



FEDERAL ELECTION COMMISSION

125 K STREET N.W.
WASHINGTON, D.C. 20543

THIS IS THE END OF MUR # 1419

Date Filmed 3/31/82 Camera No. --- 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 1982

David D. Wild, Esquire
Dow, Lobres and Albertson
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

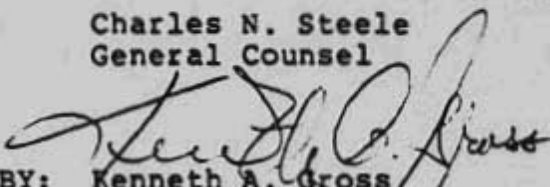
RE: MURs 1418 and 1419

Dear Mr. Wild:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure

82040314192



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 1982

Mr. Ted Andromidas
711 South Vermont
Los Angeles, California 94122

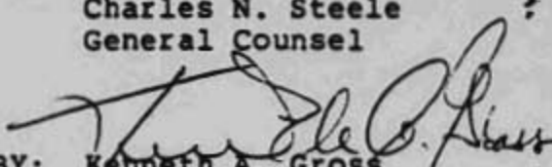
RE: MUR 1419

Dear Mr. Andromidas:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure

82040314193



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 22, 1982

John F. Sturm, Esquire
National Broadcasting Company, Inc.
1825 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1419

Dear Mr. Sturm:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Enclosure

82040314194



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 22, 1982

Carl R. Ramey, Esquire
McKenna, Wilkinson and Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

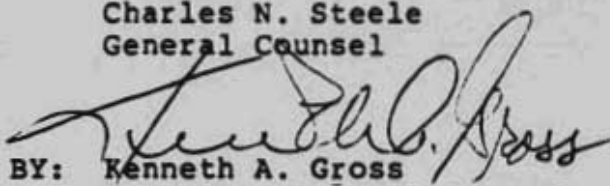
RE: MURs 1418 and 1419

Dear Mr. Ramey:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Enclosure

82040314195



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 22, 1982

John B. Emerson, Esquire
1888 Century Park East
Twenty-First Floor
Los Angeles, California 90067

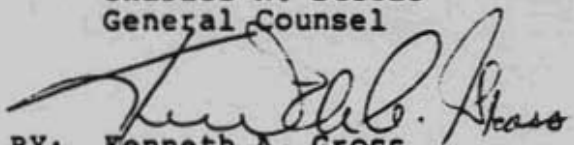
RE: MURs 1418 and 1419

Dear Mr. Emerson:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure

82040314196



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 22, 1982

Burton R. Cohn, Esquire
833 Wilshire Boulevard
Fifth Floor
Los Angeles, California

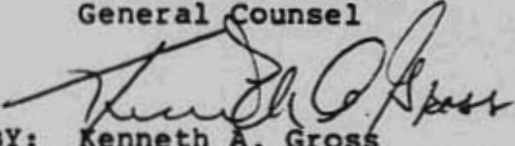
RE: MUR 1418

Dear Mr. Cohn:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure

92040314197



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 1982

John J. Duffy, Esquire
Pierson, Ball and Dowd
1000 Ring Building
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

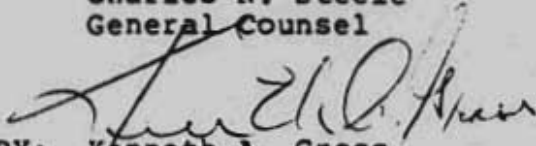
RE: MUR 1418

Dear Mr. Duffy:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure

82040314198

8



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 1982

Howard F. Jaeckel, Esquire
CBS, Inc.
51 West 52nd Street
New York, New York


RE: MUR 1419

Dear Mr. Jaeckel:

Enclosed is a Statement of Reasons of Commissioner Thomas E. Harris concerning the above referenced matter.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure

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RECEIVED
OFFICE OF THE
COMMISSIONER SECRETARY

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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STATEMENT OF REASONS OF COMMISSIONER THOMAS E. HARRIS

IN MUR 1418/1419 BROWN FOR SENATE, et al.

I agree with the Commission's conclusion that there was no violation of the Act. However, I think that the Commission, in tacitly accepting the rationale of the General Counsel's report, is basing its action on a legally erroneous ground. Worse, I think that the Commission is exceeding its jurisdiction when it reviews the content of the radio broadcasts.

The complaint asserts that various broadcasting station owners made "expenditures" in violation of the Act by broadcasting programs in which a candidate for federal office participated. However the statute provides (§431 (9) (B) (i)):

"The term "expenditure" does not include -

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

There is no claim here that any of the broadcasting stations are owned or controlled by any political party, committee or candidate. To my mind, that is the end of the matter, as far as this Commission is concerned.

In reviewing, or purporting to reviewing (for we do not have transcripts), the content of the broadcasts the Commission is doing exactly what the Congress forbade it to do. Where a broadcaster (as distinguished from, for example, a sponsor) is charged with a violation of the FECA by disbursements for broadcasting, this Commission has no more authority to review the content of the broadcast than it would of a newspaper editorial. The Federal Communications Commission does, under the Communications

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Page (2)

Act, have certain responsibilities for insuring equality of treatment of candidates by broadcasters, but this Commission does not.

3-11-82
DATE

Thomas E. Harris
Thomas E. Harris

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ted Andromidas
711 South Vermont
Los Angeles, California 94122

RE: MUR 1419

Dear Mr. Andromidas:

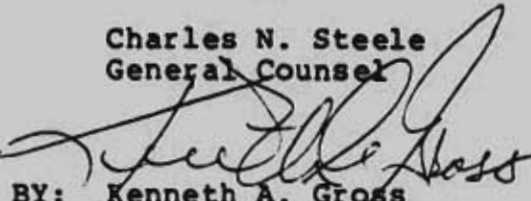
The Federal Election Commission has reviewed the allegations of your complaint dated December 15, 1981, and determined that on the basis of the information provided in your complaint (and information provided by the Respondents) there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

82040314202



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John F. Sturm, Esquire
National Broadcasting Company, Inc.
1825 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1419

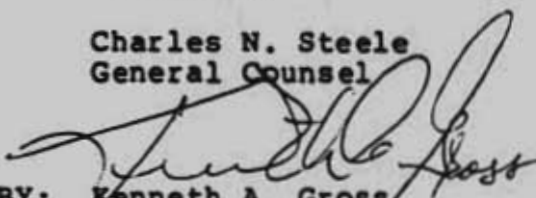
Dear Mr. Sturm:

On January 19, 1982, the Commission notified you of a complaint alleging that your clients had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 10, 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

82040314203



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John B. Emerson, Esquire
1888 Century Park East
Twenty-First Floor
Los Angeles, California 90067

RE: MUR 1418 and 1419

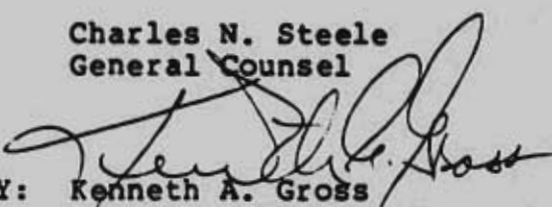
Dear Mr. Emerson:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your clients had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 10, 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

82040314204



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 17, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carl R. Ramey, Esquire
McKenna, Wilkinson and Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1418 and 1419

Dear Mr. Ramey:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your client had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 10, 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

82040314205



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David D. Wild, Esquire
Dow, Lobres and Albertson
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1418 and 1419

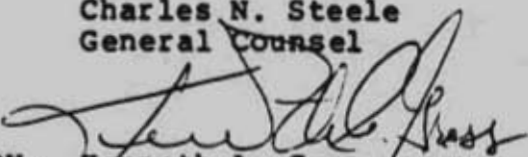
Dear Mr. Wild:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your client had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 10, 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

82040314206



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 17, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Howard F. Jaeckel, Esquire
CBS, Inc.
51 West 52nd Street
New York, New York

RE: MUR 1419

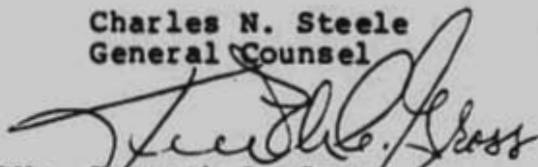
Dear Mr. Jaeckel:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your client had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 10, 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

820040314207

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Brown for U.S. Senate Committee)
McClatchy Broadcasting Corp.) MUR 1418 and 1419
Gannett Company)
Columbia Broadcasting Company)
National Broadcasting Company)
Gannett Broadcasting Company)

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal
Election Commission Executive Session on March 10, 1982, do hereby
certify that the Commission decided by a vote of 6-0 to take the
following actions in MUR 1418 and 1419:

1. Merge MUR 1419 with MUR 1418.
2. Find No Reason to Believe that the Brown
for Senate Committee violated 2 U.S.C.
§441b.
3. Find No Reason to Believe that ABC
violated 2 U.S.C. §441b.
4. Find No Reason to Believe that McClatchy
violated 2 U.S.C. §441b.
5. Find No Reason to Believe that Gannett
violated 2 U.S.C. §441b.
6. Find No Reason to Believe that CBS
violated 2 U.S.C. §441b.
7. Find No Reason to Believe that NBC
violated 2 U.S.C. §441b.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and
Reiche voted affirmatively.

Attest:

3-12-82
Date

Lena L. Stafford
Recording Secretary



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JODY CUSTER *JC*
DATE: MARCH 2, 1982
SUBJECT: OBJECTION - MURs 1418 and 1419
First General Counsel's Report dated
2-26-82; Received in OCS, 2-26-82, 11:34

The above-named document was circulated to the Commission on February 26, 1982 at 2:00.

Commissioner Harris submitted an objection at 2:39, March 2, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday, March 9, 1982.

32040314209

February 26, 1982

MEMORANDUM TO: Marjorie W. Emmons
FROM: Phyllis A. Kayson
SUBJECT: MURs 1418 & 1419

Please have the attached First General Counsel's
Report distributed to the Commission on a 48 hour tally
basis. Thank you.

Attachment

cc: Taylor

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SENSITIVE

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

82 FEB 26 All: 34

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 2-26-82

MUR # 1418 & 1419
DATE COMPLAINT RECEIVED
BY OGC 12/ /81 & 12/ /81
DATE OF NOTIFICATION TO
RESPONDENTS 12/29/81, 1/4/82 and
1/19/82
STAFF MEMBER
William E. Taylor

COMPLAINANT'S NAME: Theodore A. Bruinsma (1418)
Wertz for Senate (1419)

RESPONDENT'S NAME: Brown for U.S. Senate Committee
McClatchy Broadcasting Corp.
Gannett Company
Columbia Broadcasting Systems
National Broadcasting Company
Gannett Broadcasting Company

RELEVANT STATUTES: 2 U.S.C. § 441b
2 U.S.C. § 432(a)(1)

INTERNAL REPORTS CHECKED: Brown for U.S. Senate Committee

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

By correspondence dated December 15, 1981 and December 17, 1981, the Commission received two separate complaints from Theodore A. Bruinsma (Bruinsma) and the Wertz for Senate Committee (Wertz), respectively (see attachments I and II). 1/ Both complaints allege that:

1/ By letter dated January 18, 1982, Mr. Bruinsma asked to withdraw his complaint.

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- 1) Governor Brown is a candidate for federal office, namely, the United States Senate;
- 2) he has appeared on various radio talk show programs for the purpose of promoting his candidacy for this office;
- 3) he did not pay to appear on these programs and the free air time given Governor Brown is the receipt of something of value;
- 4) the radio stations that gave this free time are corporations. Thus, Governor Brown received something of value from corporations; and
- 5) the free air time was given for the purpose of influencing a federal election.

Mr. Bruinsma's complaint alleges that the corporations making the corporate contributions are American Broadcasting Company (ABC), McClatchy Broacasting Corp. (McClatchy), and Gannett Company, Inc. (Gannett). The Wertz complaint alleges that the corporations making the corporate contributions are ABC, McClatchy, and the National Broadcasting Company (NBC). Subsequent to this Office notifying NBC of the fact that a complaint had been filed alleging it violated certain provisions of the Federal Election Campaign Act, Wertz amended its complaint substituting the Columbia Broadcasting System for NBC. 2/

2/ CBS responded that although the radio station in question was affiliated with CBS, it did not own the station. This station is, however, owned by a subsidiary of Gannett.

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22

According to the Statement of Organization on file with the Commission, the Brown for Senate Committee ("the Committee") was organized on March 31, 1981, for the express purpose of electing Governor Brown to the United States Senate (attachment III). To date, this committee has raised over one million dollars for this purpose (attachment IV). Governor Brown did not file his Statement of Candidacy, pursuant to Commission regulation 101.1(a) (see 11 C.F.R. § 101.1(a)), until January 11, 1982. (Attachment V). He did file this statement, however, within the 30 day prescribed period, after receiving Commission notification pursuant to regulation 100.3(a)(3) (see 11 C.F.R. § 100.3(a)(3)).

The respondents have been given an opportunity to respond to the complainants' allegations and have done so. Neither Governor Brown nor any corporate respondent denies that Governor Brown did, in fact, appear on the various radio programs in question. Moreover, they all admit that Governor Brown appeared either as a talk show host or as the talk show host's guest.

FACTUAL AND LEGAL ANALYSIS

The facts presented in these matters present a factual situation that substantially parallel the facts presented in Mr. Ken Heckler's advisory opinion request dated September 12, 1977. See Commission Advisory Opinion ("AO") 1977-42 issued May 12, 1978. In this request, Mr. Heckler stated that he hosted two interview programs aired on two different radio stations in West Virginia. One program was broadcast weekly and lasted one

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hour; it featured representatives of Federal, State, local government agencies, and private industry discussing housing issues. The other program was aired for an hour five days a week and was "an interview and talk show program dealing with a different issue every day". Both programs took phone calls from the listening audience. Mr. Heckler further stated that at that time he was (in the 1978 election) a candidate to the House of Representatives from the Fourth Congressional District of West Virginia. Moreover, on July 5, 1977, he filed as a candidate with the Commission and filed a statement designating a principal campaign committee. He did not file, however, as a candidate with the West Virginia Secretary of State until January 11, 1978. The radio programs began in mid-August, 1977, and ended in October, well before the 1978 election. The Commission determined that under the circumstances these facts present that Mr. Heckler's appearances on these radio programs did not constitute an in-kind contribution from either the radio station's corporate owners or the program sponsors. This opinion was conditioned, however, "on (i) the absence of any communication expressly advocating the nomination or election of the candidate involved or the defeat of any other candidate, and (ii) the avoidance of any solicitation, making or acceptance of campaign contributions for the candidate in connection with the activity".

In the matter at hand, Governor Brown appeared on radio shows featuring a talk show format, subsequent to his principal campaign committee registering with the Commission pursuant to 2 U.S.C. § 433(a). Similarly, Governor Brown's appearances have come prior

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to his filing as a candidate with the appropriate state official; this is due solely to the fact that he has not filed, as yet, a Declaration of Candidacy, pursuant to California Election Code Section 6401. In addition, as with Mr. Heckler, all of the Governor's appearances took place well before the respective elections. ^{3/} Unlike Mr. Heckler, Governor Brown did not file with the Commission a Statement of Candidacy (Form 2) designating his principal campaign committee until after the radio programs in question had been aired. It is our opinion that this fact is not significant enough to distinguish the situation presented in this matter from the facts presented in the Heckler opinion.

Given the similarities between the facts currently before the Commission and those presented in the Heckler Advisory Opinion, there remains but two questions to answer. These questions are:

- (i) Did any radio program contain any communication expressly advocating Governor Brown's nomination or election to federal office or the defeat of any other candidate?
- (ii) Did any radio program contain any communication urging the listener to contribute to Governor Brown's campaign?

(See AO 1977-42).

A careful review of the complaints discloses no evidence indicating any communication urging the listener to vote for Governor Brown or against anyone else for the United States

^{3/} The California primary is to be held on June 8, 1982.

Senate or any statements soliciting contributions for Governor Brown. Moreover, this Office has received substantial evidence that none of these programs contained any statements advocating election or defeat or a solicitation for contributions (see attachment VI). Considering the absence of any such statements, this Office recommends that the Commission find that Governor Brown's appearances on the various radio programs in question do not constitute the committee's receipt of a corporate contribution or the making of a corporate contribution by the corporate owners of the radio stations in question. See also AO 1981-37.

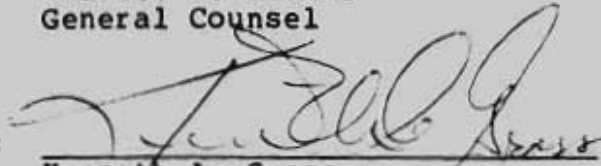
RECOMMENDATIONS

1. Merge MUR 1419 with MUR 1418.
2. Find no reason to believe that the Brown for Senate Committee violated 2 U.S.C. § 441b.
3. Find no reason to believe that ABC violated 2 U.S.C. § 441b.
4. Find no reason to believe that McClatchy violated 2 U.S.C. § 441b.
5. Find no reason to believe that Gannett violated 2 U.S.C. § 441b.
6. Find no reason to believe that CBS violated 2 U.S.C. § 441b.
7. Find no reason to believe that NBC violated 2 U.S.C. § 441b.

Charles N. Steele
General Counsel

2/25/82
Date

BY:


Kenneth A. Gross
Associate General Counsel

Attachments

1. Bruinsma complaint
2. Wertz complaint and amendment
3. Statement of Organization
4. Receipts and Expenditures
5. Form 2
6. Affidavits
7. Letters

COHN, GOTCHER, SINGER & ANDERSON
FIFTH FLOOR
833 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
(213) 624-4888

6cc# 5949

DEC 21 PM 12:43

Attorneys for Theodore A. Bruinsma

FEDERAL ELECTION COMMISSION

THEODORE A. (TED) BRUINSMA,)
Alleges Violations By) AMENDED COMPLAINT OF VIOLATION
OF FEDERAL ELECTION CAMPAIGN ACT
AMERICAN BROADCASTING SYSTEM,)
a corporation, McCLATCHY) SECTION 2 U.S.C. 441(b)
BROADCASTING CORP., GANNETT) Pursuant to 2 U.S.C. 437(g)(a)
COMPANY, INC. and EDMUND G.)
BROWN, JR.)

I, THEODORE A. (TED) BRUINSMA, do allege that the provisions of 2 U.S.C. 441(b), the Federal Election Campaign Act, have been and are continuously being violated by the American Broadcasting Company, Gannett Company, Inc., McClatchy Broadcasting Corp. and Edmund G. Brown, Jr., Governor of the State of California.

A. 2 U.S.C. 441(b)(a) states in part that:

"it is unlawful . . . for any corporation to make a contribution in connection with any election at which . . . a Senator . . . (is) voted for, or in connection with any primary election . . . for the foregoing office(s) . . . or for any candidate or other person to accept or receive any contribution prohibited by

1 this Section" (Emphasis added)

2 B. 2 U.S.C. 441 (b) (b)2 defines contribution to
3 include:

4 "any gift of money or services in connection with any
5 election"

6.
7 C. The American Broadcasting System, Gannett Company,
8 Inc. and the McClatchy Broadcasting Corp. are corporations
9 organized under the law of one or more of the United States and
10 as such are specifically prohibited from making any gift of
11 services in connection with a Federal election. Each of these
12 corporations on one or more occasions, as delineated below, made
13 a gift of radio time to Edmund G. Brown, Jr. for the major
14 purpose of influencing the primary and general election for the
15 U.S. Senator from California in 1982.

