponent Mr. Victor Morales. He was bemoaning the difference between Senator Gramm's campaign funds and those of Mr. Morales. He then went on to ask anyone who knew the address of the campaign headquarters for Mr. Morales to call and give it to him. Evidently, someone called and gave him the information. At approximately 7:31 p.m., Bernie Ward asked everyone to support Mr. Morales by sending a contribution to him. He then gave instructions (the name and address) for sending the contributions. This continued throughout the show while I was listening.

This is an unsolicited, unpaid, and illegal advertisement and solicitation for funds for a political candidate on a public broadcast program. The damage is done. Funds so solicited and received can not be identified and returned. There is only one fair and equitable thing to do. Mr. Bernie Ward should be required to broadcast similar requests (spots) for financial support for Senator Gramm. The numbers of such "spots" are to be determined by a review of the tapes of his show that evening and subsequent evenings. He should also be required to deliver these spots with the same enthusiasm as that which was put into the previous illegal ones. The playing field will have then been leveled.

Mr. Ward must be held accountable for his cavalier breech of the law and public trust. Anyone having access to a microphone needs to understand that such access does not exempt them from adherence to the law. Appropriate action(s) and penalities must be carried out.

Respectfully

Bill White

cc	Senator Phil Gramm	Wash. DC
	Friends of Phil Gramm	Dallas TX
	Senator John Warner	Wash. DC
	Hon. Frank Wolfe	Wash. DC

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 8, 1996

William A. White
19 Biscayne Place
Sterling, Virginia 21064-1106

Dear Mr. White:

This is to acknowledge receipt on October 2, 1996, of your letter dated September 30, 1996. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this _____ day of _____, 19__." A statement by the notary that the complaint was sworn to and subscribed before him also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. Sc 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

27042851309

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Bernie Ward
WMAL 630AM

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
OCT 18 10 29 AM '96

William A. White
19 Biscayne Place
Sterling, VA
21064 - 1106
703 - 430 1695
October 11,1996

MUR 4521

Federal Election Commission
Office of the General Counsel
999 E Street N.W.
Washington, DC 20463

To the General Counsel:
re: Complaint dated Sept. 30th, 1996

A local radio station (WMAL 630AM) was broadcasting the Bernie Ward program Saturday Sept.28th. The talk host, Bernie Ward was discussing the political race in the state of Texas between Sen. Phil Gramm and his opponent Mr. Victor Morales. He was bemoaning the difference between Senator Gramm's campaign funds and those of Mr. Morales. He then went on to ask anyone who knew the address of the campaign headquarters for Mr. Morales to call and give it to him. Evidently, someone called and gave him the information. At approximately 7:31 p.m., Bernie Ward asked everyone to support Mr. Morales by sending a contribution to him. He then gave instructions (the name and address) for sending the contributions. This continued throughout the show while I was listening.

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Mr. Ward must be held accountable for his cavalier breech of the law and public trust. Anyone having access to a microphone needs to understand that such access does not exempt them from adherence to the law. Appropriate action(s) and penalities must be carried out.

Respectfully

Bill White AKA William A. White

cc:	Senator Phil Gramm	Wash. DC
	Friends of Phil Gramm	Dallas TX
	Senator John Warner	Wash. DC
	Hon. Frank Wolfe	Wash. DC

State of VIRGINIA }
County of LOUDOUN } to wit:

Subscribed and sworn to before me on this 14th day of OCTOBER, 1996
BY BILL WHITE, ALSO KNOWN AS WILLIAM A. WHITE.

(Norary Public) STEVE W. SPICKMAN

VIRGINIA
(State issuing commission)

July 31, 1999
(Commission expiration date)

(Seal)

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 2 12 07 PM '96

William A. White
19 Biscayne Place
Sterling, VA
21064 - 1106
703 - 430 1695
September 30,1996

Federal Election Commission
Office of the General Counsel
999 E Street N.W.
Washington, DC 20463

To the General Counsel:

A local radio station (WMAL 630AM) was broadcasting the Bernie Ward program Saturday Sept.28th. The talk host, Bernie Ward was discussing the political race in the state of Texas between Sen. Phil Gramm and his opponent Mr. Victor Morales. He was bemoaning the difference between Senator Gramm's campaign funds and those of Mr. Morales. He then went on to ask anyone who knew the address of the campaign headquarters for Mr. Morales to call and give it to him. Evidently, someone called and gave him the information. At approximately 7:31 p.m., Bernie Ward asked everyone to support Mr. Morales by sending a contribution to him. He then gave instructions (the name and address) for sending the contributions. This continued throughout the show while I was listening.

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Respectfully

Bill White

cc:	Senator Phil Gramm	Wash. DC
	Friends of Phil Gramm	Dallas TX
	Senator John Warner	Wash. DC
	Hon. Frank Wolfe	Wash. DC

27043851313

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 25, 1996

William A. White
19 Biscayne Place
Sterling, VA 21064-1106

RE: MUR 4521

Dear Mr. White:

This letter acknowledges receipt on October 18, 1996, of the complaint you filed alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4521. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

27043851314

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 25, 1996

C.T. Corporation
1025 Vermont Avenue, NW
Washington, DC 20005

RE: MUR 4521
WMAL 630AM

Dear Sir or Madam:

The Federal Election Commission received a complaint which indicates that WMAL 630AM 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 4521. Please refer to this number in all future correspondence.

Under the Act, WMAL 630AM has the opportunity to demonstrate in writing that no action should be taken against it in this matter. Please submit any factual or legal materials which WMAL 630AM believes are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. WMAL 630AM's 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 WMAL 630AM notifies the Commission in writing that it wishes the matter to be made public. If WMAL 630AM intends 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.

27043851315

If you have any questions, please contact Erik Morrison at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

2704385131 6

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 25, 1996

Mr. Bernie Ward
900 Front Street
San Francisco, CA 94111

RE: MUR 4521

Dear Mr. Ward:

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 4521. 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 Erik Morrison at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

2704385131 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 15, 1996

David Cohen, Esq.
Capital Cities/ABC, Inc.,
77 West 66 Street
New York, NY 10023

RE: MUR 4521
WMAL 630 AM

Dear Mr. Cohen:

This is in response to your letter dated November 13, 1996 which we received on that same day requesting an extension to respond to the complaint filed in the above-noted matter. 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 December 6, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Erik Morrison

Erik Morrison, Paralegal
Central Enforcement Docket

27043851319

Capital Cities/ABC, Inc. 77[illegible]st 66 Street New York NY 10023 (212) 456[illegible]

David Cohen
General Attorney
Law & Regulation

November 13, 1996

Via Fax and Mail

Erik Morrison, Esq.
Federal Election Commission
Office of the General Counsel
900 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4521

Dear Mr. Morrison:

As I stated in our telephone call yesterday, this office will be representing respondent WMAL, Inc. in connection with MUR 4521. I will shortly be forwarding an executed Statement of Designation of Counsel.

As we discussed, WMAL's response is due tomorrow, November 14, 1996, which is 15 days after October 30, the date we received the Commission's October 29 letter. For the following reasons, we respectfully request that the deadline for WMAL's response be extended to December 6, 1996. Additional time is needed to review the facts relating to the broadcast in question, and to identify relevant witnesses and obtain affidavits in support of our submission. In addition, November is a "sweeps" ratings month so that this office has been especially busy and unable to devote its fullest attention to this matter.

Please do not hesitate to contact me if you require further information. Thank you for your anticipated cooperation.

Very truly yours,

David Cohen

DC:jsr

Fax (212) 456 6202

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 6 5 15 PM '96

CAPITAL CITIES/ABC, INC.
LAW & REGULATION DEPARTMENT
77 WEST 66th STREET
NEW YORK, NY 10023
TELEPHONE (212) 456-7711
FACSIMILE NUMBER (212) 456-6202

FACSIMILE COVER PAGE

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (collect), and return the original message to us at the above address via the U.S. Postal Service. Thank you.

To: Ms. Alva Smith

Fax No.: 202 219 3923

Phone No.:

Date: December 6, 1996

From: David Cohen

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: __2__

IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES, PLEASE CALL:
Monica at 212-456-6223

Comments:

2704385132 1

ABC, Inc.

David Cohen
General Attorney
Law & Regulation

December 6, 1996

Via Fax (202) 219 3923

Ms. Alva Smith, Paralegal
Central Enforcement Docket
Federal Election Commission
Washington D.C. 20463

RE: MUR 4521

Dear Ms. Smith:

This will confirm our conversation today in which you agreed to extend to Monday, December 9, 1996 the time of WMAL to respond to the complaint in the above-referenced matter. The additional business day is necessitated due to delayed Federal Express delivery resulting from today's inclement weather.