16
17 D. It is a well known fact of political life, recog-
18 nized by the Commission, that the major purpose of campaigning
19 is to improve name recognition, and in the words of Commissioner
20 Staebler, in his dissent to Advisory Opinion AO 1977-42:

21 "the funding of appearances by a candidate, during a
22 campaign, on programs which directly appeal to citi-
23 zens concerned with issues involved in the on-going
24 campaign is, I believe, inescapably a contribution
25 to that candidate."

26
27 E. The contributions of which I complain, are
28 clearly distinguishable from the fact pattern of AO 1977-42.

1 In that case, the candidate was one of many representatives of
2 Federal, State and local governments who hosted the "call in"
3 show. Edmund G. Brown alone, has been given the free radio
4 time as described below. No other candidate or elected official
5 has been the beneficiary of this largesse.

6
7 F. The refusal of Edmund G. Brown to recognize The
8 Brown For U.S. Senate Committee, to avoid compliance with FCC
9 and FEC compliance does not relieve him of the burden of com-
10 pliance with 2 U.S.C. 441(b). It is unlawful for any person
11 to accept a gift in connection with a campaign.

12
13 G. The pattern of appearances by Edmund G. Brown is
14 clearly related to the up coming election. It began in August
15 of 1981 after the filing of the first report of The Brown For
16 U.S. Senate Committee. Every news story of his appearances
17 relates it directly to his campaign. We quote from a typical
18 news story which appeared in the San Diego Union of November
19 1, 1981:

20 "The net result has been hours of exposure to
21 potentially millions of listeners, something that
22 would have cost a campaign hundreds of thousands of
23 dollars - if anything like it could be purchased.

24 'It's brilliant,' was the judgment of Stuart
25 Spencer, one of California's most experienced cam-
26 paign managers and one of the men who made great use
27 of the communications skills of another man to win a
28 statewide office when he managed Ronald Regan's 1966

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gubernatorial campaign.

'I wish I had thought of it,' admitted Bill Roberts, another veteran GOP campaign director who was Spencer's partner in the 1960s when they helped revolutionize campaigns here and across the nation.

Both of these Republican political strategists said the talk-show format was a perfect opportunity for Brown to improve his political image, giving him a chance to demonstrate his command of the issues and his openness. The live call-in format gives the appearance of vulnerability, which creates an image of political courage, the two said in separate interviews."

H. Contributions of those corporations were made as follows:

a) The American Broadcasting Company, made the following contributions of radio time to Edmund G. Brown, Jr. on KABC, Los Angeles:

- 1. August 24, 1981, 4 hours (Michael Jackson)
- 2. November 13, 1981, 3 hours (Sports Talk)

The quoted rate for the radio time contributed is \$400.00 for five (5) minutes. The estimated value of the contribution is \$33,600.00.

b) The American Broadcasting Company made the following contribution of radio time to Edmund G. Brown, Jr. on KGO, San Francisco:

- 1. October 19, 1981, 3 hours (Jim Eason Show)
- The quoted rate for the radio time contributed

1 is \$1,100.00 per munite. The estimated value of contribution
2 is \$198,000.00.

3 c) GANNETT COMPANY, INC. made a contribution of
4 radio time to Edmund G. Brown, Jr. on KSDO, San Diego:

5 1. October 28, 1981, 3 hours (Midday Show)

6 The quoted rate for the radio time contributed
7 is \$65.00 per minute. The estimated value of contribution is
8 \$17,550.00.

9 d) McClatchy Broadcasting Corp. made the following
10 contribution of radio time to Edmund G. Brown, Jr. on KFBK,
11 Sacramento:

12 1. September 22, 1981, 2½ hours

13 2. October 30, 1981, 2½ hours

14 The quoted rate for the radio time contributed
15 is \$40.00 per minute. The estimated value of the contribution
16 is \$12,000.00.

17 e) McClatchy Broadcasting Corp. made the following
18 contribution of radio time to Edmund G. Brown, Jr. on KBEE, Modesto:

19 1. September 23, 1981, 3 hours

20 The quoted rate for the radio time contributed
21 is \$13.00 per minute. The estimated value of the contribution
22 is \$2,340.00.

23 f) McClatchy Broadcasting Corp. made the follow-
24 ing contribution of radio time to Edmund G. Brown, Jr. on KMJ,
25 Fresno:

26 1. September 21, 1981, 3 hours

27 The quoted rate for the radio time contributed
28 is \$20.00 per minute. The estimated value of the contribution

82019314222
1 is \$3,600.00.

2
3 I. The facts of these appearances were obtained from
4 news stories which appeared in the local press. The advertising
5 rates which are quoted were obtained by members of my staff in
6 telephone inquiries to the indicated stations.

7
8 J. The Commission has always held corporations to a
9 higher standard with respect to contributions in connection
10 with a campaign for Federal office. On the basis of news stories
11 which appeared, one of which is quoted above, every official of
12 the donating corporations must have known that the appearances
13 had a direct relation to the campaign.

14
15 K. The relationship to the campaign was equally well
16 known to the Brown staff which solicited and continues to solicit
17 appearances. Edmund G. Brown's knowing acceptance of these
18 contributions is unlawful.

19
20 L. I respectfully request that the Federal Election
21 Commission proceed with an enforcement action pursuant to
22 2 U.S.C. 437(a) to prevent further violations.

23
24 M. I authorize you to communicate directly with
25 Burton R. Cohn of the law firm of Cohn, Gotcher, Singer and
26 Anderson at 833 Wilshire Boulevard, Fifth Floor, Los Angeles,
27 California, 90017, in all matters connected with the Complaint.

28 / / / / /

1 I declare under penalty of perjury that the above
2 statements are true.

3
4 Theodore A. (Ted) Bruinsma
5 THEODORE A. (TED) BRUINSMA
6

7 STATE OF CALIFORNIA)
8 COUNTY OF San Luis Obispo)-SS.
9

10 On December 17, 1982 before me, the undersigned,
11 a Notary Public in and for said State, personally appeared
12 THEODORE A. (TED) BRUINSMA, known to me to be the person whose
13 name is subscribed to the within instrument and acknowledged that
14 he executed the same.

15 WITNESS my hand and official seal.



Clara M. Knudson
Notary Public

102443

RECEIVED

81 DEC 28 410:37

604# 5982

WERTZ FOR SENATE

711 South Vermont, Suite 207
Los Angeles, California 90005
(213) 383-2912

1826 Noriega Street
San Francisco, California 94122
(415) 661-7663

Federal Election Commission
1325 K St., N.W.
Washington, D.C. 20005

December 15, 1981

Attn: Charles Steele
General Counsel

DEC 28 P12:28

Re: Complaint against Jerry Brown
Brown for Senate Committee
and Various Broadcast Corporations

Gentlemen:

This is a complaint under the provisions of 2 U.S.C. 437 G (A) (1) against Jerry Brown, a candidate for the U.S. Senate in California, Capitol Building, Sacramento, CA 95814; the Brown for Senate Committee, Jerry Brown's campaign committee, 1125 W. 6th Street, third floor, Los Angeles, CA 90017; and the following radio stations and broadcasting corporations:

American Broadcasting Company
277 Golden Gate Avenue
San Francisco, CA 94102

National Broadcasting Co., Inc.
3000 W. Alameda Avenue
Burbank, CA 91523

McClatchy Broadcasting Corporation
Box 15779
21st and Q Street
Sacramento, CA 95813

The complainant is the Wertz for Senate Campaign Committee, 711 S. Vermont Avenue, Suite 207, Los Angeles, CA 90005, the designated campaign committee of Will Wertz, Democratic candidate for U.S. Senate in California. Martin Simon is the Treasurer of this committee and brings the complaint on its behalf.

Complainant believes that Mr. Brown, the campaign committee and the broadcasting corporations listed above have committed violations of 2 U.S.C. 441 (A) et seq. by the making and acceptance of corporate contributions to the Brown senatorial campaign. The facts known to the complainant concerning these activities are as follows.

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(F) 2

Since approximately October, 1981, Jerry Brown and the Brown for Senate Committee have sought to have Jerry Brown appear as the host of various radio talk shows in California. Upon information and belief such appearances are exclusively designed to promote Jerry Brown's senatorial campaign by providing him a public forum in which to explain his controversial views and actions as Governor and overcome the negative popular perception of such actions. Upon information and belief, Jerry Brown will not appear on the various talk shows as a guest -- he will only appear if the particular show offers him a guest host spot in which he can control the format of the program.

This complainant believes that Jerry Brown has appeared under these conditions on the following programs for the times indicated:

6 hours, Michael Jackson show, KABC radio, Los Angeles (ABC)
3 hours, Jim Eason show, KGO radio, San Francisco (ABC)
3 hours, Midday show, KSDO, San Diego (CBS)
5 hours, KFBK radio, Sacramento, McClatchy Broadcasting
3 hours, KBEE, Modesto, McClatchy Broadcasting
3 hours, KMF, Fresno, McClatchy Broadcasting

This complainant is aware that Kevin Keeshan of KNTB radio in Bakersfield, California was approached by representatives of Governor Brown for an appearance on his talk show. The representatives insisted that Brown be a host -- a guest spot was offered by the talk show host. Brown's representatives stated, upon information and belief, that his appearance was conditioned on hosting the program and that he would not appear as a guest.

Upon information and belief, these appearances have all occurred following the formation of the Brown for Senate Committee and no such appearances preceded the formation of that committee.

This complainant believes that the circumstances of these appearances are clearly distinguishable from the situation the Commission anticipated in Advisory Opinion 1977-42. Brown and/or the Brown for Senate Committee have not paid for the broadcast time and Brown has received no continuing reimbursement for the appearances. The broadcast time, upon information and belief, has been allotted with the clear understanding that it promotes Brown's senatorial campaign, although the programs may not contain express advocacy or solicitation. No other senatorial candidate has been or will be offered, upon information and belief, similar guest host responsibilities.

We urge the Commission's prompt attention to this complaint and will be happy to assist the Commission in any fashion in its investigation.

Martin Simon

Martin Simon
Treasurer, Wertz for Senate
711 S. Vermont Ave. #207
Los Angeles, CA 90005
(213) 383-2912

NOTARIAL ACKNOWLEDGEMENT

COUNTY OF LOS ANGELES)

STATE OF CALIFORNIA)

ss:

Rosario Rodriguez, a notary public in the County of Los Angeles, State of California, acknowledges that on December 15, 1981, before me appeared Martin Simon and that he signed the above referenced complaint in my presence and swore that the allegations contained therein were true to the best of his knowledge and as to those matters alleged upon information and belief he swore that he believed them to be true.

Rosario Rodriguez
NOTARY PUBLIC



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4 (3)
66

WERTZ FOR SENATE

711 South Vermont, Suite 207 Los Angeles, California 90005 (213) 383-2912

1824 Noriega Street San Francisco, California 94122 (415) 661-7663

102693
GCC# 7054

Ted Andromidas
Southern California
Chairman

Brian Lantz
Northern California
Chairman

Martin Simon
Treasurer

Federal Election Commission
1325 K St., NW
Washington, D.C. 20005

Att: Charles Steele
General Counsel

JAN 29 AIO: 55

GENERAL COUNSEL

Taylor

Re: Amendment to complaint against
Jerry Brown, et al.

Gentlemen:

As per my conversation with Mr. Bill Taylor of the
General Counsel's office please amend the complaint we filed
on December 15th to read:

1) 3 hours, KMF Fresno, McClatchy Broadcasting should read as
follows:

3 hours, KMJ Fresno, McClatchy Broadcasting

2) National Broadcasting Co., Inc, 3000 W. Alameda Ave., Burbank Ca, 91523
should read:

Columbia Broadcasting Co., Inc

6121 W. Sunset Blvd.
Los Angeles, Ca. 90028

3180 University Ave.
San Diego, Ca. 92104

Thank you for your consideration.

Sincerely,

Ted Andromidas

Ted Andromidas
Southern California Chairman

(H) 1

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

Name of Committee (in Full)

Check if name or address is changed.

2. Date

Brown for U.S. Senate

(No address number and street)

One California Street, Suite 2535

(c) City, State and ZIP Code

San Francisco, CA 94111

3/31/81

3. FEC Identification Number

1981 APR -7 14 11:15

4. Is this an amended Statement?

YES

NO

HAND DELIVERED

5. TYPE OF COMMITTEE (check one):

CD=P CT=S

☒ (a) This committee is a principal campaign committee. (Complete the candidate information below.)☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Edmund G. Brown Jr.

Democratic

U.S. Senate

California

Name of Candidate

Candidate-Party-Affiliation

Office Sought

State/District

☐ (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.

(name of candidate)

☐ (d) This committee is a _____ committee of the _____ Party.

(National, State or subordinate)

(Democratic, Republican, etc.)

☐ (e) This committee is a separate segregated fund.☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund nor a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
Not applicable		

If the registering political committee has identified a "connected organization" above, please indicate type of organization:

☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position, the person in possession of committee books and records.

Full Name

Mailing Address and ZIP Code

Title or Position

Treasurer

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name

Mailing Address and ZIP Code

Title or Position

Jeremiah Hallisey

One California Street, Suite 2535
San Francisco, CA 94111

Attorney

(415) 433-5300

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

Mailing Address and ZIP Code

American City Bank

One Wilshire Boulevard
Los Angeles, California 90017

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Jeremiah F. Hallisey
Type or Print Name of Treasurer

SIGNATURE OF TREASURER

3/31/81
Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

For further information contact:

Federal Election Commission, Toll Free 800-424-9530, Local 202-523-4068

4/8	9/19/80	4/10	/	/	/	/	/
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FEC FORM 1 (3/80)

S30401 CA DEM C1402

Summary Page

1. Name of Committee (If Null)
Senate for U. S. Senate

2. FEC Identification Number
C00141283

3. Is this Report an Amendment?
☐ YES ☒ NO

4. Address (Printer and Street)
1125 W. Sixth St. Los Angeles, CA 90017

5. City, State and ZIP Code
Los Angeles, CA 90017

6. Check if address is different than previously reported.

7. TYPE OF REPORT

☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☒ January 31 Year End Report
☐ July 31 1982 Year Report (Non-election Year Only)

☐ Twelfth day report preceding election on _____ in the State of _____
☐ Thirtieth day report following the General Election on _____ in the State of _____
☐ Termination Report

This report contains activity for -- ☒ Primary Election ☒ General Election ☐ Special Election ☐ Runoff Election

SUMMARY		Column A This Period	Column B Calendar Year-to-Date
8. Covering Period	<u>7/1/81 Through 12/31/81</u>		
9. Net Contributions (other than loans):			
(a) Total Contributions (other than loans) (from Line 11a)	\$ 799,185.33	\$ 1,881,044.21	
(b) Total Contribution Refunds (from Line 20a)	\$ 26,229.41	\$ 26,229.41	
(c) Net Contributions (other than loans) (Subtract Line 9b from 9a)	\$ 772,955.92	\$ 1,854,814.80	
10. Net Operating Expenditures:			
(a) Total Operating Expenditures (from Line 17)	\$ 155,100.69	\$ 245,751.59	
(b) Total Offsets to Operating Expenditures (from Line 14)	\$ 170.93	\$ 170.93	
(c) Net Operating Expenditures (Subtract Line 10b from 10a)	\$ 154,929.76	\$ 245,580.66	
11. Cash on Hand at Close of Reporting Period (from Line 27)	\$ 1,678,650.61		
12. Debts and Obligations Owed TO the Committee (Include all on Schedule C or Schedule D)	\$ 0.00		
13. Debts and Obligations Owed BY the Committee (Include all on Schedule C or Schedule D)	\$ 0.00		

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

For further information, contact:

Federal Election Commission
 Toll Free 800-424-9630
 Local 202-523-4098

WILL DINES
 Treasurer of Committee

[Signature]
 Secretary of Committee

1/31/82

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. § 437g.

NOTE: This form is to be filed with the Federal Election Commission and should be kept for record.

Form 278e (1-81)

(11)0

3412

1/12

52CA 00088

STATEMENT OF CANDIDACY

2-NEW

88 JAN 12

1. Name of Candidate (in Full)

EDWARD G. BROWN JR.

2. Name of Office

Office of the ~~Commander~~ State Captain

Position

3. City, State and Zip Code

Santa Monica, CA 90405

DESIGNATION OF PRIVATE CAMPAIGN ORGANIZATION

4. Please designate an individual natural person or partnership firm, firm, corporation, or other entity to act as the campaign treasurer.

1/1982

NOTE: The designated treasurer must be a resident of the state in which the candidate is running for office.

5. Name of Campaign (in Full)

BROWN FOR U.S. SENATE

6. Address (Street and Number)

105 West 6th Street, Third Floor

7. City, State and Zip Code

Los Angeles, CA 90017

DESIGNATION OF OTHER AUTHORIZED CAMPAIGN OFFICER

8. I, the undersigned, do hereby designate, name, appoint, select, and authorize the following person to act as the campaign treasurer.

NOTE: The designated treasurer must be a resident of the state in which the candidate is running for office.

9. Name of Designee (in Full)

10. Address (Street and Number)

11. City, State and Zip Code

CS=C

I hereby declare that I have read and understand the contents of this statement and that the information contained herein is true and correct.

Edward G. Brown Jr.

JANUARY 11, 1982

NOTE: Candidate of 1981, and holder of statement of information, for 1982, must file this statement with the State of California by January 15, 1982.

12. Signature of Candidate

13. Signature of Designee

14. Signature of Campaign Treasurer

15. Signature of Campaign Manager

16. Signature of Campaign Secretary

AC

2/12

UN

2-16

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Page 1 of 1

AFFIDAVIT OF BARBARA ANN O'CONNER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

BARBARA ANN O'CONNER, being duly sworn, here declares:

1. I hold a Ph.D. in communications. For the past several months I have served, on a volunteer basis, as the coordinator for appearances by California Governor Edmund G. Brown, Jr. on several radio talk shows. In this capacity, I accompanied the Governor to each of those radio talk shows identified in FEC Case Nos. MUR 1418 and MUR 1419 on which the Governor appeared. I was present with the Governor throughout each such talk show.

2. Those radio talk shows identified in FEC Case Nos. MUR 1418 and MUR 1419 on which Governor Brown appeared contained no communication advocating his nomination or election to any office, or the defeat of any other candidate, and contained no solicitation, making, or acceptance of campaign contributions.

3. Governor Brown is not an announced candidate for the United States Senate, or any other federal office. Governor Brown has not filed as a candidate for any federal office with the California Secretary of State.

4. I have personal knowledge of the foregoing and if called as a witness I could and would competently testify thereto under oath.

///

///

///

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(V) (1)

1 I declare that the foregoing is true and correct, and
2 that this Affidavit was executed this 27 day of January, 1982,
3 at Sacramento, California.

4
5 Barbara O'Conner
6 BARBARA ANN O'CONNER
7

8 SUBSCRIBED AND SWORN TO BEFORE ME
9 this 27 day of January, 1982

10 Rose Ann Stark
11 NOTARY PUBLIC in and for said
12 County and State



January 26, 1982

Statement of Ms. Nelkane Benton, Director of Community Relations, KABC Radio

I, Nelkane Benton, being duly sworn, hereby state that I am Director of Community Relations at KABC Radio, Los Angeles, California.

I have reviewed the programs that aired on KABC on August 24, 1981 between the hours of 9:00 AM and 1:00 PM, on November 13, 1981 between the hours of 4:00 PM and 7:00 PM, and on December 7, 1981 between the hours of 4:00 PM and 7:00 PM, which were guest-hosted by Governor Edmund Brown. The subjects discussed by Governor Brown, his guests, and listeners who called the station were issues of general interest to the citizens of California. In particular, no comments were made advocating the nomination or election of Governor Brown for United States Senate or advocating the defeat of any candidate for U.S. Senate.* In addition Governor Brown made no statements that could be construed as a solicitation of funds for his candidacy.