Thank you for your courtesy.

Very truly yours,

David Cohen

DC/mwh

77 West 66th Street New York, NY 10023-6298 (212) 456-7711 Fax (212) 456-6202
E-mail: cohends@abc.com

2704385132

ABC, Inc.

David Cohen
General Attorney
Law & Regulation

December 6, 1996

Via Fax (202) 219 3923

Ms. Alva Smith, Paralegal
Central Enforcement Docket
Federal Election Commission
Washington D.C. 20463

RE: MUR 4521

Dear Ms. Smith:

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Thank you for your courtesy.

Very truly yours,

David Cohen

DC/mwh

77 West 66th Street New York, NY 10023-6298 (212) 456-7711 Fax (212) 456-6202
E-mail: cohends@abc.com

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ABC, Inc.

David Cohen
General Attorney
Law & Regulation

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 9 10 41 AM '96

December 5, 1996

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

Re: MUR 4521

Dear Mr. Noble:

I write on behalf of WMAL, Inc., licensee of radio station WMAL(AM) ("WMAL"), in response to a complaint filed with the Federal Election Commission ("FEC" or the "Commission") by William White of Sterling, Virginia. In his letters dated September 30 and October 11, 1996, Mr. White contends that certain statements made by the host of a talk show broadcast on WMAL allegedly constituted a prohibited corporate contribution, in violation of the Federal Election Campaign Act of 1971 ("FECA" or the "Act"). However, Mr. White's complaint ignores the express language of FECA exempting "commentary" by a media entity from the reach of the Act. Since WMAL broadcast the statements in its capacity as a media entity, not affiliated with any candidate or campaign, long-settled Commission precedent holds that the "media exemption" applies even if the statements contained a solicitation of funds for a candidate or political party. Accordingly, the FEC should find no "reason to believe" and should summarily dismiss the complaint.

Fact Summary

Bernie Ward is the host of a talk show heard Saturday and Sunday evenings on WMAL on which the newsworthy and controversial issues of the day are addressed. See Affidavit of Bernard Ward ("Ward Aff."), ¶ 2. During the September 28, 1996 edition of his program, Mr. Ward was discussing the upcoming November elections. One caller to the show noted how Victor Morales was running close behind Phil Gramm in the Texas Senatorial race. In response, Mr. Ward observed that Senator Gramm's campaign treasury was far better financed than Mr. Morales' because, in part, Mr. Gramm was the primary beneficiary of "special interests" money. Mr. Ward then spontaneously suggested that listeners might want to send a nominal contribution of $1 or $5 to Mr. Morales and, later, provided an address therefor. Mr. Ward further remarked that it would be in keeping with the American spirit if the underdog could prevail in this election. Ward Aff., ¶ 3. The complained of comments were part of Mr. Ward's discussion of a variety of issues that day which, at the prompting of the caller, included the Senate race in Texas.[1] Ward Aff., ¶ 4.

[1] We note parenthetically that Senator Gramm prevailed in his reelection bid.

77 West 66th Street New York, NY 10023-6298 (212) 456-7711 Fax (212) 456-6202
E-mail: cohends@abc.com

2704385132 4

Discussion

The Act prohibits any corporate contributions or expenditures in connection with federal elections. 2 U.S.C. §441b (a). However, in enacting FECA, Congress was careful not to impinge on the rights of a free and vibrant press and thus exempted from the reach of the Act "any news story, commentary or editorial distributed through the facilities of any broadcasting station . . . unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. §431 (9)(B)(I) (Emphasis added.); see also 11 C.F.R. §100.7 (b) (2) and 100.8 (b)(2) (the term "contribution" does not include "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station" unless owned or controlled by a political candidate or party).

The legislative history of the Act makes it plain that "it is not the intent of Congress in [FECA] to limit or burden in any way the first amendment freedoms of the press or of association. [The media exception] assures the unfettered right of the newspapers, television networks, and other media to cover and comment on political campaigns." H.R. Rep No. 93-1239, 93rd Congress, 2d Sess., p. 4 (1974). (Emphasis added.) In accordance with this Congressional directive, the FEC may scrutinize the substance of a communication solely to discern whether a press entity was conducting a legitimate press function when it disseminated the challenged statement. See FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1312-13 (D.D.C. 1981); Reader's Digest Association, Inc. v. FEC, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981) (applicability of media exemption turns on "whether the press entity was acting as a press entity" as opposed to "acting in a manner unrelated to its publishing function"); see also FEC v. Massachusetts Citizens For Life, 479 U.S. 238, 250-51 (1986) (Court's analysis of applicability of media exemption focuses on whether challenged statements were published within ordinary course of media entity's business); AO 1982-44; AO 1980-109

The potential harm to the media from an overbroad reading of the Act's reach is a matter of substantial concern. As the court in Reader's Digest observed in reviewing the issue of whether distribution of a videotape reenactment of the Chappaquidick accident constituted a corporate contribution

> [F]reedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter. These factors support the interpretation of the statutory exemption as barring even investigation of press activities which fall within the exemption

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509 F. Supp. at 1214. See also Phillips, 517 F. Supp. at 1312 (In granting an "unfettered right" to the media to comment free from the potentially chilling effect of FECA, Congress intended that the media exemption be "a broad one.").[2]

Thus, there are only two limitations to application of the media exemption: 1) the media entity must not be owned or controlled by the candidate or political committee, and 2) a media entity must be performing a legitimate press function in publishing the complained of statements.

WMAL's broadcast facilities are neither owned nor controlled by any political party, political committee, or candidate. See Affidavit of Tom Bresnahan ("Bresnahan Aff."), ¶ 2. WMAL, Inc., licensee of WMAL, is a wholly-owned subsidiary of ABC, Inc. Id. Mr. Ward does not have any connection whatever with Mr. Morales or any political party or committee affiliated with him, nor does Mr. White allege to the contrary. Ward Aff., ¶ 5. The complained of comments were in no way authorized by or coordinated with the Morales campaign. Id. Moreover, Mr. Ward's employment is in no way dependent upon the position he takes on this or any other political issue or race. Bresnahan Aff., ¶¶ 6-7; Ward Aff., ¶ 5. Thus, it is not disputed that WMAL meets this condition to invocation of the media exemption.

As to the second limitation, the dispensing of political commentary is a classic example of a "legitimate press function" that falls squarely within the media exemption to the Act. WMAL utilizes a "talk radio" format. This format encourages vigorous debate on newsworthy issues, often animated by unrehearsed and unplanned listener phone calls. Bresnahan Aff., ¶¶ 3, 6, 7. The challenged statements were Mr. Ward's spontaneous response to a caller, made as part of his job to provide commentary and perspective on the political and ethical questions of the day. Bresnahan Aff., ¶¶ 3, 5; Ward Aff., ¶¶ 2, 4. Thus, the second limitation on the media exemption is likewise inapplicable.

That Mr. Ward asked his listeners to send money to Mr. Morales' campaign does not in any way alter this conclusion. In AO 1980 - 109, the Commission addressed precisely that situation in an inquiry from the publisher of a periodical entitled The Ruff Times:

> Mr. Ruff has indicated, you say, that he may endorse specific candidates in his commentary . . . and may urge his subscribers to support such candidates with their votes and with contributions to the candidates or to committees who support the candidates.

(Emphasis added.) In rendering its advisory opinion, the Commission concluded that Mr. Ruff's recurring columns would fall within the statutory exemption for commentary even if the periodical

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[2] Indeed, the complaint cites no Commission authority and we are unaware of any instance where the Commission had denied the media exemption to any news story, commentary or editorial, produced by a media entity, that reflected the subjective views of the broadcaster, publisher or commentator.

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explicitly urged the public to send contributions to a particular candidate. The only qualification was that the media entity could not become a "conduit or intermediary" for the candidate.

A similar determination was reached by the Commission in AO 1982-44. The issue there was whether a television station could donate free air time to both the Democratic and Republican National Committees to espouse their positions, without running afoul of the corporate contribution prohibition. The FEC held that even though the DNC had indicated its intent to, among other things, solicit contributions during its allotted time, a corporate contribution did not result. In reaching its decision, the FEC noted that the distribution of free time by the television station was within its legitimate broadcast functions and that the proposed program was a "form of commentary falling within the press exemption." The Commission found that this result was consistent with the "unfettered right" of a broadcast entity "to cover and comment on political campaigns."[3] (Citing H.R. Report No. 93-1239, p.4.)