The guest-host appearance by Governor Brown was initiated by KABC Radio. It is the practice of the station, from time to time, to invite prominent civic and political leaders to host talk programs. The Governor's appearance was consistent with the format of the station which consists of a continuum of talk show programs and news reports. Governor Brown appeared as guest-host on a talk program in place of the regularly aired talk program on November 11, 1981 and December 7, 1981. Governor Brown was paid for his appearances on KABC Radio in accordance with the minimum rates of the American Federation of Television and Radio Artists.

The station does not maintain transcripts of its talk programs and, accordingly has no transcript of the programs on which Governor Brown appeared. The station, however, keeps a metro tech tape, which is a slow speed, low quality recording of its programming, twenty-four hours a day.

*Although no such comments were made during the course of the August 24th and December 7th program, incidental references to the U.S. Senatorial Campaign were made. These lasted a matter of seconds. The exact text of such comments is attached hereto as Appendix A.

(VI) 3

January 26, 1982

As Governor of the State of California, Edmund Brown has been a frequent and sought after guest on KABC. During 1981, Governor Brown was heard as a phone-in guest on the Carole Hemingway program on March 9, 1981 between 8:37 PM and 8:55 PM, on August 7, 1981 between 7:12 and 7:17 PM, and on August 20, 1981 between 9:07 PM and 9:26 PM, and as a phone-in guest on the Michael Jackson show on May 7, 1981 between 9:06 AM and 9:21 AM. He was an in studio guest of the Carole Hemingway show on July 16, 1981 between 8:05 PM and 8:40 PM.

The station considers the opportunity to have had Governor Brown guest-host a program on KABC Radio to have been a valuable program service to its listeners.

William Berton

Sworn to before me
this..... day of
January.....1982

Joanne K. Udell



(VI) (u)

January 26, 1982

Appendix A

Governor Edmund G. (Jerry) Brown Jr., sitting in for Michael Jackson on 8/24/81--at approximately 11:16 A.M.--the following caller: "You're doing a great job. I may not vote for you for the Senate, but I'd like to see you do this regularly." Governor Brown: (over caller's laugh) "Hey, uh, you'd better keep an open mind, here. All right?"

Governor Edmund G. (Jerry) Brown Jr., sitting in for Michael Jackson on 8/24/81. At approximately 11:45 A.M.--the following: Governor Brown: (reintroducing Undersheriff Sherm Block after the break) "We're on with Undersheriff Sherm Block of L.A. County. By the way, are you an announced candidate, yet, I take it at this point." Block: "I am not an announced candidate." Brown: "I tell ya, it's a secret at this point but one known to most of the citizens of the County." Block: "Well, I'm still evaluating the conditions." Brown: "Well, ah, I'm still evaluating the conditions for the U.S. Senate race, but, uh, (laughter in background) we'll leave it at that."

" Governor Edmund G. (Jerry) Brown Jr., on 12/7/81. At approximately 6:08 P.M. The following: Caller: "Governor, you're doing an outstanding job." Governor Brown: "Is that as governor or is that on this talk show?" Caller: (talking over Governor's words) "...Put in for talk show host instead of senator." Governor Brown: "All right." Caller: "My question is on reapportionment..."

3 2 0 1 0 3 1 4 2 3 1

VI

Statement of Ms. Jeannette Boudreau, Assistant Program Director,
KGO Radio.

I, Jeannette Boudreau, being duly sworn, hereby state that I am
Assistant Program Director at KGO Radio San Francisco, California.

I have reviewed the programs that aired on KGO on October 19, 1981,
between the hours of 1pm and 4pm, and on December 18, 1981, between
the hours of 7pm and 10pm, which were guest hosted by Governor Edmund
Brown. The subjects discussed by Gov. Brown, his guests, and listeners
who called the station, were issues of general interest to the citizens
of California. In Particular, no comments were made advocating the
nomination or election of Gov. Brown for U.S. Senate or advocating the
defeat of any candidate for U.S. Senate.* In addition, Gov. Brown made
no statements that could be construed as a solicitation of funds for
his candidacy.

The guest host appearances by Gov. Brown were initiated by KGO Radio.
It is the practice of the station, from time to time, to invite prominent
civic and political leaders to host talk programs in lieu of regular
scheduled hosts. The governor's appearance was consistent with the
format of the station which consists of a continuum of talk show programs
and news reports. Gov. Brown appeared as a substitute host for Jim Eason
on October 19, 1981 and for Ronn Owens on December 18, 1981. Gov. Brown
was paid for his appearances on KGO Radio with accordance with the minimum
rates of the American Federation of Radio and Television Artists.

The station does not maintain transcripts of its talk programs, and
accordingly, has no transcript of the programs on which Gov. Brown
appeared. The station, however, keeps a metro tech tape which is a slow
speed, low-quality recording of it's programming, 24 hours a day.

As Governor of the State of California, Edmund Brown has been a frequent
and sought after guest on KGO. During 1981, Gov. Brown was heard as a
phone-in guest on August 6 at 7pm, May 7 at 7pm, July 9 at 1pm and as
an in studio guest on July 8, 1981 at 7pm.

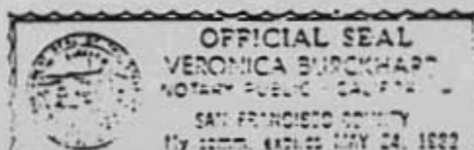
The station considers the opportunity to have had the Governor of the
State guest host a program on KGO radio a valuable program service to
it's listeners.

* Although no such comments were made during the course of these programs,
incidental references to the U.S. Sentatorial campaign were made. These
lasted a matter of seconds. The nature of these comments is set forth
and attached hereto as Appendix B

Jeannette Boudreau
Jeannette Boudreau

ACKNOWLEDGMENT - GENERAL

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO } SS.
ON 1-22-82 BEFORE THE UNDERSIGNED
A NOTARY PUBLIC FOR THE STATE OF CALIFORNIA PERSONALLY
APPEARED JEANNETTE BOUDREAU
WHO KNOWS AND IDENTIFIED HERSELF AS THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT SHE EXECUTED THE SAME.



Veronica Burckhardt
NOTARY PUBLIC FOR SAID COUNTY AND STATE

APPENDIX B

On the show of October 19, 1981 at approx. 1:40pm, a caller to the program asked Gov. Brown what his position on the abortion issue would be if he were to become a U.S. Senator. Gov. Brown outlined his position on abortion.

On the show of October 19th during the second hour of the broadcast a caller asked Gov. Brown as a potential candidate for the Senate what his views would be on space exploration. Gov. Brown outlined his view on this subject.

Of December 18, 1981 at approximately 7:40pm, a caller questioned whether Gov. Brown should be allowed air time on KGO Radio, since he was obviously running for the Senate. Gov. Brown responded that he was making himself accessible in this capacity as Governor of California to those who elected him and to whom he was accountable for his performance in office. Gov. Brown stated that he was not a candidate in the eyes of the law.

3 2 0 1 0 3 1 4 2 3 7

VI 8

I, the undersigned, John Mainelli, under oath, depose and say that:

1. I am the News Director at radio broadcast station KSDO, San Diego, California.

2. During the Fall of 1981, I heard Edmund G. Brown, Jr., the Governor of California, appearing on a call-in program on another radio station. During that call-in program, Governor Brown indicated that he would like to appear on other such programs throughout the state. Believing that Governor Brown's appearance would appeal to our audience and would be in the public interest, I contacted the Governor's staff on behalf of KSDO and extended to the Governor an invitation to appear on the KSDO Midday Show with Laurence Gross ("Midday Show").

3. The Midday Show is one of a number of talk shows that are broadcast by KSDO. It is presented Monday through Friday, from 9:00 a.m. to noon. The Midday Show has a set format. Laurence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Discussions are sometimes directed towards a single topic area in which the guest has a particular expertise; but at other times, the subject area is not limited, and the guest responds to a wide range of questions from the station's audience. Governor Brown appeared on the Midday Show three times: On October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared as a guest with Laurence Gross, the regular host.

4. Public officials frequently appear on the Midday Show. Some of the public figures who have appeared recently are listed in the attached Appendix A.

(VI) 9

5. Governor Brown was asked to appear on the Midday Show because he was the Governor of California and, therefore, his appearance was likely to be attractive to our audience and would serve the public interest by providing residents of the San Diego area with an opportunity to question him about state policies.

6. To the best of my knowledge, Governor Brown was not at the time he appeared a candidate for any federal elective office.

7. To the best of my recollection, and that of Host Gross, during his appearances on the Midday Show, Governor Brown did not solicit contributions on behalf of any candidate for federal office nor advocate the election or defeat of any candidate for federal office.

JOHN MAINELLI

Subscribed and sworn to before me this ____ day of
January, 1982.

CM Hennen
Notary Public



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David D. Wild, Esquire
Dow, Lobres and Albertson
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1418 and 1419

Dear Mr. Wild:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your client had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

VII / ①



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carl R. Ramey, Esquire
McKenna, Wilkinson and Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1418 and 1419

Dear Mr. Ramey:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your client had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

82040314241

VII



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John J. Duffy, Esquire
Pierson, Ball and Dowd
1000 Ring Building
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1418

Dear Mr. Duffy:

On December 29, 1981, the Commission notified you of a complaint alleging that your clients had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

VII (3)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Howard F. Jaeckel, Esquire
CBS, Inc.
51 West 52nd Street
New York, New York

RE: MUR 1419

Dear Mr. Jaeckel:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your client had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

(VTT) (4)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John B. Emerson, Esquire
1888 Century Park East
Twenty-First Floor
Los Angeles, California 90067

RE: MUR 1418 and 1419

Dear Mr. Emerson:

On December 29, 1981, and on January 4, 1982, the Commission notified you of a complaint alleging that your clients had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

82040314244

VII
55



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John F. Sturm, Esquire
National Broadcasting Company, Inc.
1825 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1419

Dear Mr. Sturm:

On January 19, 1982, the Commission notified you of a complaint alleging that your clients had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1982, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

82040314245

(14) (6)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Burton R. Cohn, Esquire
833 Wilshire Boulevard
Fifth Floor
Los Angeles, California

RE: MUR 1418

Dear Mr. Cohn:

The Federal Election Commission has reviewed the allegations of your complaint dated December 15, 1981, and determined that on the basis of the information provided in your complaint (and information provided by the Respondents) there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

(TH) (2)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ted Andromidas
711 South Vermont
Los Angeles, California 94122

RE: MUR 1419

Dear Mr. Andromidas:

The Federal Election Commission has reviewed the allegations of your complaint dated December 15, 1981, and determined that on the basis of the information provided in your complaint (and information provided by the Respondents) there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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DOW, LOHNES & ALBERTSON

1225 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

TELEPHONE (202) 862-8000

TELECOPIER (202) 869-0059

CABLE "DOWLOHNES"

TELEX 99-553

WRITER'S DIRECT DIAL NO.

(202) 862-8072

FAYETTE S. DOW (1927-1992)

MORACE L. LOHNES (1907-1964)

WILLIAM P. SONS
THOMAS H. WALL
EARL R. STANLEY
JOHN A. RAFTER
RICHARD L. BRAUNSTEIN
JOHN S. MATTHEWS
CHARLES A. HERRNS
S. DWIGHT PERRY
DANIEL H. REDMOND
DANIEL W. TOOHAY
BERNARD J. LONG, JR.
CHARLES H. HELEN
ALAN C. CAMPBELL
PATRICK H. ALLEN
RALPH W. HARDY, JR.
JAMES A. TREATOR, III
VERNER A. HARTENBERGER
JONATHAN S. HILL

BRENT S. DUCHFORT
J. DONNIE KESSEMAN
MARSHALL F. BERMAN
J. MICHAEL HINES
RICHARD S. MARIS
JOHN L. BAYB
ARNOLD P. LUTERER
LEONARD J. BAST
MICHAEL S. GOLDSTEIN
JOHN R. PEDRE, JR.
LESLIE H. WIESENFELDER
MICHAEL J. MCCARTHY
KEVIN F. REED
RAYMOND S. BENDER, JR.
WILLIAM A. SILVERMAN
DORNA COLEMAN GREGG
DAVID P. FLEMING
STUART A. SHELTON

MICHAEL A. PAGE
FREDERICK S. COONS, JR.
ALBERT H. TURNER
JOYCE TRIMBLE OMARE
HELEN E. DISENHAUS
KENNETH D. SALOMON
EDWARD H. LEBOW
CHRISTOPHER C. SMALLWOOD
ANDREW A. MERDES
JOHN C. JOST
JOHN S. WARD
TODD D. GRAY
JOHN H. POMEROY
NOEL C. R. GUNTHER
JOHN R. SCHNITZER
R. BRUCE BECKER
BERNARD JOHN SARRETT, JR.
JULIA A. WISDOFF

HARVEY S. HOWARD
BLANK S. BUTHER
JOHN T. BYRNES, JR.
LINDA A. FRITS
JILL S. JOSEPHSON
DAVID J. WITTENSTEIN
NANCY L. WOLF
JAMES H. WELFISH, JR.
TIMOTHY J. O'DOUBRAE
LISA A. PALMER
THOMAS J. HUTTON
DAVID S. HILL
CAROLYN A. WIMBLY
CORINNE M. ANTLEY
HORM R. HOHENLOHE
J. CHRISTOPHER REDDING

OF COUNSEL

FRED W. ALBERTSON
L. ADRIAN ROBERTS

THOMAS W. WILSON
SUZANNE MEYER PERRY

February 26, 1982

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention: William Taylor, Office of General Counsel

Re: Supplemental Response of McClatchy
Newspapers to MUR-1418 and MUR-1419

Dear Mr. Taylor:

In letters of January 19, 1982, and January 22, 1982, McClatchy Newspapers (hereafter "McClatchy"), by its attorneys, responded to complaints filed with the Federal Election Commission by Theodore A. Bruinsma (MUR-1418) and Will Wertz (MUR-1419). These complaints alleged that the appearance of California Governor Edmund G. (Jerry) Brown, Jr. on radio programs produced by McClatchy constituted illegal campaign contributions from McClatchy to Brown. In response, McClatchy submitted that Brown's appearances were not contributions within the meaning of the Federal Election Campaign Act, 2 U.S.C. §431 et seq.

In support of its position, McClatchy cited, inter alia, the Federal Election Commission's Advisory Opinion, AO 1977-42 (Answer to Ken Hechler) (hereafter "Hechler"). As discussed more fully in McClatchy's earlier responses, the Hechler opinion involved a factual situation nearly identical to that presented in this case, in that a public affairs call-in program was hosted by a candidate for federal office. The Commission held that no violation of the Federal Election Campaign Act occurs "where the major purpose of activities involving appearances of candidates for federal office was not to influence their nomination or

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election." McClatchy's earlier responses included affidavits from the station managers of the three McClatchy-owned stations named in the complaints establishing that the decision to permit Brown's appearances was not in any way motivated by an intent to influence his election.

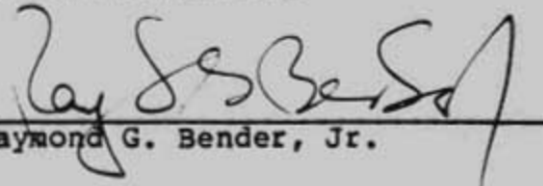
In Hechler, the Commission also stated that its opinion was conditioned on "(i) the absence of any communication expressly advocating the nomination or election of the candidate involved or the defeat of any other candidate, and (ii) the avoidance of any solicitation, making, or acceptance of campaign contributions for the candidate in connection with the activity." McClatchy hereby submits that no such advocacy or solicitation occurred during Governor Brown's radio appearances. Attached hereto are supplemental affidavits of the station managers of Stations KMJ and KFBK and the Program Manager of Station KBEE, each of whom have reviewed recordings of the broadcasts in question. These affidavits establish that the conditions imposed in the Hechler opinion were not violated in this case. Exhibits A, B and C attached.

The explicit applicability of the Hechler opinion to the facts of this case demonstrates that no violation of the Federal Election Campaign Act by McClatchy has occurred. Therefore, the Office of General Counsel is again requested to recommend this conclusion to the Commission, and the Commission is requested to close its files with respect to MUR-1418 and MUR-1419.

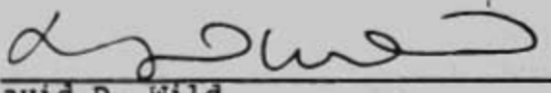
Respectfully submitted,

McCLATCHY NEWSPAPERS

By


Raymond G. Bender, Jr.

By


David D. Wild

Its Attorneys


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AFFIDAVIT

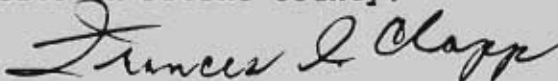
I, Richard F. Sheppard, am Station Manager of Radio Station KFBK, Sacramento, California. In this position I have ultimate responsibility for the station's day-to-day programming decisions.

This Affidavit supplements my previous Affidavits executed January 18, 1982 submitted as Exhibit C to Response of McClatchy Newspapers to MUR-1418 and to Response of McClatchy Newspapers to MUR-1419 filed January 19, 1982.

The appearances of Governor Brown as a host of a call-in radio program on KFBK were broadcast September 22, 1981 (2 and 1/2 hours) and on October 30, 1981 (2 and 1/2 hours). The tapes of the broadcast in question have been reviewed by the affiant and at no time during either broadcast was there (i) any communication expressly advocating the nomination or election of Governor Brown or the defeat of any other candidate and (ii) any solicitation, making, or acceptance of campaign contributions for Governor Brown in connection with the activity.


Richard F. Sheppard

Subscribed and sworn before me this 24th day of February 1982
Notary Public in and for the State of California with principal office in Fresno County.





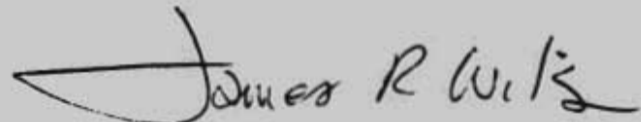
AFFIDAVIT

I, James R. Wilson, am Station Manager of Radio Station KMJ, Fresno, California. In this position I have ultimate responsibility for the station's day-to-day programming decisions.

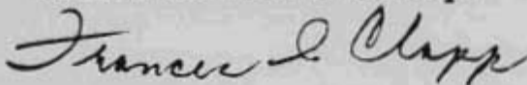
This Affidavit supplements my previous Affidavits executed January 18, 1982 submitted as Exhibit C to Response of McClatchy Newspapers to MUR-1418 and to Response of McClatchy Newspapers to MUR-1419 filed January 19, 1982.

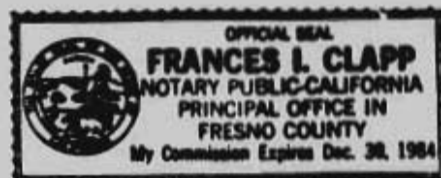
The appearance of Governor Brown as a host of a call-in radio program on KMJ was broadcast September 21, 1981 (3 hours).

The tape of the broadcast in question has been reviewed by the affiant and at no time during the broadcast was there (i) any communication expressly advocating the nomination or election of Governor Brown or the defeat of any other candidate and (ii) any solicitation, making, or acceptance of campaign contributions for Governor Brown in connection with the activity.


James R. Wilson

Subscribed and sworn before me this 24th day of February 1982
Notary Public in and for the State of California with principal
office in Fresno County.