Commission precedent, therefore, holds unambiguously that statements by an independent media entity soliciting contributions to a political party or candidate, constitute "commentary" exempt from the Act. Indeed, as reflected in the Advisory Opinions cited here, the Commission has reached this result even where the media entity knew in advance that a contribution would be solicited and even where the commentary was by a non-media third party. Here, of course, neither WMAL nor Bernie Ward had advance notice of the subject to be broached by the caller and the objected to commentary was by the media entity itself. Ward Aff., ¶ 4. Moreover, Mr. Ward's remarks concerned political commentary, which Congress explicitly recognized as deserving of protection from the constraints of the Act. Under these circumstances, the Commission can give effect to the Congressionally mandated media exemption without fear of subverting the objectives behind the Act.

Conclusion

During the broadcast in question, and at the prompting of a caller to his show, Mr. Ward briefly presented his view that the candidates in the Texas Senatorial race were not operating on a level playing field. Mr. Ward's suggestion that listeners send nominal amounts directly to Mr. Morales' campaign is an indivisible part of that commentary, broadcast by a press entity "acting as a press entity." As neither WMAL nor Mr. Ward is in any way "owned" or "controlled" by," or an "intermediary" for a candidate or political committee, the Act explicitly exempts Mr. Ward's remarks from the reach of the Act. Accordingly, there has been no improper corporate contribution and the complaint should be summarily dismissed.

Very truly yours,

David Cohen

David Cohen

---

[3] The AO 1982-44 decision was cited by the FEC as recently as this year in AO 1996-16. In addition, the Commission has recently decided to take "no action" in separate complaints against ABC's owned and operated radio stations WABC(AM) [MUR 4099] and WBAP(AM) [MUR 4212]. In each instance, by letter dated March 7, 1996, the Commission recognized that commentary by a media entity was exempt from the reach of the Act.

9704385132 7

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

RE: MUR 4521	)	AFFIDAVIT OF TOM BRESNAHAN

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

TOM BRESNAHAN, being duly sworn, deposes and says:

1. I am President and General Manager of radio station WMAL(AM) ("WMAL") in Washington, D.C. I submit this affidavit in support of the reply of WMAL, Inc. to the complaint filed with the Federal Election Commission by William White of Sterling, Virginia.

2. WMAL, Inc., the licensee of WMAL, is a wholly-owned subsidiary of ABC, Inc. Neither WMAL, Inc. nor ABC, Inc. is owned or controlled by any political party, political committee or political candidate.

3. WMAL's format is overwhelmingly news and talk-radio. During their programs, WMAL's on-air talk-radio hosts offer their opinions on matters of public concern and speak with listeners who call in to the station. The hosts' commentaries and their dialogue with listeners on these programs form the heart of the talk-radio format.

4. The "Bernie Ward Show" is broadcast on WMAL on Saturday and Sunday evenings between the hours of 6 p.m. and 9 p.m. WMAL has broadcast Mr. Ward's talk- radio program since October 1995.

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5. As part of his program, Mr. Ward engages in provocative discussions with his listeners and studio guests on a broad range of topics, with an emphasis on ethics, politics and current events. Mr. Ward's commentary often provokes a spirited exchange of views. In the months leading up to November 5, 1996, Mr. Ward frequently expressed his observations on the upcoming local and national elections.

6. As a broadcast licensee, WMAL is obligated, pursuant to Federal Communications Commission rules and policies, to meet the diverse needs and interests of the listeners in its Washington, D.C. area community of license through its programming. The management of WMAL has determined that the "Bernie Ward Show" -- and similar programs, in which the host is given wide-range discretion to express his personal views in order to foster debate -- constitutes one appropriate means to meet its public interest obligations.

7. WMAL permits Bernie Ward and other talk-show hosts to present their own opinions in favor of candidates on their programs. Moreover, Mr. Ward's employment is not in any way contingent on the nature of the opinions he expresses during his show. While WMAL seeks to attract listeners who are engaged by the diverse opinions expressed on the station, including commentary from both ends of the political spectrum, it does not require that Mr. Ward (or any other host) obtain management approval for the political views he expresses, nor do those views represent those of WMAL or its corporate parents.

Tom Bresnahan

TOM BRESNAHAN

Sworn and subscribed to before me
this 4th day of November, 1996.

Sara S Cusick

Notary Public

My Commission expires: My Commission Expires September 30, 1998

2704385132 9

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

RE: MUR 4521	)	AFFIDAVIT OF BERNARD WARD

COUNTY OF SAN FRANCISCO)
) ss:
STATE OF CALIFORNIA)

BERNARD WARD, being duly sworn, deposes and says:

1. I submit this affidavit in support of the reply of WMAL(AM), Inc. ("WMAL") to the complaint filed with the Federal Election Commission ("FEC") by William White of Sterling, Virginia.

2. I am the host of a talk show heard on WMAL radio in Washington D.C. on Saturday and Sunday evenings. My show addresses a wide variety of newsworthy issues including local and national elections and other political and ethical topics. The nature of my program is such that I do not shy away from issues or opinions that some consider "controversial."

3. On or about September 28, 1996, a caller to my program broached the issue of the Texas Senatorial race between Phil Gramm and Victor Morales. The caller said she was encouraged by the fact that Mr. Morales was gaining on Mr. Gramm and expressed her preference for Mr. Morales. In response, I observed that the playing field was not level in that Mr. Gramm's campaign was substantially better funded. I then suggested that listeners may want to send in a

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nominal contribution of $1 or $5 to Mr. Morales' campaign. I later gave an address to which to send the money. I also noted that it would be in keeping with the American spirit if the underdog could prevail in this race.

4. I did not know in advance that this caller would call or that she would raise the Texas Senatorial race as a topic. My remarks were part of my analysis of this race and nothing more. I was simply doing my job to provide commentary and perspective on the political and ethical questions of the day.

5. I am not (and have never been) affiliated or connected in any way with Mr. Morales or his campaign organization. Nor were the comments at issue in this case in any way coordinated with or authorized by the Morales campaign. My employment is not in any way affected by the position I take as to any political issue or race.

BERNARD WARD

Sworn and subscribed to before me
this 5 day of November, 1996.

Notary Public

LESLIE SUMMERS
COMM. # 1064802
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires JUL 12, 1999

My commission expires: July 12, 1999

2704385131

[illegible]
STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
ON [illegible] BEFORE ME, Leslie Summers
PERSONALLY APPEARED [illegible]
PERSONALLY KNOWN TO ME
PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE
TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED
TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT
BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT
THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH
THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL

ABC, Inc.

David Cohen
General Attorney
Law & Regulation

December 12, 1996

Via Airborne

Mr. Erik Morrison, Paralegal
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 13 3 11 PM '96

RE: MUR 4521

Dear Mr. Morrison:

Enclosed please find an executed Statement of Designation of Counsel for filing with the Commission in connection with the above-referenced matter. Please do not hesitate to call if you require any further information.

Very truly yours,

David Cohen

DC/mwh
Enc

2704385132

77 West 66th Street New York, NY 10023-6298 (212) 456-7711 Fax (212) 456-6202
E-mail: cohends@abc.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dec 13 3 11 PM '96

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4521

NAME OF COUNSEL: David Cohen

FIRM: ABC, Inc.

ADDRESS: 77 W. 66th Street - 16th Floor

New York, N.Y. 10023

Attn: Legal Department

TELEPHONE: (212) 456-7711

FAX: (212) 456-6202

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.

12/11/96
Date

Tom Bresnahan
Signature

RESPONDENT'S NAME: WMAL(AM) by Tom Bresnahan, President & General Manager

ADDRESS: WMAL(AM)

4400 Jenifer Street, NW

Washington, D.C. 20015

TELEPHONE: HOME( )

BUSINESS(202) 686-3100

9704385133

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) ENFORCEMENT PRIORITY **SENSITIVE**
)

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

This is the first Enforcement Priority Report that reflects the impact of the 1996 election cycle cases on the Commission's enforcement workload. We have identified cases that are stale which are recommended for dismissal at this time. This is the highest number of cases identified as stale in a single report, and the highest number of stale cases recommended for closure at one time, since the inception of EPS in 1993.

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II. CASES RECOMMENDED FOR CLOSURE

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria, resulting in a numerical rating for each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified cases that do not warrant further action relative to other pending matters.[3] Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of this fact, EPS provides us with the