Affidavit

I, Robert Neira, am a Program Manager of Radio Station KBEE, Modesto, California, and am acting as station manager during the absence of Robert E. Neutzling, KBEE Station Manager, who is out of the country on vacation until March 1, 1982; As acting Station Manager, I have temporary responsibility for the station's day-to-day programming decisions.

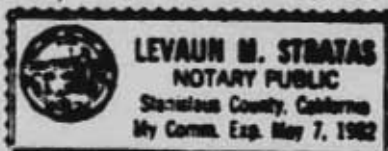
This affidavit supplements the affidavits of Robert E. Neutzling executed January 18, 1982, submitted as Exhibit B to Response of McClatchy Newspapers to MUR-1418 and to Response of McClatchy Newspapers MUR 1419 filed January 19, 1982.

The appearance of Governor Brown as a host of a call-in radio program on KBEE was broadcast September 23, 1981 (3 hours). The tape of the broadcast in question has been reviewed by the affiant and at no time during the broadcast was there (I) any commentary expressly advocating the nomination or election of Governor Brown or the defeat of any other candidate, and (II) any solicitation, making, or acceptance of campaign contributions for Governor Brown in connection with the activity.

Robert Neira
Robert Neira

Subscribed and sworn to before me
this 24 of February, 1982.

Notary Public for said County & State



Levaun M. Stratas

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CBS

CBS Inc., 51 West 52 Street
New York, New York 10019
(212) 975-4321

Law Department

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Commission Reference No. MUR 1419

Dear Mr. Gross:

February 17, 1982

This is in response to your February 3 letter requesting the comments of CBS Inc. ("CBS") regarding a complaint filed with the Federal Election Commission by the Wertz For Senate Committee against CBS and several other radio stations and broadcasting corporations. In essence, the complaint alleges that appearances by Governor Jerry Brown as a "guest host" on various radio talk shows have violated the provisions of 2 U.S.C. §§ 441 (A) et seq., in that such appearances constitute prohibited contributions to the Brown senatorial campaign.

Without addressing the question of whether the type of candidate appearance on a broadcast station alleged in the complaint could ever constitute a violation of the Federal Election Campaign Act, see, 2 U.S.C. §§ 431 (9) (B)(i), we note that the complaint is misdirected insofar as it names CBS. Thus, the complaint's only specific allegation with respect to CBS concerns a three hour appearance by Governor Brown on local programming on radio station KSDO, San Diego. While KSDO is affiliated with the CBS Radio Network, that station is independently owned and CBS exercises no control whatever over its programming decisions. Thus, local programming presented on that station cannot be the basis for a complaint against CBS.

In light of the above, we respectfully submit that no further action with respect to CBS is warranted regarding this complaint.

Very truly yours,

Howard F. Jaeckel

Howard F. Jaeckel
Assistant General Attorney

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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RECEIVED



Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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30A # 7191

JOHN B. EMERSON
1888 CENTURY PARK EAST
TWENTY FIRST FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 556-5569

February 16, 1982

2 FEB 17
5:03
CENTRAL
BY EXPRESS MAIL

Bill Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

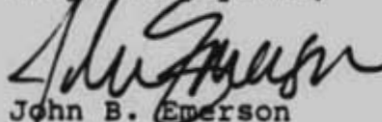
Re: Theodore A. Bruinsma Allegations Against
Edmund G. Brown, Jr., Case No. MUR 1418;
Wertz for Senate Allegations Against
Edmund G. Brown, Jr., Case No. MUR 1419

Dear Mr. Taylor:

Enclosed herewith please find our brief and supporting affidavit in response to the allegations of the above-referenced complaints. As the enclosed indicates, Commission precedent and sound policy require that no action be taken against Governor Brown by virtue of the Wertz and Bruinsma complaints.

We strongly urge the Commission to rapidly dispose of this matter, which we believe was raised solely in an effort to obtain publicity by two virtually unknown candidates. I look forward to hearing from you soon.

Very truly yours,


John B. Emerson

JBE:veg
Enclosure

cc: Hon. Edmund G. Brown, Jr. (w/enc.)
Michael Kantor, Esq. (w/enc.)
Burt Pines, Esq. (w/enc.)

1 JOHN B. EMERSON, ESQ.
1888 Century Park East
2 Seventeenth Floor
Los Angeles, California 90067
3 Telephone: (213) 556-5569

4 Attorney for GOVERNOR EDMUND G. BROWN, JR.
5
6
7

8 FEDERAL ELECTION COMMISSION
9
10

11 THEODORE A. (TED) BRUINSMA,) FEC Case No. MUR 1418
12 Alleges Violations By)
13 AMERICAN BROADCASTING SYSTEM,) BRIEF IN RESPONSE TO COMPLAINT,
McCLATCHY BROADCASTING CORP.,) FILED ON BEHALF OF EDMUND G.
14 GANNETT COMPANY, INC. and) BROWN, JR.; DECLARATION OF
EDMUND G. BROWN, JR.) BARBARA ANN O'CONNER IN SUPPORT
15 THEREOF)
16 WERTZ FOR SENATE,) FEC Case No. MUR 1419
17 Alleges Violations By) BRIEF IN RESPONSE TO COMPLAINT,
18 AMERICAN BROADCASTING COMPANY,) FILED ON BEHALF OF EDMUND G.
NATIONAL BROADCASTING CO.,) BROWN, JR.; DECLARATION OF
19 INC. (sic), McCLATCHY BROAD-) BARBARA ANN O'CONNER IN SUPPORT
CASTING CORP., and EDMUND G.) THEREOF
20 BROWN, JR.)
21

22 INTRODUCTORY STATEMENT
23

24 This brief is filed in response to complaints lodged by
25 Theordore A. Bruinsma ("Bruinsma") and Wertz for Senate ("Wertz"),
26 FEC Case Nos. MUR 1418 and MUR 1419, respectively, against Cali-
27 fornia Governor Edmund G. Brown, Jr. ("Governor Brown") and the
28 corporate owners of several California radio stations. Since

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1 the Bruinsma and Wertz complaints are virtually identical, this
2 brief responds to the issues raised therein in a consolidated
3 manner. As will be demonstrated below, both Federal Election
4 Commission ("Commission") precedent and sound policy require the
5 dismissal of the above-captioned complaints as unmeritorious.
6 Accordingly, we respectfully request the Commission to find that
7 no action should be taken against Governor Brown in this matter.

8
9 The Bruinsma and Wertz complaints are based upon the
10 contention that the above-named corporate entities committed
11 violations of 2 USC §§441a et. seq. by making contributions to a
12 campaign for federal office. The purported "contributions"
13 complained of are appearances by Governor Brown as a guest host
14 of a radio talk show on six occasions from August, 1981 through
15 November 13, 1981. The radio shows were of a listener call-in
16 format, whereby unscreened listeners were able to telephone the
17 station and speak directly with the Governor during a live radio
18 broadcast. Bruinsma and Wertz contend that the above-named
19 corporate entities, who allegedly own the radio stations on which
20 Governor Brown appeared, made an illegal campaign contribution to
21 Governor Brown by inviting him to participate in and by broad-
22 casting said radio talk shows, and that Governor Brown accepted
23 illegal contributions by appearing on those shows.

24
25 Governor Brown is not an announced candidate for the
26 United States Senate, or any other federal office. He has not
27 filed as a candidate for any federal office with the California
28 Secretary of State (See Declaration of Barbara Ann O'Conner

1 [hereinafter the "O'Conner Declaration"]', ¶3). Contrary to the
2 unsubstantiated assertions of Bruinsma and Wertz, the radio talk
3 shows complained of were coordinated, on a volunteer basis, by
4 Barbara Ann O'Conner, who is in no way connected with the Brown
5 for Senate Campaign Committee (O'Conner Declaration, ¶1).

6
7 Governor Brown's appearances on the radio talk shows
8 can only be characterized as campaign contributions within the
9 meaning of the 2 USC §441a prohibition if made "in connection
10 with any election to any political office, or in connection with
11 any primary election" 2 USC §441b(a). Thus, the ques-
12 tion presented is whether Governor Brown's appearance as a guest
13 host on several radio talk shows during a period of time more
14 than six months prior to the date of the California primary
15 election can be construed as having been a gift of services "in
16 connection with" an election for federal office.

17
18 I.

19 GOVERNOR BROWN'S RADIO TALK SHOW APPEARANCES

20 CANNOT BE CHARACTERIZED AS A "CONTRIBUTION"

21 TO A CAMPAIGN FOR FEDERAL OFFICE

22
23 The Federal Election Commission addressed the precise
24 issue presented by the Bruinsma and Wertz complaints in Advisory
25 Opinion 1977-42: Sponsorship of Radio Program. The rationale
26 applied by the Commission in Advisory Opinion 1977-42 is on all
27 fours with the instant case, and compels the conclusion that

28 / / /

1 Governor Brown's appearances on the radio talk shows did not
2 constitute "contributions" within the meaning of the applicable
3 statutory provisions.

4
5 Advisory Opinion 1977-42 involved a candidate for
6 Congress who appeared, on a regular basis, on two radio programs
7 broadcast within his congressional district located in West
8 Virginia. One program, which aired for an hour five days a week,
9 was an interview and talk show format, while the other, broadcast
10 weekly for one hour, was a listener call-in program, similar to
11 the radio talk shows described by Bruinsma and Wertz. Ken
12 Hechler ("Hechler"), the Congressional candidate, was seeking his
13 Party's nomination for Congress in the 1978 elections. Hechler
14 designated a principal campaign committee on July 5, 1977. His
15 radio programs were broadcast between August and October, 1977.
16 Hechler did not file as a candidate with the West Virginia
17 Secretary of State until January, 1978.

18
19 Significantly, the radio talk shows complained of by
20 Bruinsma and Wertz also were broadcast between August and November
21 of the year preceding the election for which they purportedly
22 constitute a contribution.

23
24 In Advisory Opinion 1977-42, the Commission specif-
25 ically addressed the question of whether Hechler's appearances on
26 the radio programs constituted the making of a "contribution" by
27 the program sponsors or the radio stations. Citing recent
28 Advisory Opinions, the Commission concluded that a "contribution"

1 would not occur in specific circumstances where the major pur-
2 pose of activities involving appearances of candidates for federal
3 office was not to influence their nomination or election. The
4 Commission defined those specific circumstances as follows:

5
6 " (i) The absence of any communication
7 expressly advocating the nomination or the
8 election of the candidate involved or the
9 defeat of any other candidate, and

10
11 (ii) the avoidance of any solicitation,
12 making, or acceptance of campaign contribu-
13 tions for the candidate in connection with
14 the activity." A.O. 1977-42, C.C.H. Federal
15 Election Campaign Financing Guide, ¶5313.
16

17 There is no evidence whatsoever that the radio programs
18 on which Governor Brown appeared were conducted by the hosting
19 radio stations for the purpose of influencing a nomination or
20 election to the United States Senate. Moreover, the sworn
21 affidavit of Barbara Ann O'Conner, who personally accompanied the
22 Governor to each radio show complained of by Bruinsma and Wertz,
23 and was present throughout the entire broadcast, indicates that
24 those radio talk shows on which Governor Brown appeared contained
25 no communication advocating his nomination or election to any
26 office, or the defeat of any other candidate, and contained no
27 solicitation, making, or acceptance of campaign contributions.
28 (O'Conner Declaration, ¶2).

1 The factual basis for the Commission's opinion in
2 Advisory Opinion 1977-42 is so similar to the circumstances
3 surrounding the radio talk shows complained of by Bruinsma and
4 Wertz that any characterization of Governor Brown's appearances
5 as campaign contributions must be rejected. Accordingly, Com-
6 mission precedent requires the finding that Governor Brown's
7 radio talk show appearances did not occur in circumstances where
8 the major purpose of the activity was to influence the Governor's
9 nomination or election to the United States Senate, and thus were
10 not "contributions" within the meaning of the applicable statutes
11 and regulations.

12
13 II.

14 SOUND POLICY REQUIRES APPLICATION OF
15 ADVISORY OPINION 1977-42 TO THE INSTANT CASE
16

17 Both Bruinsma and Wertz suggest, in their complaints,
18 that Advisory Opinion 1977-42 is distinguishable from the current
19 situation. Indeed, the only distinction between the Commission's
20 earlier opinion and the current facts is that the rationale for
21 applying the rule articulated in Advisory Opinion 1977-42 is even
22 more compelling here. Candidate Hechler was a non-elected official
23 who presumably had much to gain from the name recognition he
24 would gain from regularly hosting interview and radio talk shows
25 over a three-month period of time. In contrast, Governor Brown

26 ///

27 ///

28 ///

1 has served as a State-wide elected official for the past eleven
2 years, with four years as California's Secretary of State and
3 seven years as her Governor. Moreover, as Governor of California,
4 Governor Brown's responses to various questions and problems put
5 to him by individual citizens are newsworthy, and his ability to
6 listen and respond is critical to the governing process. Yet the
7 position Bruinsma and Wertz urge the Commission to take would
8 have far reaching undesirable ramifications, and would directly
9 impede the public's right to observe and question those it elects
10 to federal office.

11
12 If the commission adopts the position urged by com-
13 plainants, the effect would be to preclude any Member of Congress
14 who is likely to seek re-election from participating in a talk
15 show, on radio or television, during eighteen months of a twenty-
16 four month term unless every conceivable challenger for his seat
17 is also asked to participate. To characterize as campaign con-
18 tributions Governor Brown's appearances on radio talk shows in
19 August through November of the year preceding the election in a
20 state with a June primary would violate sound public policy and
21 fly in the face of common sense.

22
23 Accordingly, we urge the Commission to apply the
24 reasoning and holding of Advisory Opinion 1977-42 to the instant
25 case, and to find that the major purpose of the radio talk shows

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27 / / /

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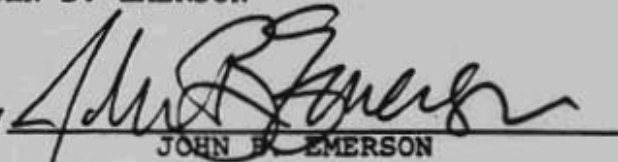
1 on which Governor Brown appeared was not to influence his nomina-
2 tion or election to federal office, and that said appearances
3 therefore did not constitute a "contribution" within the meaning
4 of 2 USC §441a.
5

6 DATED: February 15, 1982

Respectfully Submitted,

JOHN B. EMERSON

By


JOHN B. EMERSON

Attorney for GOVERNOR EDMUND G.
BROWN, JR.

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AFFIDAVIT OF BARBARA ANN O'CONNER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

BARBARA ANN O'CONNER, being duly sworn, here declares:

1. I hold a Ph.D. in communications. For the past several months I have served, on a volunteer basis, as the coordinator for appearances by California Governor Edmund G. Brown, Jr. on several radio talk shows. In this capacity, I accompanied the Governor to each of those radio talk shows identified in FEC Case Nos. MUR 1418 and MUR 1419 on which the Governor appeared. I was present with the Governor throughout each such talk show.

2. Those radio talk shows identified in FEC Case Nos. MUR 1418 and MUR 1419 on which Governor Brown appeared contained no communication advocating his nomination or election to any office, or the defeat of any other candidate, and contained no solicitation, making, or acceptance of campaign contributions.

3. Governor Brown is not an announced candidate for the United States Senate, or any other federal office. Governor Brown has not filed as a candidate for any federal office with the California Secretary of State.

4. I have personal knowledge of the foregoing and if called as a witness I could and would competently testify thereto under oath.

///

///

///

1 I declare that the foregoing is true and correct, and
2 that this Affidavit was executed this 25 day of January, 1982,
3 at Sacramento, California.

4
5 Barbara O'Conner
6 BARBARA ANN O'CONNER
7

8 SUBSCRIBED AND SWORN TO BEFORE ME
9 this 27 day of January, 1982

10
11 Rose Ann Stark
12 NOTARY PUBLIC in and for said
13 County and State



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JOHN B. EMERSON
1888 CENTURY PARK EAST
TWENTY FIRST FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 556-5569

January 14, 1982

Bill Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Theodore A. Bruinsma Allegations
Against Edmund G. Brown, Jr.,
Case No. MUR 1418; Wertz for Senate
Allegations Against Edmund G.
Brown, Jr., Case No. MUR 1419

Dear Mr. Taylor:

This will confirm our conversation of today wherein I advised you that I have been designated as counsel for Edmund G. Brown, Jr. for the above-referenced matters. Since our offices only received the complaints in said matters this morning, you have granted us an extension of time through and including Tuesday, January 26, 1982 in which to respond to the allegations contained therein. You have also agreed to favorably consider a request for additional time in which to respond should that become necessary.

Please direct all notification and other communications concerning the above-referenced matters to my attention at the above address. A formal designation of counsel will follow.

Very truly yours,

John B. Emerson
John B. Emerson
Counsel
Brown for Senate
Exploratory Committee

JBE:veg

cc: Honorable Edmund G. Brown, Jr.
Michael Kantor, Chairman,
Brown Exploratory Committee
Burt Pines, Treasurer,
Brown Exploratory Committee

85:pd 81

NBC

National Broadcasting Company, Inc.

1825 K Street, N.W.

Washington, D.C. 20006 202-833-3600 Telex-89-2685

John F. Sturm
Law Department
Assistant General Attorney
Washington

Hand Delivery

February 2, 1982

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

RE: MUR-1419

Dear Mr. Steele:

This is in response to the above-noted correspondence dated January 19, 1982, addressed to Mr. Corydon B. Dunham, Executive Vice President and General Counsel of National Broadcasting Company, Inc. (NBC). Mr. Dunham has asked me to respond for NBC.

Your letter and attachments thereto indicate that the Commission has received a complaint from the Wertz For Senate organization alleging possible violation of the Federal Election Campaign Act of 1971, as amended, or of Chapters 95 and 96 of Title 26, U.S. Code.

Please be advised that, although the Wertz For Senate letter alleges a complaint against NBC, none of the radio stations listed or mentioned in the complaint is owned by NBC.

For your additional information, NBC owns two radio stations in California, both in San Francisco (KNBR and KYUU(FM)). Governor Edmund G. Brown, Jr. has not hosted or appeared on a "talk show" on either of the NBC radio stations in San Francisco during the period noted in the complaint.

Accordingly, in light of the above, the complaint is obviously in error and should be promptly dismissed with regard to NBC.

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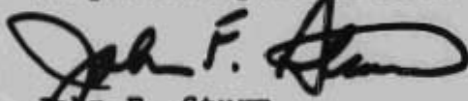
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Page 2
Mr. Charles N. Steele
February 2, 1982

If there are any further questions, please communicate
with the undersigned.

Respectfully submitted,


John F. Sturm

cc: Mr. Corydon B. Dunham
Mr. Kenneth Gross
Mr. Bill Taylor

82040314258

National Broadcasting Company, Inc.
1825 K Street, N.W.
Washington, D.C. 20006

Hand Delivery

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NBC

National Broadcasting Company, Inc.

1825 K Street, N.W.
Washington, D.C. 20006 202-833-3600 Telex-89-2685John F. Sturm
Law Department
Assistant General Attorney
WashingtonHand Delivery

February 2, 1982

82 FEB 2 P 3:53

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General Counsel
Federal Election Commission
Washington, D. C. 20463RE: MUR-1419

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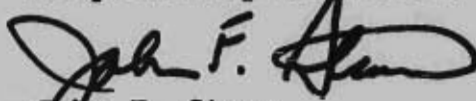
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Page 2
Mr. Charles N. Steele
February 2, 1982

If there are any further questions, please communicate
with the undersigned.