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[3] These cases are: RAD 97L-10 (*Citizens for Randy Borow*); RAD 97L-16 (*Republican State Central Committee of South Dakota*); Pre-MUR 347 (*Producers Lloyds Insurance Company*); Pre-MUR 348 (*Peoples National Bank of Commerce*); Pre-MUR 349 (*Trump Plaza*); Pre-MUR 350 (*Citibank, N.A.*); Pre-MUR 355 (*Feingold Senate Committee*); MUR 4494 (*Georgianna Lincoln*); MUR 4586 (*Friends of Zach Wamp*); MUR 4590 (*Oklahoma Education Association*); MUR 4600 (*San Diego Police Officers Assoc.*); MUR 4612 (*Teresa Doggett for Congress*); MUR 4615 (*Catholic Democrats for Christian Values*); MUR 4616 (*American Legislative Exchange Council*); MUR 4620 (*Eastern Connecticut Chamber of Commerce*); MUR 4622 (*Telles for Mayor*); MUR 4628 (*Gutknecht for Congress*); MUR 4629 (*Janice Schakowsky*); MUR 4636 (*IBEW Local 505*); MUR 4637 (*Dettman for Congress*); MUR 4639 (*Larson for Congress*); MUR 4641 (*Becker for Congress*); MUR 4644 (*Detroit City Council*); MUR 4651 (*Mike Ryan*); MUR 4653 (*Pritzker for Congress*); MUR 4656 (*H. Carroll for Congress*); and MUR 4657 (*Buchanan for President*).

2704385133 5

means to identify those cases which, though earning a higher rating when received, remained unassigned for a significant period due to a lack of staff resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We are recommending the closure of cases based on staleness.[6]

[6] These cases are: MUR 4283 (*Chenoweth for Congress*); MUR 4341 (*Juan Soliz for Congress*); MUR 4402 (*U.S. Representative Helen Chenoweth*); MUR 4435 (*Lincoln for Congress*); MUR 4439 (*UAW*); MUR 4442 (*Lipinski for Congress*); MUR 4444 (*Roberts for Congress*); MUR 4445 (*Randy Tate for Congress*); MUR 4446 (*Clinton/Gore '96 Primary*); MUR 4447 (*Random House, Inc.,*); MUR 4449 (*Clinton Administration*); MUR 4453 (*Mike Ward for Congress*); MUR 4454 (*Ralph Nader*); MUR 4459 (*Clinton/Gore '96*); MUR 4474 (*Salvi for Senate*); MUR 4477 (*BBDO-New York*); MUR 4481 (*Diamond Bar Caucus*); MUR 4485 (*Perot '92 Petition Committee*); MUR 4486 (*Bunda for Congress*); MUR 4495 (*Pennsylvania PACE for Federal Elections*); MUR 4496 (*Norwood for Congress*); MUR 4497 (*Pease for Congress*); MUR 4510 (*Stabenow for Congress*); MUR 4511 (*Bob Coffin for Congress*); MUR 4514 (*Friends for Franks*); MUR 4515 (*Clinton Investigative Commission*); MUR 4521 (*WMAL 630 AM*); MUR 4525 (*Senator Larry Pressler*); MUR 4527 (*Brennan for Senate*); MUR 4536 (*Signature Properties, Inc.*); MUR 4540 (*Tim Johnson for SD*); MUR 4542 (*Dan Frisa for Congress*); MUR 4552 (*Charles W. Norwood*); MUR 4554 (*John Byron for Congress*); MUR 4556 (*Jim Wiggins for Congress*); MUR 4561 (*Jay Hoffman for Congress*); MUR 4564 (National Republican Congressional Committee); MUR 4567 (DNC Services Corp.); MUR 4569 (McGovern Committee); RAD 96L-11 (*New York Republican County Committee*); Pre-MUR 343 (*NRSC*); and Pre-MUR 312 (*Joseph Demio*). The *Demio* case involves fundraising related to former Congresswoman Mary Rose Oakar's 1992 congressional campaign. It was held as a courtesy to the Department of Justice pending resolution of a parallel criminal matter in the District Court for the District of Columbia. Mr. Demio recently entered into a plea agreement with the Department of Justice (on which we were not consulted) in which he agreed, among other things, to waive the statute of limitations regarding civil violations of the FECA. Considering the age of the case and activity, the fact that DOJ has not formally referred this matter to us, and the Commission's continuing resource constraints, dismissal is the appropriate disposition of this matter.