Respectfully submitted,


John F. Sturm

cc: Mr. Corydon B. Dunham
Mr. Kenneth Gross
Mr. Bill Taylor

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NBC

National Broadcasting Company, Inc.
1825 K Street, N.W.
Washington, D.C. 20006

Mr. Bill Taylor
Office of General Counsel
Federal Election Commission
Washington, D. C. 20463

NBC

National Broadcasting Company, Inc.

1825 K Street, N.W.

Washington, D.C. 20006 202-833-3600 Telex-89-2685

John F. Sturm
Law Department
Assistant General Attorney
Washington

Hand Delivery

February 2, 1982

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

RE: MUR-1419

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Accordingly, in light of the above, the complaint is obviously in error and should be promptly dismissed with regard to NBC.

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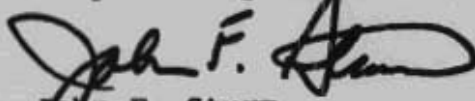
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Page 2
Mr. Charles N. Steele
February 2, 1982

If there are any further questions, please communicate
with the undersigned.

Respectfully submitted,


John F. Sturm

cc: Mr. Corydon B. Dunham
Mr. Kenneth Gross
Mr. Bill Taylor

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NBC

National Broadcasting Company, Inc.
1825 K Street, N.W.
Washington, D.C. 20006

Hand Delivery

**Mr. Kenneth Gross
Associate General Counsel
Federal Election Commission
Washington, D. C. 20463**

Cec# 7069

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
(202) 861-2600

JAMES A. MCKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS K. FROMOCK
CARL R. RAMEY
EDWARD F. TAPTICH
NORMAN R. LEVENTHAL
STEVEN A. LERMAN
R. MICHAEL BENKOWSKI
RANDOLPH J. MAY
VIRGINIA S. CARSON
LAWRENCE J. HOVSHIN
JAMES S. BLASZAR
WILLIAM K. KEANE
DENNIS P. CORSETT
JAMES H. DE GRAFFENREIDT, JR.
JILL ABERHOUSE STERN

February 1, 1982

DIRECT DIAL NO.
2622

92 FEB 1 P 2:51

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR-1418 and
MUR-1419

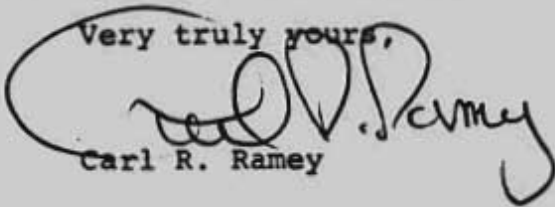
Dear Sir:

On January 29, 1982, American Broadcasting Companies, Inc., submitted its "Response" to the above-referenced pending complaints. As a result of mail delivery delays it was not possible, at that time, to include the original signed statement of Ms. Nelkane Benton as Attachment A to that Response.

Since the original executed copy of Ms. Benton's statement has now arrived from California, it is being transmitted herewith for association with the ABC submission made on January 29.

If there are any questions concerning this matter, kindly communicate with the undersigned.

Very truly yours,


Carl R. Ramey

Enclosure

cc: William E. Taylor, Esq.

January 26, 1982

Statement of Ms. Nelkane Benton, Director of Community Relations, KABC Radio

I, Nelkane Benton, being duly sworn, hereby state that I am Director of Community Relations at KABC Radio, Los Angeles, California.

I have reviewed the programs that aired on KABC on August 24, 1981 between the hours of 9:00 AM and 1:00 PM, on November 13, 1981 between the hours of 4:00 PM and 7:00 PM, and on December 7, 1981 between the hours of 4:00 PM and 7:00 PM, which were guest-hosted by Governor Edmund Brown. The subjects discussed by Governor Brown, his guests, and listeners who called the station were issues of general interest to the citizens of California. In particular, no comments were made advocating the nomination or election of Governor Brown for United States Senate or advocating the defeat of any candidate for U.S. Senate.* In addition Governor Brown made no statements that could be construed as a solicitation of funds for his candidacy.

The guest-host appearance by Governor Brown was initiated by KABC Radio. It is the practice of the station, from time to time, to invite prominent civic and political leaders to host talk programs. The Governor's appearance was consistent with the format of the station which consists of a continuum of talk show programs and news reports. Governor Brown appeared as guest-host on a talk program in place of the regularly aired talk program on November 11, 1981 and December 7, 1981. Governor Brown was paid for his appearances on KABC Radio in accordance with the minimum rates of the American Federation of Television and Radio Artists.

The station does not maintain transcripts of its talk programs and, accordingly has no transcript of the programs on which Governor Brown appeared. The station, however, keeps a metro tech tape, which is a slow speed, low quality recording of its programming, twenty-four hours a day.

*Although no such comments were made during the course of the August 24th and December 7th program, incidental references to the U.S. Senatorial Campaign were made. These lasted a matter of seconds. The exact text of such comments is attached hereto as Appendix A.

January 26, 1982

As Governor of the State of California, Edmund Brown has been a frequent and sought after guest on KABC. During 1981, Governor Brown was heard as a phone-in guest on the Carole Hemingway program on March 9, 1981 between 8:37 PM and 8:55 PM, on August 7, 1981 between 7:12 and 7:17 PM, and on August 20, 1981 between 9:07 PM and 9:26 PM, and as a phone-in guest on the Michael Jackson show on May 7, 1981 between 9:06 AM and 9:21 AM. He was an in studio guest of the Carole Hemingway show on July 16, 1981 between 8:05 PM and 8:40 PM.

The station considers the opportunity to have had Governor Brown guest-host a program on KABC Radio to have been a valuable program service to its listeners.

Helene Burton

Sworn to before me
this *26th* day of
January, 1982

Joanne K. Udell



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January 26, 1982

Appendix A

Governor Edmund G. (Jerry) Brown Jr., sitting in for Michael Jackson on 8/24/81--at approximately 11:16 A.M.--the following caller: "You're doing a great job. I may not vote for you for the Senate, but I'd like to see you do this regularly." Governor Brown: (over caller's laugh) "Hey, uh, you'd better keep an open mind, here. All right?"

Governor Edmund G. (Jerry) Brown Jr., sitting in for Michael Jackson on 8/24/81. At approximately 11:45 A.M.--the following: Governor Brown: (reintroducing Undersheriff Sherm Block after the break) "We're on with Undersheriff Sherm Block of L.A. County. By the way, are you an announced candidate, yet, I take it at this point." Block: "I am not an announced candidate." Brown: "I tell ya, it's a secret at this point but one known to most of the citizens of the County." Block: "Well, I'm still evaluating the conditions." Brown: "Well, ah, I'm still evaluating the conditions for the U.S. Senate race, but, uh, (laughter in background) we'll leave it at that."

Governor Edmund G. (Jerry) Brown Jr., on 12/7/81. At approximately 6:08 P.M. The following: Caller: "Governor, you're doing an outstanding job." Governor Brown: "Is that as governor or is that on this talk show?" Caller: (talking over Governor's words) "...Put in for talk show host instead of senator." Governor Brown: "All right." Caller: "My question is on reapportionment..."

Gen # 7065

Before The
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

In the Matter of

Complaints Directed Against American
Broadcasting Companies, Inc. by
THEODORE A. BRUINSMA and the WERTZ
FOR SENATE CAMPAIGN COMMITTEE

)
)
) MUR-1418 and
) MUR-1419
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RESPONSE OF
AMERICAN BROADCASTING COMPANIES, INC.

American Broadcasting Companies, Inc. ("ABC"), by
its attorneys, hereby submits the following comments in
response to the above-captioned complaints. For the reasons
hereinafter stated, both complaints should be dismissed with-
out further Commission action.

I.

Introduction

ABC is the licensee of a number of broadcast
stations in major markets throughout the country, including
radio stations KGO, San Francisco, and KABC, Los Angeles,
California. Although two separate complaints have been
tendered involving these stations, we believe the essential
facts and legal issues are sufficiently similar to justify
this single response.

A. The Bruinsma Complaint

This complaint asserts that ABC and other broadcast
organizations violated the Federal Election Campaign Act by

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permitting Governor Edmund G. Brown, Jr. of California to appear on certain radio programs. According to the complaint, such broadcast appearances constituted an impermissible corporate political contribution under 2 U.S.C. § 441b. Specifically, it is alleged that ABC "made a gift of radio time to Edmund G. Brown, Jr. for the major purpose of influencing the primary and general election for the U.S. Senate from California in 1982." Bruinsma Complaint, p. 2. The complaint lists three appearances of Governor Brown on ABC -- two on KABC and one on KGO.

In addition, the complaint is colored by highly general assertions regarding the nature of these broadcast appearances -- claiming, in particular, that "official[s]" of ABC "must have known that the appearances had a direct relation to the campaign." Bruinsma Complaint, p. 6. Although this statement is advanced on the basis of "news stories," the complainant fails to identify a single news account or other source specifically characterizing ABC's knowledge and assumptions regarding this matter.

The complaint closes by requesting that the Commission proceed with enforcement action "to prevent further violations." Bruinsma Complaint, p. 6.

B. The Wertz Complaint

This complaint, like the Bruinsma complaint, charges that ABC and other broadcast organizations have violated U.S.C. § 441 "by the making and acceptance of corporate 2

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contributions to the Brown senatorial campaign." Wertz Complaint, p. 1.

Claiming that the Brown campaign has specifically sought to promote Governor Brown in such radio appearances, the complaint lists two appearances on ABC -- 6 hours on KABC, and 3 hours on KGO. No other factual information is asserted, as to ABC.

In a highly generalized manner, however, the Wertz complaint expresses the view that "Brown and/or the Brown for Senate Committee have not paid for the broadcast time and Brown has received no continuing reimbursement for the appearances." Also without support, it is asserted that "the broadcast time, upon information and belief, has been allotted with the clear understanding that it promotes Brown's senatorial campaign, although the programs may not contain express advocacy or solicitation." Wertz Complaint, p. 2.

C. The Subject Broadcast Appearances on ABC Stations

As shown in Attachments A and B hereto,^{1/} Governor Brown was recently invited to appear as a guest-host on certain radio talk programs broadcast by KABC and KGO. Each of the appearances took place on a type of talk program that is regularly broadcast by both stations -- i.e., one that

^{1/} See Attachment A (being an affidavit of Ms. Nelkane Benton, Director of Community Relations of KABC Radio) and Attachment B (being an affidavit of Ms. Jeannette Boudreau, Assistant Program Director of KGO Radio).

features telephone conversations between members of the listening public and the guest or host of the program. Indeed, both stations utilize an "all-talk" format, 24 hours per day, consisting of news and talk programming.

KABC

Governor Brown appeared on KABC as a guest-host on August 24, 1981 between the hours of 9:05 a.m. and 1:00 p.m.; on November 13, 1981 between the hours of 4:05 p.m. and 7:00 p.m.; and on December 7, 1981, also between the hours of 4:05 p.m. and 7:00 p.m. KABC Radio initiated the appearance of Governor Brown on each occasion and also made the suggestion that he appear as a guest-host.

KABC Radio follows a regular practice of inviting prominent political and governmental leaders and other newsworthy figures, including entertainers, to guest-host on the station in lieu of a regularly scheduled host. For instance, this practice is often followed when the regular host is on vacation. To merely illustrate, over the course of the last two years, the following personalities have appeared on various KABC talk programs as guest hosts: Los Angeles Mayor Tom Bradley, Los Angeles Police Chief Daryl Gates, then Los Angeles City Attorney Burt Pines, and the then President of the Los Angeles City Board of Education, Roberta Weintraub.

As is the case with other guest hosts on KABC, Governor Brown was compensated for each of the foregoing

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appearances at the minimum rates established by the American Federation of Television and Radio Artists (AFTRA).

KGO

Governor Brown also appeared as a guest-host on KGO Radio at the behest of the station. He appeared as guest-host on talk programs between the hours of 1:00 p.m. and 4:00 p.m. on October 19, 1981 and between the hours of 7:00 p.m. and 10:00 p.m. on December 18, 1981. Governor Brown was also paid for his appearances on KGO.

Guest-hosts have been periodically featured on KGO Radio for a number of years. For example, such guest-hosts have included former California Congressmen Jerome Waldie and Congressman Pete Stark, California Assembly Speaker Willy Brown, Marin County Supervisor Barbara Boxer, and Quentin Kopp, a member of the San Francisco Board of Supervisors, who, at the time of his guest-host appearance, was a candidate for Mayor of San Francisco.^{1/}

D. Status of the Election

One further preliminary matter should be mentioned. Complainants apparently assume that Governor Brown is a candidate for the U.S. Senate from California and that the election campaign for that office is presently underway.

^{1/} Although not as a guest-host, one of the complainants, Theodore A. Bruinsma, appeared as a featured guest on the KGO "Ron Owens Program" on December 14, 1981, between 7-8:00 p.m.

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From a broadcaster's perspective, however, it is significant to note that the subject campaign has not yet commenced and Governor Brown is not presently a "legally qualified candidate" for purposes of federal communications law. In the first place, Governor Brown has not announced his candidacy for the U.S. Senate and, in the second place, even if he had announced, under California law he could not complete the necessary filing requirements for that office at this early date. See, e.g., Section 73.1940 of the Rules and Regulations of the Federal Communications Commission, 47 C.F.R. § 73.1940; and Section 52 of the California Election Code.

Accordingly, ABC did not regard Mr. Brown's appearances on KABC and KGO to be made in the capacity of a candidate for federal office (only in his capacity as Governor of California). Indeed, if ABC believed otherwise, it could only have agreed to such appearances with the understanding that the stations would be obligated, under Section 315 of the Communications Act (47 U.S.C. § 315), to provide "equal opportunities" to all "legally qualified candidates" for the same office -- a totally unrealistic prospect from ABC's standpoint, given the substantial amounts of air time that would have been involved in this case.

II.

Summary of ABC Position

Governor Brown's appearances on KABC and KGO were initiated by those stations for the sole purpose of providing

their listening public with an opportunity to communicate with the Governor on issues of interest and importance to Californians. See Attachments A and B. The appearances occurred in talk/discussion type programs that are a regular feature on both stations (programs which periodically include the use of "guest-hosts").

Plainly and unequivocally, the determination by ABC to present Governor Brown as a guest-host was an editorial judgment to foster the discussion of public issues, not, in any sense, to influence the election of any candidate in any particular election for federal office. Indeed, as noted, ABC did not even regard Mr. Brown as a federal candidate at the time of his appearances.

Moreover, based on a recent review of tape recordings of the appearances, we are able to confirm that the subjects discussed on the programs (by Governor Brown, his guests and the listeners who "called-in") concerned issues of general interest to the citizens of California. In particular, the programs did not contain advocacy of the nomination or election of Governor Brown for federal office (or the defeat of any candidate for federal office); nor did Governor Brown make any statements that could be construed as a solicitation of funds for his candidacy. See Attachments A and B.

Accordingly, ABC does not believe that Governor Brown's appearances on KABC and KGO constituted a political "contribution" prohibited by federal law. On the contrary, such guest appearances by the highest elected state official

of California are highly newsworthy and represent a unique public service by federally licensed broadcast entities clearly outside the scope of 2 U.S.C. § 441b and fully consistent with past Commission rulings.

In addition, we believe that any ruling effectively precluding broadcast stations from offering guest appearances, to persons who are considered likely federal candidates,^{1/} would necessarily intrude upon the long-established discretion and, we submit, First Amendment prerogatives, of radio and television licensees to afford government officials broadcast time to discuss important public issues.^{2/}

III.

Governor Brown's Appearances On KABC And KGO Talk Programs Did Not Violate Applicable Federal Elections Law

According to the complaints, Governor Brown's appearances on KABC and KGO violate 2 U.S.C. § 441b, which provides that:

^{1/} Because their authority to continue to operate is subject to a federal license, it is highly unlikely that broadcast stations would assume the risk of intentionally violating federal election laws. In this context, however, it is interesting to note that because 2 U.S.C. § 441b is only directed to corporate contributions, such a ruling would have the anomolous result of not being applicable to the many radio and television stations that are not incorporated, but operate, instead, as partnerships, unincorporated associations, joint ventures or single proprietorships.

^{2/} See, e.g., Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973); Reader's Digest Assoc., Inc. v. Federal Election Commission, 509 F. Supp. 1210 (S.D.N.Y. 1981).

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"It is unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever . . . to make a contribution or expenditure in connection with any election at which presidential or vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section"

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b(2) to include:

". . . any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section" 1/

The Bruinsma and Wertz complaints appear to rely exclusively upon the superficial thrust of the cited statutory language. In ABC's view, this is patently insufficient to conclude that the mere appearance of a candidate (or presumed

1/ See also 2 U.S.C. § 431(8)(A)(i) which defines a contribution as a "gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing" an election. The Commission's Rules and Regulations incorporate like provisions and definitions. See, e.g., 11 C.F.R. §§ 100.7(a)(1), 114.1(a)(1) and 114.2.

candidate) on a broadcast discussion or talk program constitutes an impermissible political contribution by the broadcast organization (as distinguished, for instance, from a third party corporate purchase or sponsorship of broadcast time for a partisan political purpose). A brief review of the underlying purposes of 2 U.S.C. § 441b confirms this view.

The origin, legislative history and purpose of what is now 2 U.S.C. § 441b is discussed in detail in United States v. C.I.O., 335 U.S. 106 (1948) and in United States v. International Union United Auto Aircraft and Agr. Implement Workers, 352 U.S. 567 (1957). With respect to corporations, the Supreme Court in United States v. C.I.O. states:

"This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders." 335 U.S. 106, 113 (footnotes omitted). 1/

1/ See also United States v. International Union where the Court observed that the "evil at which Congress has struck . . . is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." 352 U.S. at 589. Significantly, U.S. v. International Union involved a situation where a union had utilized its dues to sponsor commercial television broadcasts designed to influence the electorate to select certain candidates for Congress. The Court's extensive discussion of that situation, including elaborate citations to pertinent legislative history, focused on the purchase of broadcast time by a union or corporation without indicating that the provision of broadcast time by a broadcast licensee was even remotely analogous.

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The essential elements of an offense under 2 U.S.C. § 441b have been summarized as follows: "(1) [a] contribution or expenditure, (2) by a [corporation or] labor organization, (3) for the purpose of active electioneering (4) in connection with an election for named federal offices described in the statute." United States v. Pipefitters Local Union No. 562, 434 F.2d 1116, 1121 (8th Cir. 1970). In other words, the activity Congress sought to restrict by 2 U.S.C. § 441b was of a highly partisan nature -- "active electioneering" in connection with specific federal elections.^{1/}

This construction, defining the kind of restricted activity by the nature (as well as the fact) of the "contribution," is also reflected in pertinent provisions of the Commission's rules and regulations designed to implement Section 441b and other federal election laws. For instance, Section 100.7(1) of the Commission's Rules, paralleling Section 431(e) of the statute, defines a "contribution" as including payments, services or other things of value which are made "for the purpose of influencing any election for Federal office" 11 C.F.R. § 100.7(1) (emphasis added). Similarly, "[a] gift, subscription, loan, advance, or

^{1/} As the Court emphasized in United States v. Boyle, 338 F. Supp. 1028, 1033 (D.D.C. 1972), it is only when a corporation or union is engaged in "active electioneering" on behalf of particular Federal candidates "with the idea of reaching the public at large . . . that the statute's proscription . . . becomes applicable."