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We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective November 17, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective November 17, 1997, and approve the appropriate letters in the following matters:

RAD 96L-11	Pre-MUR 312	Pre-MUR 349
	Pre-MUR 343	Pre-MUR 350
RAD 97L-10	Pre-MUR 347	Pre-MUR 355
RAD 97L-16	Pre-MUR 348	

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B. Take no action, close the file effective November 17, 1997, and approve the appropriate letters in the following matters:

MUR 4283
MUR 4341
MUR 4402
MUR 4435
MUR 4439
MUR 4442
MUR 4444
MUR 4445
MUR 4446
MUR 4447
MUR 4449
MUR 4453
MUR 4454
MUR 4459
MUR 4474
MUR 4477
MUR 4481
MUR 4485
MUR 4486

MUR 4494

MUR 4495
MUR 4496
MUR 4497
MUR 4510
MUR 4511
MUR 4514
MUR 4515

MUR 4521
MUR 4525
MUR 4527
MUR 4536
MUR 4540
MUR 4542
MUR 4552
MUR 4554
MUR 4556
MUR 4561

MUR 4564
MUR 4567

MUR 4569
MUR 4586
MUR 4590
MUR 4600
MUR 4612
MUR 4615
MUR 4616
MUR 4620
MUR 4622
MUR 4628
MUR 4629
MUR 4636
MUR 4637
MUR 4639
MUR 4641
MUR 4644
MUR 4651
MUR 4653
MUR 4656
MUR 4657

11/7/97
Date

Lawrence M. Noble
General Counsel

Attachment
Tier 3 Case Summaries

27043851338

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document No. X97-77
Enforcement Priority	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 2, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document No. X97-77:

1. Decided by a vote of 5-0 to

A. Decline to open a MUR, close the file effective December 15, 1997, and approve the appropriate letters in the following matters:

1.	RAD 96L-11	7.	Pre-MUR 347
		8.	Pre-MUR 348
3.	RAD 97L-10	9.	Pre-MUR 349
4.	RAD 97L-16	10.	Pre-MUR 350
5.	Pre-MUR 312	11.	Pre-MUR 355
6.	Pre-MUR 343		

B. Take no action, close the file effective December 15, 1997, and approve the appropriate letters in the following matters:

1.	MUR 4283	6.	MUR 4442
2.	MUR 4341	7.	MUR 4444
3.	MUR 4402	8.	MUR 4445
4.	MUR 4435	9.	MUR 4446
5.	MUR 4439	10.	MUR 4447

(continued)

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11.	MUR 4449	36.	MUR 4556
12.	MUR 4453	37.	MUR 4561
13.	MUR 4454	38.	MUR 4564
14.	MUR 4459	39.	MUR 4567
15.	MUR 4474	40.	MUR 4569
16.	MUR 4477	41.	MUR 4586
17.	MUR 4481	42.	MUR 4590
18.	MUR 4485	43.	MUR 4600
19.	MUR 4486	44.	MUR 4612
20.	MUR 4494	45.	MUR 4615
21.	MUR 4495	46.	MUR 4616
22.	MUR 4496	47.	MUR 4620
23.	MUR 4497	48.	MUR 4622
24.	MUR 4510	49.	MUR 4628
25.	MUR 4511	50.	MUR 4629
26.	MUR 4514	51.	MUR 4636
27.	MUR 4515	52.	MUR 4637
28.	MUR 4521	53.	MUR 4639
29.	MUR 4525	54.	MUR 4641
30.	MUR 4527	55.	MUR 4644
31.	MUR 4536	56.	MUR 4651
32.	MUR 4540	57.	MUR 4653
33.	MUR 4542	58.	MUR 4656
34.	MUR 4552	59.	MUR 4657
35.	MUR 4554		

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

27043851310

Attest:

12-4-97
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William A. White
19 Biscayne Place
Sterling, VA 21064-1106

RE: MUR 4521

Dear Mr. White:

On October 18, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action in the matter. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 1997. This matter will become part of the public record within 30 days.

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

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

2704385134 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

David Cohen, Esq.
ABC, Inc.
Legal Department
77 W. 66th Street, 16th Floor
New York, NY 10023

RE: MUR 4521
WMAL 630 AM

Dear Mr. Cohen:

On October 25, 1996, the Federal Election Commission notified C.T. Corporation of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against WMAL 630 AM. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 1997.

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

If you have any questions, please contact Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

27043851342

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

Bernie Ward
c/o WMAL 630 AM
900 Front Street
San Francisco, CA 94111

RE: MUR 4521

Dear Mr. Ward:

On October 25, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 1997.

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

If you have any questions, please contact Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

27043851343

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # [redacted]-4521

DATE FILMED 12-21-87 CAMERA NO. 2

CAMERAMAN Jim H

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