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deposit of money or anything of value made to a national committee . . . of a political party is not a contribution if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office." 11 C.F.R. § 100.7(b)(12) (emphasis added).^{1/}

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It is especially noteworthy that separate Commission regulations specifically recognize the inherent journalistic function that is being performed when broadcast facilities are used for certain forms of political discussion -- a regulatory acknowledgment, we submit, that further supports the conclusion that Section 441b is only intended to prohibit corporate contributions undertaken with a clear partisan purpose. Thus, the Commission's regulations also provide that "[a]ny cost incurred in covering or carrying a news story, commentary, or

^{1/} See also Advisory Opinion 1980-89, where the Commission found that donations of food and beverages by corporations to a reception by a Congressman (for his advisory committee on the arts) were not contributions as long as "electioneering" was not involved; and Advisory Opinion 1977-54, where the Commission held that funds contributed by corporations to a campaign against the Panama Canal treaties would not be considered contributions, even though the campaign was headed by a congressional candidate, provided that the campaign did not involve "electioneering" for the candidate.

editorial by any broadcasting station . . . is not a contribution" 11 C.F.R. § 100.7(b)(2).^{1/}

Based on the foregoing, it is fair to conclude that two principal assumptions must underlie any determination that the offer of broadcast time to political candidates (or those who are presumed to be such) represents an illegal contribution. First, it would have to be assumed that the offer of time represented a "contribution" or "expenditure" specifically "in connection with" a federal election, as that phrase is used in 2 U.S.C. § 441b. Second, it would have to be assumed that such "contributions" or "expenditures" of broadcast time are "made for the purpose of influencing" the nomination or election of a particular Federal candidate or candidates.

We do not believe, however, that either 2 U.S.C. § 441b or pertinent Commission regulations were intended to cover and should be interpreted to presume that broadcast appearances -- whether in a regularly scheduled talk/

^{1/} This regulation essentially mirrors Section 431(9)(B)(i) of the Federal Election Campaign Act which provides that the term "expenditure" does not include "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. § 431(9)(B)(i). See also Buckley v. Valeo, 424 U.S. 1, 50 note 56 (1976); Reader's Digest Assoc., Inc. v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981).

discussion program or in some other program^{1/} -- represent either a contribution "in connection with" a specific election or an attempt "to influence" such election. On the contrary, the explicit language of the statute and its legislative history, as construed by the courts and as reflected in the Commission's own regulations, demonstrate that the prohibition on corporate contributions was intended to restrict a highly partisan form of corporate activity -- what has been characterized by the courts as "active electioneering."

ABC's decision to feature the Governor of California on its talk programs in Los Angeles and San Francisco was

^{1/} For instance, a station might decide to interrupt its normal programming to schedule a program specifically tailored around a particular candidate -- or, simply, to offer a certain amount of broadcast time for the candidate to use in whatever manner he wishes. In this regard, we should note that federal communications law affirmatively obligates broadcast licensees to provide time generally to political candidates -- whether on a free or paid basis. See, e.g., Columbia Broadcast System, Inc. v. Democratic National Comm., 412 U.S. 94, 113-114 n. 12 (1973). Indeed, the Federal Communications Commission has held that a licensee may, if he elects, fulfill his political broadcasting obligations entirely through offers of free time to candidates. See, e.g., Rockefeller for Governor Campaign, 59 FCC 2d 649 (1976). Moreover, Section 312(a)(7) of the Communications Act, enacted as part of the Federal Election Campaign Act of 1971, provides that broadcast stations face license revocation if they fail to "allow reasonable access to or to permit purchase of reasonable amounts of time" by legally qualified federal candidates. As the FCC remarked (in comments before this Commission concerning the formulation of debate regulations): "We do not believe that Congress would, in the same Act, require broadcasters to give time to Federal candidates, and simultaneously declare those gifts to be crimes" (by reading 2 U.S.C. § 441b to prohibit such offers of broadcast time).

clearly not a "gift" in the sense intended by 2 U.S.C. § 441b.^{1/} In fact, by selecting the format and producing the broadcasts, ABC's presentation of these programs constituted the dissemination of news and informational material more akin to the "news story and commentary" exemption of the statute and the Commission's regulations. See pp. 12-13 supra.^{2/} It is equally apparent that ABC's decision to air these programs was not partisan electioneering contemplated by Section 441b. Rather, its decision and activities in this regard represented a natural extension of a broadcast licensee's fundamental "public trustee" role -- i.e., to seek out and present the critical issues of the day by representative spokespersons.^{3/}

Finally, pertinent Commission interpretative rulings also underscore the conclusion that the appearances in question do not constitute a contribution under 2 U.S.C. § 441b.

^{1/} In this regard, we believe it is essential to distinguish between the normal practice of a broadcast station to invite particular persons to appear on the air, including government officials and political candidates, and the situation where a corporation (or any other entity not affiliated with the station) purchases a discrete amount of broadcast time for the benefit of a political candidate. Obviously, the latter situation differs markedly from the former, and comes much closer to what would normally be regarded as a "gift" or "contribution."

^{2/} Particular sensitivity by the Commission in even investigating such matters is warranted when the claimed "contribution" or incident involves a basic news story and news dissemination. See Reader's Digest Assoc., Inc. v. Federal Election Commission, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981).

^{3/} See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

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For instance, even though the complainants attempt to distinguish Advisory Opinion 1977-42, that ruling, in fact, strongly supports ABC's position. There, a federal Congressional candidate from West Virginia had hosted two radio "interview" programs on two different radio stations, one of which consisted, at least in part, of the acceptance of live telephone calls from the listening audience. One program, broadcast weekly, was paid for and sponsored by a noncorporate business enterprise, while the other program was produced by the station, with the candidate/host being "employed and paid by" the station. The programs were broadcast after the candidate/host filed a registration statement with this agency, but before the candidate/host filed as a candidate with the West Virginia Secretary of State.

The Commission found that "neither the stations broadcasting [the] programs, nor the private sponsor of the weekly program, have made a 'contribution' or 'expenditure' on [the candidate/host's] behalf, as defined in the Act and Commission regulations." AO 1977-42, p. 2. This conclusion, the Commission added, was based on the assumption that the programs were not conducted for the purpose of influencing the candidate/host's nomination and the appearances did not involve (a) any communication expressly advocating the nomination or election of the candidate appearing in the broadcast or the defeat of any other candidate or (b) any solicitation,

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making, or acceptance of campaign contributions for the candidate in connection with the appearance.^{1/}

Contrary to the contentions of Complainant Bruinsma (pp. 2-3) and Complainant Wertz (p. 2), the current situation is not readily distinguishable from the foregoing advisory opinion. Bruinsma claims it is distinguishable merely because, in AO 1977-42, the candidate was one of several government "representatives" who hosted the "call-in" program on the one station, and Governor Brown was the sole "candidate or elected official" who made such broadcast appearances in this case. First, it is simply not accurate that other elected officials have not appeared on ABC as guest-hosts (see pp. 4-6 supra). Second, there is nothing in AO 1977-42 to suggest that the advisory opinion is dependent on whether one or more candidates and elected officials appeared on the same program.^{2/}

^{1/} In a general observation prefacing that ruling, the Commission noted that its "[r]ecent advisory opinions . . . have concluded that a 'contribution' or 'expenditure' would not necessarily occur in certain specific circumstances where the major purpose of activities involving appearances of candidates for Federal office was not to influence their nomination or election." AO 1977-42, p. 2, citing, in addition, AO 1977-54, AO 1978-15 and AO 1978-4.

^{2/} Wertz claims AO 1977-42 is distinguishable because Governor Brown has not paid for the time, and has not received any "continuing reimbursement" for the appearances. However, as we have noted, Governor Brown was treated in the same manner as other guest hosts on ABC and given certain compensation for the appearances.

In short, rather than being distinguishable, AO 1977-42 bears rather directly on the facts of the instant case. There, as here, the candidate/host appeared on a radio call-in program. There, as here, one of the programs was regularly scheduled and was hosted by different persons at different times. There, as here, the candidate/host had not yet qualified as a candidate by completing the necessary filings with state officials. There, as here, the appearances were not conducted to expressly advocate or denounce a particular candidacy or to solicit campaign contributions.

A more recent advisory opinion -- AO 1981-37 -- adds additional support to the conclusion that Governor Brown's appearances did not constitute a contribution under 2 U.S.C. § 441b. That ruling involved the participation of a United States Congressman as moderator for a series of public affairs forums to be taped before a live audience and then subsequently broadcast. The Commission held that corporate purchases of tickets or advertising for the television or radio presentation of the series was not prohibited under 2 U.S.C. § 441b. Rather, the Commission concluded that even though the candidate's "involvement in the public affairs programs may indirectly benefit future campaigns," the "major purpose" of the activity would not be the nomination or election of the Congressman or any other federal candidate. AO 1981-37, p. 3.

In a statement that we believe has particular relevance to the current complaints, the Commission emphasized

that, in general, "[w]here the purpose of the activity is not to influence the nomination or election of a candidate for Federal office but rather in connection with the duties of a Federal officeholder, the Commission has consistently held that no contribution or expenditure results under the Act:" Id. at 2. Clearly, therefore, if a current federal Congressman may host or moderate a public affairs forum intended for broadcast, without invoking 2 U.S.C. § 441b, an incumbent Governor should likewise be able to host a radio talk program without invoking 2 U.S.C. § 441b. Indeed, that result is even more compelling here where Governor Brown's appearances on KGO and KABC were initiated by ABC in the exercise of its news and programming judgment and public interest responsibilities under federal communications law.

It is irrefutable that Mr. Brown is a highly newsworthy figure as the Governor of the nation's most populous state. His appearances in a "talk" or discussion format on ABC's "all-talk" radio stations are, we submit, an integral part of a broadcaster's basic responsibility to present important public issues. See, e.g., Fairness Report, 48 FCC 2d 1 (1974). To construe this activity as being conducted for the purpose of influencing the nomination or election of Governor Brown would not only belie the pertinent facts underlying his appearances, it would directly contravene fundamental public interest principles encouraging such broadcast discussions. If they are to carry out their proper role under both the

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First Amendment and federal communications law, broadcast journalists, whether incorporated or not, should be permitted full freedom to select and present public officials, whether candidates or not, for the purpose of addressing important public issues and responding to public inquiries.

IV.

Conclusion

Accordingly, for the foregoing reasons, we urge the Commission to find that no reason exists to believe that either complaint sets forth a possible violation of the Federal Election Campaign Act. Any other result, we submit, would be contrary to both federal election law and this Commission's interpretative rulings, as well as in direct conflict with applicable federal communications law.

Respectfully submitted,

AMERICAN BROADCASTING
COMPANIES, INC.

By Everett H. Erlick
Douglas S. Land
Lettice Tanchum
1330 Avenue of the Americas
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James A. McKenna, Jr.
Carl R. Ramey
McKenna, Wilkinson & Kittner
1150 Seventeenth St., N.W.
Washington, D.C. 20036

January 29, 1982

Its Attorneys

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Attachment A

ATTACHMENT A

82040314300

January 26, 1982

Statement of Ms. Nelkane Benton, Director of Community Relations, KABC Radio

I, Nelkane Benton, being duly sworn, hereby state that I am Director of Community Relations at KABC Radio, Los Angeles, California.

I have reviewed the programs that aired on KABC on August 24, 1981 between the hours of 9:00 AM and 1:00 PM, on November 13, 1981 between the hours of 4:00 PM and 7:00 PM, and on December 7, 1981 between the hours of 4:00 PM and 7:00 PM, which were guest-hosted by Governor Edmund Brown. The subjects discussed by Governor Brown, his guests, and listeners who called the station were issues of general interest to the citizens of California. In particular, no comments were made advocating the nomination or election of Governor Brown for United States Senate or advocating the defeat of any candidate for U.S. Senate.* In addition Governor Brown made no statements that could be construed as a solicitation of funds for his candidacy.

The guest-host appearance by Governor Brown was initiated by KABC Radio. It is the practice of the station, from time to time, to invite prominent civic and political leaders to host talk programs. The Governor's appearance was consistent with the format of the station which consists of a continuum of talk show programs and news reports. Governor Brown appeared as guest-host on a talk program in place of the regularly aired talk program on November 11, 1981 and December 7, 1981. Governor Brown was paid for his appearances on KABC Radio in accordance with the minimum rates of the American Federation of Television and Radio Artists.

The station does not maintain transcripts of its talk programs and, accordingly has no transcript of the programs on which Governor Brown appeared. The station, however, keeps a metro tech tape, which is a slow speed, low quality recording of its programming, twenty-four hours a day.

*Although no such comments were made during the course of the August 24th and December 7th program, incidental references to the U.S. Senatorial Campaign were made. These lasted a matter of seconds. The exact text of such comments is attached hereto as Appendix A.

January 26, 1982

As Governor of the State of California, Edmund Brown has been a frequent and sought after guest on KABC. During 1981, Governor Brown was heard as a phone-in guest on the Carole Hemingway program on March 9, 1981 between 8:37 PM and 8:55 PM, on August 7, 1981 between 7:12 and 7:17 PM, and on August 20, 1981 between 9:07 PM and 9:26 PM, and as a phone-in guest on the Michael Jackson show on May 7, 1981 between 9:06 AM and 9:21 AM. He was an in studio guest of the Carole Hemingway show on July 16, 1981 between 8:05 PM and 8:40 PM.

The station considers the opportunity to have had Governor Brown guest-host a program on KABC Radio to have been a valuable program service to its listeners.

William B. Berton

Sworn to before me
this *26th* day of
January,1982

Joanne K. Udell



Governor Edmund G. (Jerry) Brown Jr., sitting in for Michael Jackson on 8/24/81--at approximately 11:16 A.M.--the following caller: "You're doing a great job. I may not vote for you for the Senate, but I'd like to see you do this regularly." Governor Brown: (over caller's laugh) "Hey, uh, you'd better keep an open mind, here. All right?"

Governor Edmund G. (Jerry) Brown Jr., sitting in for Michael Jackson on 8/24/81. At approximately 11:45 A.M.--the following: Governor Brown: (reintroducing Undersheriff Sherm Block after the break) "We're on with Undersheriff Sherm Block of L.A. County. By the way, are you an announ- you're not an announced candidate, yet, I take it at this point." Block: "I am not an announced candidate." Brown: "I tell ya, it's a secret at this point but one known to most of the citizens of the County." Block: "Well, I'm still evaluating the conditions." Brown: "Well, ah, I'm still evaluating the conditions for the U.S. Senate race, but, uh, (laughter in background) we'll leave it at that."

1 Governor Edmund G. (Jerry) Brown Jr., on 12/7/81. At approximately
2 6:08 P.M. The following: Caller: "Governor, you're doing an outstanding
3 job." Governor Brown: "Is that as governor or is that on this talk show?"
4 Caller: (talking over Governor's words) "...Put in for talk show host
5 instead of senator." Governor Brown: "All right." Caller: "My question
6 is on reapportionment..."

Attachment B

ATTACHMENT B

82040314304

Statement of Ms. Jeannette Boudreau, Assistant Program Director,
KGO Radio.

I, Jeannette Boudreau, being duly sworn, hereby state that I am
Assistant Program Director at KGO Radio San Francisco, California.

I have reviewed the programs that aired on KGO on October 19, 1981,
between the hours of 1pm and 4pm, and on December 18, 1981, between
the hours of 7pm and 10pm, which were guest hosted by Governor Edmund
Brown. The subjects discussed by Gov. Brown, his guests, and listeners
who called the station, were issues of general interest to the citizens
of California. In Particular, no comments were made advocating the
nomination or election of Gov. Brown for U.S. Senate or advocating the
defeat of any candidate for U.S. Senate.* In addition, Gov. Brown made
no statements that could be construed as a solicitation of funds for
his candidacy.

The guest host appearances by Gov. Brown were initiated by KGO Radio.
It is the practice of the station, from time to time, to invite prominent
civic and political leaders to host talk programs in lieu of regular
scheduled hosts. The governor's appearance was consistent with the
format of the station which consists of a continuum of talk show programs
and news reports. Gov. Brown appeared as a substitute host for Jim Eason
on October 19, 1981 and for Ronn Owens on December 18, 1981. Gov. Brown
was paid for his appearances on KGO Radio with accordance with the minimum
rates of the American Federation of Radio and Television Artists.

The station does not maintain transcripts of its talk programs, and
accordingly, has no transcript of the programs on which Gov. Brown
appeared. The station, however, keeps a metro tech tape which is a slow
speed, low-quality recording of it's programming, 24 hours a day.

As Governor of the State of California, Edmund Brown has been a frequent
and sought after guest on KGO. During 1981, Gov. Brown was heard as a
phone-in guest on August 6 at 7pm, May 7 at 7pm, July 9 at 1pm and as
an in studio guest on July 8, 1981 at 7pm.

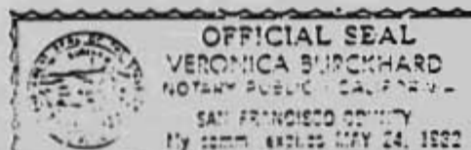
The station considers the opportunity to have had the Governor of the
State guest host a program on KGO radio a valuable program service to
it's listeners.

* Although no such comments were made during the course of these programs,
incidental references to the U.S. Senatorial campaign were made. These
lasted a matter of seconds. The nature of these comments is set forth
and attached hereto as Appendix B

Jeannette Boudreau
Jeannette Boudreau

ACKNOWLEDGMENT - GENERAL

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO } SS.
ON 1-22-82 BEFORE THE UNDERSIGNED
A NOTARY PUBLIC FOR THE STATE OF CALIFORNIA, PERSONALLY
APPEARED Jeannette Boudreau
KNOWING AND BELIEVING THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE WITHIN INSTRUMENT, AND ACKNOWLEDGING THAT HE SIGNED
THE SAME.



Veronica Birchard
NOTARY PUBLIC FOR SAID COUNTY AND STATE

APPENDIX B

On the show of October 19, 1981 at approx. 1:40pm, a caller to the program asked Gov. Borwn what his position on the abortion issue would be if he were to become a U.S. Senator. Gov. Brown outlined his position on abortion.

On the show of October 19th during the second hour of the broadcast a caller asked Gov. Brown as a potential candidate for the Senate what his views would be on space exploration. Gov. Brown outlined hsi view on this subject.

Of December 18, 1981 at approximately 7:40pm, a caller questioned whether Gov. Brown should be allowed air time on KGO Radio, since he was obviously running for the Senate. Gov. Brown responded that he was making himself accessible in this capacity as Govenor of California to those who elected him an to whom he was accountable for his performance in office. Gov. Brown stated that he was not a candidate in the eyes of the law.

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CERTIFICATE OF SERVICE

I, Beth Bennett, hereby certify that on this 29th day of January, 1982, copies of the foregoing "Response of American Broadcasting Companies, Inc." were sent by United States First Class Mail, postage prepaid, to the following:

William E. Taylor, Esq.
Federal Election Commission
Seventh Floor
1325 K Street, N.W.
Washington, D.C. 20463

Burton R. Cohn, Esq.
Cohn, Gotcher, Singer & Anderson
Fifth Floor
833 Wilshire Boulevard
Los Angeles, California 90017

Mr. Martin Simon
Treasurer, Wertz for Senate
711 S. Vermont Avenue #207
Los Angeles, California 90005

Beth Bennett
Beth Bennett

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RECEIVED

Ccc# 7057

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COUNSEL
THOMAS N. DOWD
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LOWELL J. BRADFORD
RETIRED 1980

JAN 29 11:00

Pierson, Ball & Dowd
1000 Ring Building
1200 18th Street, N.W.
Washington, D. C. 20036

TEL. (202) 331-8555
CABLE ADDRESS "PIERBALL"

January 28, 1982

W. THEODORE PIERSON
HAROLD DAVID COHEN
WILLIAM F. WETHORE JR.
WILLIAM A. GEOGHEGAN
DAVID WACHANE
WILLIAM S. GREEN
J. LAURENT SCHARFF
JAMES J. FREEMAN
BRIAN A. JOHNSON
FREDERIC T. SPINGEL
GORDON W. HATHAWAY, JR.
MARK J. TAUBER
JOHN J. DUFFY
L. L. HANE HANKLA
RICHARD M. SINGER
JUDITH L. HARRIS
JOEL M. HAMME
BENJAMIN J. GRIFFIN
ELIZABETH S. CARMER
JAMES K. JACKSON
KARL W. SONNEMAN
EUGENE TILLMAN
JOHN A. RITCHIE
JAMES H. SMITH
RANDY ALAN WEISS
JUDITH ST. LEDGER-ROTY

HARRISON T. SLAUGHTER
DEAN BURCH
ROBERT S. FORTY
WILLIAM G. BITTMAN
PETER D. O'CONNELL
VIRGINIA LEE RILEY
W. THEODORE PIERSON, JR.
THOMAS C. FOX
WILLIAM H. FITZ
STEPHAN E. LAWTON
GEORGE R. CLARK
JOHN R. ERICKSON
PHILIP L. VERVEER
R. K. DUNAGAN III
MICHAEL E. MINNIS
NORMAN L. KULE
JACK N. GOODMAN
BENJAMIN F. P. IVINS
LAWRENCE E. CARR III
LINDA A. SCHNEIDER
JOSEPH M. SELLERS
MARNIE R. SARVER
GERTRUDE J. WHITE
SUE D. BLUMENFELD
JOHN J. MCGREW

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

Re: MUR 1418, MUR 1419

Dear Mr. Steele:

We submit on behalf of Gannett Co., Inc., the parent company of Pacific and Southern Company, Inc., which is the licensee of radio broadcast station KSDO, San Diego, California, its response to complaints filed by Theodore A. (Ted) Bruinsma and the Wertz For Senate Committee.

We also ask that this letter be considered a statement of our representation of Gannett Co., Inc. with reference to MUR 1419. A statement of representation with respect to MUR 1418 has already been filed.

If you have any questions concerning this matter, don't hesitate to contact me.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD:dh
Enclosure

cc: William Taylor, Esq.

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of
Gannett Co., Inc.

) MUR 1418
) MUR 1419

RESPONSE OF GANNETT CO., INC. TO COMPLAINTS BY
THEODORE A. (TED) BRUINSMA AND THE WERTZ FOR SENATE COMMITTEE

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Gannett Co., Inc. ("Gannett"), the parent company of Pacific and Southern Company, Inc., which is the licensee of radio station KSDO, San Diego, California, submits this response to the complaints filed by Theodore A. (Ted) Bruinsma and the Wertz For Senate Committee ("Wertz Committee"). In their complaints, Mr. Bruinsma and the Wertz Committee contend that Gannett has permitted the Honorable Edmund G. Brown, Jr., the incumbent Governor of California, to appear as a guest on the KSDO Midday Show With Lawrence Gross ("Midday Show") to answer questions telephoned to the station by members of the radio audience and that by doing so Gannett has made a "contribution" or "expenditure" in violation of 2 U.S.C. §441b (1976).

Although Governor Brown has appeared several times on the Midday Show, his appearances do not constitute contributions or expenditures by Gannett. First, at the time of his appearances, Governor Brown was not a candidate for any federal office, and such candidacy is a precondition to his appearances being considered contributions or expenditures. Furthermore, if Governor Brown had been a candidate for federal office when he appeared on the

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Midday Show, his appearances would still not have constituted contributions or expenditures, because they were not in connection with a federal election. The Commission has repeatedly held that sponsorship of a candidate's appearance is not a contribution or expenditure if the primary purpose of the appearance is unconnected with a federal election and if during that appearance the candidate neither solicits contributions to his campaign nor advocates his election or the defeat of his opponents. Governor Brown's appearances on KSDO were not connected with any campaign for a federal office; he was offered an opportunity to appear on KSDO because the station's staff concluded that providing KSDO's audience with an opportunity to question the incumbent governor would serve the public interest. During his appearances on the Midday Show, Governor Brown did not solicit contributions to nor advocate the election or defeat of any federal candidate. Finally, assuming that during his appearances on the Midday Show Governor Brown had advocated his election to a federal office, his appearances would still not constitute contributions or expenditures because they fall within the scope of 2 U.S.C. §431(9)(B)(i) (Supp. IV 1981), which excludes from the definition of expenditure the costs of any news story, commentary, or editorial distributed over the facilities of a broadcast station. ^{1/}

^{1/}Although 2 U.S.C. §431(9)(B)(i) relates only to expenditures, the Commission has construed it to be a limitation on the definition of contribution as well. See 11 CFR §100.7(b)(2) (1981) and AO 1978-76 [CCH ¶ 5370].

A. Statement of Facts.

After Mr. John Mainelli, KSDO's News Director, heard Governor Brown on another California radio station acting as the "host" of a call-in program, he contacted the Governor's staff and extended to the Governor an invitation to appear on the Midday Show. The Midday Show is broadcast Monday through Friday, 9:00 a.m. to noon, and it has a standard format: Lawrence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Public officials regularly appear on the Midday Show. (See Exhibit I, Appendix A.)

KSDO was anxious to have Governor Brown appear because it had concluded that the opportunity to question Governor Brown and hear his responses would be attractive to the station's audience and would serve the public interest. Governor Brown appeared on the Midday Show three times: on October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared with the program's host, Mr. Lawrence Gross. To the best of Mr. Mainelli's and Mr. Gross's recollections, Governor Brown neither solicited contributions to any candidate for any federal office nor made any statement in support of or in opposition to any candidate for any federal office during his appearances. (See Exhibit I.)

82040314311

- B. Since Governor Brown Was Not A Candidate For Federal Office When He Appeared On The Midday Show, His Appearances Were Not Contributions Or Expenditures By Gannett.

Title 2 U.S.C. §441b prohibits corporations from making contributions or expenditures in connection with any federal election. Section 441b(b)(2) defines the terms contribution and expenditure in relevant part as a gift of anything of value to a "candidate, campaign committee or political organization." Assuming that Governor Brown's appearances as a guest on the Midday Show were gifts of radio time to him,^{2/} these gifts could not be contributions or expenditures unless Governor Brown was a candidate for some federal office.^{3/} Neither Mr. Bruinsma nor the Wertz Committee has submitted any evidence to show that Governor Brown was a candidate for federal office when he appeared on KSDO.

- C. Governor Brown's Appearances On The Midday Show Would Not Have Been Contributions Or Expenditures Even If He Had Been A Candidate For Federal Office Because They Were Not In Connection With A Federal Election.

To be a contribution or expenditure a gift must be made "in connection with a federal election." 2 U.S.C. §441b(b)(2). The

^{2/}Mr. Bruinsma and the Wertz Committee assume that Governor Brown's appearances on the Midday Show were "gifts" of radio time to the Governor. Actually, it was Governor Brown who was providing KSDO with a substantial benefit. KSDO, like other commercial radio stations, tries to broadcast programming that will maximize its audience. Since the audience appeal of call-in shows like the Midday Show depends to a large extent upon the interest that the audience has in the guest, Governor Brown's appearances conferred a substantial benefit on KSDO.

^{3/}Cf. AO 1975-8 [CCH ¶ 5112].

Commission has held that a candidate's appearance before members of his/her electorate is not "in connection with a federal election" if the primary purpose of that appearance is not connected with a federal election, and if the appearance does not include the solicitation of campaign contributions or any communications advocating the nomination, election or defeat of any candidate for federal office. In AO 1977-42 [CCH ¶ 5313], the Commission held that corporate sponsorship of a radio call-in program in which a candidate for federal office was the host was not a contribution or expenditure. Similarly, in AO 1981-37 [CCH ¶ 5623], the Commission permitted a corporation to sponsor a series of televised public affairs forums in which an incumbent Congressman, and apparent candidate for re-election, was a participant, and in AO 1978-4 [CCH ¶ 5293], the Commission allowed corporations to sponsor a testimonial dinner for a Congressman in his congressional district despite the fact that the Congressman was a candidate for re-election.^{4/}

- D. Even If Governor Brown Had Used His Appearances To Advocate His Election To Some Federal Office, They Still Would Not Have Constituted Contributions Or Expenditures By Gannett, Because They Would Have Come Within The Scope of 2 U.S.C. §431(9)(B)(i), Which Excludes From The Definition Of Those Terms The Costs Of News Stories, Commentaries, And Editorials Carried By A Broadcast Station.

Title 2 U.S.C. §431(9)(B)(i) provides that the cost of any

^{4/}See also AO 1980-22 [CCH ¶ 5479] (the Commission held that an incorporated trade association, and its corporate members, could sponsor a series of town meetings in which Senators and Congressmen participated); AO 1979-2 [CCH ¶ 5399] (the Commission approved corporate sponsorship of political conferences in which a Congressman would appear as a primary participant); AO 1978-15 [CCH ¶ 5304]; and AO 1977-54 [CCH ¶ 5301].

news story, commentary, or editorial by any station, newspaper, magazine, or other periodical publication will be exempt from the definition of expenditure unless the facilities are owned or controlled by a political party, a political committee, or candidate. Although there has been some question about the applicability of Section 431(9)(B)(i) to the separate definition of contribution and expenditure in Section 441b(b)(2), the plain language of Section 431 demonstrates that Congress intended it to apply across the board. Nothing in the legislative history of Section 431 evinces any other intent. Furthermore, in its decision in AO 1978-76 [CCH ¶ 5370], the Commission appears to have assumed that Section 431 (f)(4)(a), the predecessor of Section 431(9)(B)(i), applies to the definition of contribution and expenditure in Section 441b. In that Advisory Opinion, the Commission was asked if broadcast by a television station of a film showing the facilities that were available to a Congressman's constituents would constitute a corporate contribution or expenditure. The Commission answered in the negative on the grounds that such a broadcast fell within the ambit of Section 431(f)(4)(a).

Moreover, as the Commission's staff has recognized, the legislative history of Section 441b and its predecessors demonstrates that when it prohibited corporate contributions, Congress did not

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intend to interfere in any way with the historic role of newspapers and broadcast stations as providers of information to the electorate.^{5/} Therefore, even if the Commission concludes that Section 431(9)(B)(i) does not apply directly to Section 441b, it would nevertheless be justified in using Section 431(9)(B)(i) as a guide to a proper interpretation of Section 441b.

Governor Brown's appearances as a guest on the Midday Show fall within the ambit of Section 431(9)(B)(i), which excludes the cost of "news stories" from the definition of contribution and expenditure. The broadcast of a candidate's press conference would certainly qualify as a news story, and there is no significant difference between the broadcast of a press conference during which Governor Brown would respond to questions from journalists and the broadcast of a call-in program during which Governor Brown responds to questions from the radio audience.

Furthermore, we submit that even if KSDO had simply provided Governor Brown with time to make statements in support of a candidacy for federal office, such a program would still have come within the scope of Section 431(9)(B)(i). Congress must have intended the language of Section 431(9)(B)(i) to cover the broadcast

^{5/}FEC Agenda Document #79-324, December 6, 1979, at 13.

of statements by candidates in support of their candidacy, as well as the broadcast of other campaign coverage. Any other interpretation of Section 441b's restrictions on corporate contributions would put them in direct conflict with Congress' clear intention, as manifested in Section 312(a)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §312(a)(7) (1976), to encourage broadcasters to make broadcast time available to candidates for federal offices. Moreover, construing Section 441b to prohibit absolutely the provision of free time to federal candidates would bring Section 441b in direct conflict as well with Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. §315 (1976). Section 315 states that if the licensee of a broadcast station permits a candidate to use the station, it must give equal time to all other candidates for the same office. Section 315 reflects a Congressional determination to allow licensees to give free time to candidates for the expression of their views, conditioned on their providing equal time to other candidates. The Congressional scheme created by Section 315 would be nullified, however, if Section 441b was interpreted to prohibit radio and television licensees from giving broadcast time to federal candidates. Section 441b must be construed, therefore, to permit broadcast stations, like KSDO, to provide candidates for federal elective office with time in which to advocate their candidacy.

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E. Conclusion.

Gannett respectfully submits that the complaints filed by Mr. Bruinsma and the Wertz Committee do not provide any reason to believe that Gannett has violated Section 441b of the Federal Election Campaign Act, as amended, and, therefore, their complaints should be dismissed.

Respectfully submitted,

GANNETT CO., INC.

By

John J. Duffy

PIERSON, BALL & DOWD
1200 18th Street, N.W.
Washington, D.C. 20036

January 28, 1982

82040314317

82040314318

EXHIBIT I

I, the undersigned, John Mainelli, under oath, depose and say that:

1. I am the News Director at radio broadcast station KSDO, San Diego, California.

2. During the Fall of 1981, I heard Edmund G. Brown, Jr., the Governor of California, appearing on a call-in program on another radio station. During that call-in program, Governor Brown indicated that he would like to appear on other such programs throughout the state. Believing that Governor Brown's appearance would appeal to our audience and would be in the public interest, I contacted the Governor's staff on behalf of KSDO and extended to the Governor an invitation to appear on the KSDO Midday Show with Laurence Gross ("Midday Show").

3. The Midday Show is one of a number of talk shows that are broadcast by KSDO. It is presented Monday through Friday, from 9:00 a.m. to noon. The Midday Show has a set format. Laurence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Discussions are sometimes directed towards a single topic area in which the guest has a particular expertise; but at other times, the subject area is not limited, and the guest responds to a wide range of questions from the station's audience. Governor Brown appeared on the Midday Show three times: On October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared as a guest with Laurence Gross, the regular host.

4. Public officials frequently appear on the Midday Show. Some of the public figures who have appeared recently are listed in the attached Appendix A.

5. Governor Brown was asked to appear on the Midday Show because he was the Governor of California and, therefore, his appearance was likely to be attractive to our audience and would serve the public interest by providing residents of the San Diego area with an opportunity to question him about state policies.

6. To the best of my knowledge, Governor Brown was not at the time he appeared a candidate for any federal elective office.

7. To the best of my recollection, and that of Host Gross, during his appearances on the Midday Show, Governor Brown did not solicit contributions on behalf of any candidate for federal office nor advocate the election or defeat of any candidate for federal office.

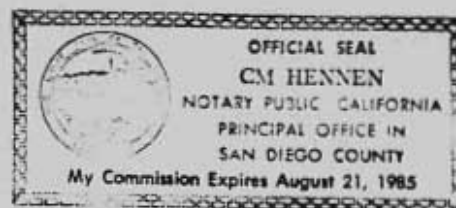
John Mainelli

JOHN MAINELLI

Subscribed and sworn to before me this 26th day of
January, 1982.

CM Hennen

Notary Public



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APPENDIX A

NAME & TITLE

Date on the show

Time

Lucy Goldman
Candidate for City Council

Aug. 4 & Oct. 9

9-10 & 10-11

KEN BREMAN
CANDIDATE for City Council

July 24 & Aug. 25

10-11 & 10¹⁵-11

Dick Murphy
Councilman

July 22, 24 & Oct. 9

10-11, 9-9³⁰ 10-11

Mike Gotch
Councilman

July 17

10-11

PETE McCloskey
Congressman

July 29

10-11

Pete Chacon
State Assemblyman

JUNE 12

11-11³⁰

Edwin Miller
District Attorney

June 11

9-10

Lionel van Derland
Ex Congressman

June 10 & Oct. 1

10-11 & 9-10

Bill Bolander
Police Chief

June 1

9-10

Sheriff John Duffy
Sheriff

Aug 11

9-10

Bill Lowery
Congressman

Aug. 7

9:30 - 11

ROGER HEDGELOCK
Supervisor

Aug 19

9-10

March Fong Eu
Sec. of State

Aug 25

11-12

S. J. Hayakawa
Senator

Sept. 2

9:30 - 10:30

Noel Neudeck
Candidate for city council

Sept. 3

10:30 - 11

Jim Bates
Supervisor

Sept. 8

11-12

Alain Cravston
Senator

Jan. 7.

10-11

Jerry Brown
Governor

Dec 21
Oct. 28
Oct. 12

9-12
9-12
10-11³⁰

Duncan Hunter
Congressman

Nov 24

9-10

John Garamendi
CA Senate majority Leader

Nov. 4

10-11

Larry Stirling
State Assemblyman

Oct. 23

10-11

Dec. 28

9-12 (Guest
host)

Jamie Brierton
Council Candidate

Oct. 22

10-11

Susan Golding
Councilman

Oct. 22

10-11

Bill Mitchell
Councilman

Oct. 20

9-10

Ed Malone
Council Candidate

Oct. 20

9-10

Eugene McCarthy
Senator

Oct. 2

11-12

Clarence Pendleton
Pres. U.S. Civil Rights Com.

Dec. 1

11-12

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of
Gannett Co., Inc.

) MUR 1418
) MUR 1419

RESPONSE OF GANNETT CO., INC. TO COMPLAINTS BY
THEODORE A. (TED) BRUINSMA AND THE WERTZ FOR SENATE COMMITTEE

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Gannett Co., Inc. ("Gannett"), the parent company of Pacific and Southern Company, Inc., which is the licensee of radio station KSDO, San Diego, California, submits this response to the complaints filed by Theodore A. (Ted) Bruinsma and the Wertz For Senate Committee ("Wertz Committee"). In their complaints, Mr. Bruinsma and the Wertz Committee contend that Gannett has permitted the Honorable Edmund G. Brown, Jr., the incumbent Governor of California, to appear as a guest on the KSDO Midday Show With Lawrence Gross ("Midday Show") to answer questions telephoned to the station by members of the radio audience and that by doing so Gannett has made a "contribution" or "expenditure" in violation of 2 U.S.C. §441b (1976).

Although Governor Brown has appeared several times on the Midday Show, his appearances do not constitute contributions or expenditures by Gannett. First, at the time of his appearances, Governor Brown was not a candidate for any federal office, and such candidacy is a precondition to his appearances being considered contributions or expenditures. Furthermore, if Governor Brown had been a candidate for federal office when he appeared on the

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Midday Show, his appearances would still not have constituted contributions or expenditures, because they were not in connection with a federal election. The Commission has repeatedly held that sponsorship of a candidate's appearance is not a contribution or expenditure if the primary purpose of the appearance is unconnected with a federal election and if during that appearance the candidate neither solicits contributions to his campaign nor advocates his election or the defeat of his opponents. Governor Brown's appearances on KSDO were not connected with any campaign for a federal office; he was offered an opportunity to appear on KSDO because the station's staff concluded that providing KSDO's audience with an opportunity to question the incumbent governor would serve the public interest. During his appearances on the Midday Show, Governor Brown did not solicit contributions to nor advocate the election or defeat of any federal candidate. Finally, assuming that during his appearances on the Midday Show Governor Brown had advocated his election to a federal office, his appearances would still not constitute contributions or expenditures because they fall within the scope of 2 U.S.C. §431(9)(B)(i) (Supp. IV 1981), which excludes from the definition of expenditure the costs of any news story, commentary, or editorial distributed over the facilities of a broadcast station. ^{1/}

^{1/} Although 2 U.S.C. §431(9)(B)(i) relates only to expenditures, the Commission has construed it to be a limitation on the definition of contribution as well. See 11 CFR §100.7(b)(2) (1981) and AO 1978-76 [CCH ¶ 5370].

A. Statement of Facts.

After Mr. John Mainelli, KSDO's News Director, heard Governor Brown on another California radio station acting as the "host" of a call-in program, he contacted the Governor's staff and extended to the Governor an invitation to appear on the Midday Show. The Midday Show is broadcast Monday through Friday, 9:00 a.m. to noon, and it has a standard format: Lawrence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Public officials regularly appear on the Midday Show. (See Exhibit I, Appendix A.)

KSDO was anxious to have Governor Brown appear because it had concluded that the opportunity to question Governor Brown and hear his responses would be attractive to the station's audience and would serve the public interest. Governor Brown appeared on the Midday Show three times: on October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared with the program's host, Mr. Lawrence Gross. To the best of Mr. Mainelli's and Mr. Gross's recollections, Governor Brown neither solicited contributions to any candidate for any federal office nor made any statement in support of or in opposition to any candidate for any federal office during his appearances. (See Exhibit I.)

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- B. Since Governor Brown Was Not A Candidate For Federal Office When He Appeared On The Midday Show, His Appearances Were Not Contributions Or Expenditures By Gannett.

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Title 2 U.S.C. §441b prohibits corporations from making contributions or expenditures in connection with any federal election. Section 441b(b)(2) defines the terms contribution and expenditure in relevant part as a gift of anything of value to a "candidate, campaign committee or political organization." Assuming that Governor Brown's appearances as a guest on the Midday Show were gifts of radio time to him,^{2/} these gifts could not be contributions or expenditures unless Governor Brown was a candidate for some federal office.^{3/} Neither Mr. Bruinsma nor the Wertz Committee has submitted any evidence to show that Governor Brown was a candidate for federal office when he appeared on KSDO.

- C. Governor Brown's Appearances On The Midday Show Would Not Have Been Contributions Or Expenditures Even If He Had Been A Candidate For Federal Office Because They Were Not In Connection With A Federal Election.

To be a contribution or expenditure a gift must be made "in connection with a federal election." 2 U.S.C. §441b(b)(2). The

^{2/}Mr. Bruinsma and the Wertz Committee assume that Governor Brown's appearances on the Midday Show were "gifts" of radio time to the Governor. Actually, it was Governor Brown who was providing KSDO with a substantial benefit. KSDO, like other commercial radio stations, tries to broadcast programming that will maximize its audience. Since the audience appeal of call-in shows like the Midday Show depends to a large extent upon the interest that the audience has in the guest, Governor Brown's appearances conferred a substantial benefit on KSDO.

^{3/}Cf. AO 1975-8 [CCH ¶ 5112].

Commission has held that a candidate's appearance before members of his/her electorate is not "in connection with a federal election" if the primary purpose of that appearance is not connected with a federal election, and if the appearance does not include the solicitation of campaign contributions or any communications advocating the nomination, election or defeat of any candidate for federal office. In AO 1977-42 [CCH ¶ 5313], the Commission held that corporate sponsorship of a radio call-in program in which a candidate for federal office was the host was not a contribution or expenditure. Similarly, in AO 1981-37 [CCH ¶ 5623], the Commission permitted a corporation to sponsor a series of televised public affairs forums in which an incumbent Congressman, and apparent candidate for re-election, was a participant, and in AO 1978-4 [CCH ¶ 5293], the Commission allowed corporations to sponsor a testimonial dinner for a Congressman in his congressional district despite the fact that the Congressman was a candidate for re-election.^{4/}

- 8 2 0 1 0 3 1 4 3 2 9
- D. Even If Governor Brown Had Used His Appearances To Advocate His Election To Some Federal Office, They Still Would Not Have Constituted Contributions Or Expenditures By Gannett, Because They Would Have Come Within The Scope of 2 U.S.C. §431(9)(B)(i), Which Excludes From The Definition Of Those Terms The Costs Of News Stories, Commentaries, And Editorials Carried By A Broadcast Station.

Title 2 U.S.C. §431(9)(B)(i) provides that the cost of any

^{4/} See also AO 1980-22 [CCH ¶ 5479] (the Commission held that an incorporated trade association, and its corporate members, could sponsor a series of town meetings in which Senators and Congressmen participated); AO 1979-2 [CCH ¶ 5399] (the Commission approved corporate sponsorship of political conferences in which a Congressman would appear as a primary participant); AO 1978-15 [CCH ¶ 5304]; and AO 1977-54 [CCH ¶ 5301].

news story, commentary, or editorial by any station, newspaper, magazine, or other periodical publication will be exempt from the definition of expenditure unless the facilities are owned or controlled by a political party, a political committee, or candidate. Although there has been some question about the applicability of Section 431(9)(B)(i) to the separate definition of contribution and expenditure in Section 441b(b)(2), the plain language of Section 431 demonstrates that Congress intended it to apply across the board. Nothing in the legislative history of Section 431 evinces any other intent. Furthermore, in its decision in AO 1978-76 [CCH ¶ 5370], the Commission appears to have assumed that Section 431 (f)(4)(a), the predecessor of Section 431(9)(B)(i), applies to the definition of contribution and expenditure in Section 441b. In that Advisory Opinion, the Commission was asked if broadcast by a television station of a film showing the facilities that were available to a Congressman's constituents would constitute a corporate contribution or expenditure. The Commission answered in the negative on the grounds that such a broadcast fell within the ambit of Section 431(f)(4)(a).

Moreover, as the Commission's staff has recognized, the legislative history of Section 441b and its predecessors demonstrates that when it prohibited corporate contributions, Congress did not

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intend to interfere in any way with the historic role of newspapers and broadcast stations as providers of information to the electorate.^{5/} Therefore, even if the Commission concludes that Section 431(9)(B)(i) does not apply directly to Section 441b, it would nevertheless be justified in using Section 431(9)(B)(i) as a guide to a proper interpretation of Section 441b.

Governor Brown's appearances as a guest on the Midday Show fall within the ambit of Section 431(9)(B)(i), which excludes the cost of "news stories" from the definition of contribution and expenditure. The broadcast of a candidate's press conference would certainly qualify as a news story, and there is no significant difference between the broadcast of a press conference during which Governor Brown would respond to questions from journalists and the broadcast of a call-in program during which Governor Brown responds to questions from the radio audience.

Furthermore, we submit that even if KSDO had simply provided Governor Brown with time to make statements in support of a candidacy for federal office, such a program would still have come within the scope of Section 431(9)(B)(i). Congress must have intended the language of Section 431(9)(B)(i) to cover the broadcast

^{5/}FEC Agenda Document #79-324, December 6, 1979, at 13.

of statements by candidates in support of their candidacy, as well as the broadcast of other campaign coverage. Any other interpretation of Section 441b's restrictions on corporate contributions would put them in direct conflict with Congress' clear intention, as manifested in Section 312(a)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §312(a)(7) (1976), to encourage broadcasters to make broadcast time available to candidates for federal offices. Moreover, construing Section 441b to prohibit absolutely the provision of free time to federal candidates would bring Section 441b in direct conflict as well with Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. §315 (1976). Section 315 states that if the licensee of a broadcast station permits a candidate to use the station, it must give equal time to all other candidates for the same office. Section 315 reflects a Congressional determination to allow licensees to give free time to candidates for the expression of their views, conditioned on their providing equal time to other candidates. The Congressional scheme created by Section 315 would be nullified, however, if Section 441b was interpreted to prohibit radio and television licensees from giving broadcast time to federal candidates. Section 441b must be construed, therefore, to permit broadcast stations, like KSDO, to provide candidates for federal elective office with time in which to advocate their candidacy.

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E. Conclusion.

Gannett respectfully submits that the complaints filed by Mr. Bruinsma and the Wertz Committee do not provide any reason to believe that Gannett has violated Section 441b of the Federal Election Campaign Act, as amended, and, therefore, their complaints should be dismissed.

Respectfully submitted,

GANNETT CO., INC.

By _____
John J. Duffy

PIERSON, BALL & DOWD
1200 18th Street, N.W.
Washington, D.C. 20036

January 28, 1982

82040314333

82040314334

EXHIBIT I

AFFIDAVIT OF JOHN MAINELLI

I, the undersigned, John Mainelli, under oath, depose and say that:

1. I am the News Director at radio broadcast station KSDO, San Diego, California.

2. During the Fall of 1981, I heard Edmund G. Brown, Jr., the Governor of California, appearing on a call-in program on another radio station. During that call-in program, Governor Brown indicated that he would like to appear on other such programs throughout the state. Believing that Governor Brown's appearance would appeal to our audience and would be in the public interest, I contacted the Governor's staff on behalf of KSDO and extended to the Governor an invitation to appear on the KSDO Midday Show with Laurence Gross ("Midday Show").

3. The Midday Show is one of a number of talk shows that are broadcast by KSDO. It is presented Monday through Friday, from 9:00 a.m. to noon. The Midday Show has a set format. Laurence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Discussions are sometimes directed towards a single topic area in which the guest has a particular expertise; but at other times, the subject area is not limited, and the guest responds to a wide range of questions from the station's audience. Governor Brown appeared on the Midday Show three times: On October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared as a guest with Laurence Gross, the regular host.

4. Public officials frequently appear on the Midday Show. Some of the public figures who have appeared recently are listed in the attached Appendix A.

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5. Governor Brown was asked to appear on the Midday Show because he was the Governor of California and, therefore, his appearance was likely to be attractive to our audience and would serve the public interest by providing residents of the San Diego area with an opportunity to question him about state policies.

6. To the best of my knowledge, Governor Brown was not at the time he appeared a candidate for any federal elective office.

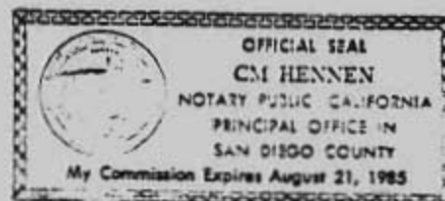
7. To the best of my recollection, and that of Host Gross, during his appearances on the Midday Show, Governor Brown did not solicit contributions on behalf of any candidate for federal office nor advocate the election or defeat of any candidate for federal office.

JOHN MAINELLI

Subscribed and sworn to before me this . . . day of
January, 1982.

CM Hennen

Notary Public



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APPENDIX A

NAME & TITLE

Date on the show

Time

Lucy Goldman
Candidate for City Council

Aug. 4 & Oct. 9

9-10 & 10-11

KEN BREHAN
CANDIDATE for City Council

July 24 & Aug. 25

10-11 & 10¹⁵ 11

Dick Murphy
Councilman

July 22, 24 & Oct. 9

10-11, 9-9³⁰ 10-11

Mike Gotch
Councilman

July 17

10-11

PETE McCloskey
Congressman

July 29

10-11

Pete Chacon
State Assemblyman

JUNE 12

11-11:30

EDWIN MILLER
District Attorney

JUNE 11

9-10

Lionel van Derland
EX Congressman

June 10 & Oct. 1

10-11 & 9-10

Bill Bolander
Police Chief

June 1

9-10

Sheriff John Duffy
Sheriff

Aug 11

9-10

Bill Lowery
Congressman

Aug. 7

9:30-11

ROGER HEDGEcock
Supervisor

Aug. 19

9-10

March Fong Eu
Sec. of State

Aug 25

11-12

S. I. Hayakawa
Senator

Sept. 2

9:30-10:30

Noel Neudeck
Candidate for City Council

Sept. 3

10:30-11

Jim Bates
Supervisor

Sept. 8

11-12

Maio Cranston
Senator

JAN. 7.

10-11

Jerry Brown
Governor

Dec 21
Oct. 28
Oct. 12

9-12
9-12
10-11³⁰

Duncan Hunter
Congressman

Nov 24

9-10

John Garamendi
CA Senate majority Leader

Nov. 4

10-11

0
Larry Stirling
3 State Assemblyman

Oct. 23

10-11

4
1
Dec. 28

9-12 (Guest
host)

Jamie Brierton
1 Council Candidate

Oct. 22

10-11

50
2
8 Susan Golding
Councilman

Oct. 22

10-11

Bill Mitchell
Councilman

Oct. 20

9-10

Ed Malone
Council Candidate

Oct. 20

9-10

Eugene McCarthy
Senator

Oct. 2

11-12

Clarence Pendleton
Pres. U.S. Civil Rights Com.

Dec. 1

11-12

W. THEODORE PIERSON
HAROLD DAVID COHEN
WILLIAM F. WETMORE JR.
WILLIAM A. GEORGEHAN
DAVID MACHANIC
WILLIAM S. GREEN
J. LAURENT SCHARFF
JAMES J. FREEMAN
BRIAN A. JOHNSON
FREDERIC T. SPINGEL
GORDON W. KATHENWAY, JR.
HARRIS J. TAUBER
JOHN J. DUFFY
L. L. HARRIS
RICHARD M. SINGER
JUDITH L. HARRIS
JOEL M. HAMME
BENJAMIN J. GRIFFIN
ELIZABETH S. CARDER
JAMES R. JACKSON
EARL W. BONNEHAN
EUGENE TILLMAN
JOHN A. RITCHIE
JAMES M. SMITH
RANDY ALAN WEISS
JUDITH ST. LEDGER-ROTT

HARRISON T. SLAUGHTER
DEAN BURCH
ROBERT S. YORTY
WILLIAM G. BITTMAN
PETER D. O'CONNELL
VIRGINIA LEE RILEY
W. THEODORE PIERSON, JR.
THOMAS C. FOX
WILLIAM H. FITE
STEPHAN E. LANTON
GEORGE R. CLARK
JOHN R. ERICKSON
PHILIP L. VERVEER
R. N. DUNAGAN III
MICHAEL E. MINNIS
NORMAN L. EULE
JACK N. GOODMAN
BENJAMIN F. R. IVINS
LAWRENCE E. CARR III
LINDA A. SCHNEIDER
JOSEPH H. SELLERS
HARRIE H. BARVER
GERTRUDE J. WHITE
SUE D. BLUMENFELD
JOHN J. MCGREW

Pierson, Ball & Dowd
1000 Ring Building
1200 18th Street, N.W.
Washington, D. C. 20036

TEL. (202) 331-8586
CABLE ADDRESS "PIERBALL"

January 28, 1982

RECEIVED
Dec # 7051
82 JAN 28 3:55
CITY NATIONAL BANK TOWER
SUITE 750
OKLAHOMA CITY, OKLA. 73102
TEL. (405) 235-7666

COUNSEL
THOMAS N. DOWD
ROBERT S. HANKINS

LOWELL J. BRADFORD
RETIRED 1980

JAN 28 4:15

GENERAL COUNSEL

William Taylor, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Bill:

I enclose a copy of Gannett Co., Inc.'s response to the complaints of Theodore A. (Ted) Bruinsma and the Wertz For Senate Committee. If you have any questions concerning our response, or need any additional information, don't hesitate to give me a call.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD:dh
Enclosure

32010314341

TEL. (202) 331-8566
CABLE ADDRESS "PIERBALL"

LOWELL J. BRADFORD
RETIRED 1993

cc: William Taylor, Esq.

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of
Gannett Co., Inc.

) MUR 1418
) MUR 1419

RESPONSE OF GANNETT CO., INC. TO COMPLAINTS BY
THEODORE A. (TED) BRUINSMA AND THE WERTZ FOR SENATE COMMITTEE

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Gannett Co., Inc. ("Gannett"), the parent company of Pacific and Southern Company, Inc., which is the licensee of radio station KSDO, San Diego, California, submits this response to the complaints filed by Theodore A. (Ted) Bruinsma and the Wertz For Senate Committee ("Wertz Committee"). In their complaints, Mr. Bruinsma and the Wertz Committee contend that Gannett has permitted the Honorable Edmund G. Brown, Jr., the incumbent Governor of California, to appear as a guest on the KSDO Midday Show With Lawrence Gross ("Midday Show") to answer questions telephoned to the station by members of the radio audience and that by doing so Gannett has made a "contribution" or "expenditure" in violation of 2 U.S.C. §441b (1976).

Although Governor Brown has appeared several times on the Midday Show, his appearances do not constitute contributions or expenditures by Gannett. First, at the time of his appearances, Governor Brown was not a candidate for any federal office, and such candidacy is a precondition to his appearances being considered contributions or expenditures. Furthermore, if Governor Brown had been a candidate for federal office when he appeared on the

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A. Statement of Facts.

After Mr. John Mainelli, KSDO's News Director, heard Governor Brown on another California radio station acting as the "host" of a call-in program, he contacted the Governor's staff and extended to the Governor an invitation to appear on the Midday Show. The Midday Show is broadcast Monday through Friday, 9:00 a.m. to noon, and it has a standard format: Lawrence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Public officials regularly appear on the Midday Show. (See Exhibit I, Appendix A.)

KSDO was anxious to have Governor Brown appear because it had concluded that the opportunity to question Governor Brown and hear his responses would be attractive to the station's audience and would serve the public interest. Governor Brown appeared on the Midday Show three times: on October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared with the program's host, Mr. Lawrence Gross. To the best of Mr. Mainelli's and Mr. Gross's recollections, Governor Brown neither solicited contributions to any candidate for any federal office nor made any statement in support of or in opposition to any candidate for any federal office during his appearances. (See Exhibit I.)

- B. Since Governor Brown Was Not A Candidate For Federal Office When He Appeared On The Midday Show, His Appearances Were Not Contributions Or Expenditures By Gannett.

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Title 2 U.S.C. §441b prohibits corporations from making contributions or expenditures in connection with any federal election. Section 441b(b)(2) defines the terms contribution and expenditure in relevant part as a gift of anything of value to a "candidate, campaign committee or political organization." Assuming that Governor Brown's appearances as a guest on the Midday Show were gifts of radio time to him,^{2/} these gifts could not be contributions or expenditures unless Governor Brown was a candidate for some federal office.^{3/} Neither Mr. Bruinsma nor the Wertz Committee has submitted any evidence to show that Governor Brown was a candidate for federal office when he appeared on KSDO.

- C. Governor Brown's Appearances On The Midday Show Would Not Have Been Contributions Or Expenditures Even If He Had Been A Candidate For Federal Office Because They Were Not In Connection With A Federal Election.

To be a contribution or expenditure a gift must be made "in connection with a federal election." 2 U.S.C. §441b(b)(2). The

^{2/}Mr. Bruinsma and the Wertz Committee assume that Governor Brown's appearances on the Midday Show were "gifts" of radio time to the Governor. Actually, it was Governor Brown who was providing KSDO with a substantial benefit. KSDO, like other commercial radio stations, tries to broadcast programming that will maximize its audience. Since the audience appeal of call-in shows like the Midday Show depends to a large extent upon the interest that the audience has in the guest, Governor Brown's appearances conferred a substantial benefit on KSDO.

^{3/}Cf. AO 1975-8 [CCH ¶ 5112].

Commission has held that a candidate's appearance before members of his/her electorate is not "in connection with a federal election" if the primary purpose of that appearance is not connected with a federal election, and if the appearance does not include the solicitation of campaign contributions or any communications advocating the nomination, election or defeat of any candidate for federal office. In AO 1977-42 [CCH ¶ 5313], the Commission held that corporate sponsorship of a radio call-in program in which a candidate for federal office was the host was not a contribution or expenditure. Similarly, in AO 1981-37 [CCH ¶ 5623], the Commission permitted a corporation to sponsor a series of televised public affairs forums in which an incumbent Congressman, and apparent candidate for re-election, was a participant, and in AO 1978-4 [CCH ¶ 5293], the Commission allowed corporations to sponsor a testimonial dinner for a Congressman in his congressional district despite the fact that the Congressman was a candidate for re-election.^{4/}

- D. Even If Governor Brown Had Used His Appearances To Advocate His Election To Some Federal Office, They Still Would Not Have Constituted Contributions Or Expenditures By Gannett, Because They Would Have Come Within The Scope of 2 U.S.C. §431(9)(B)(i), Which Excludes From The Definition Of Those Terms The Costs Of News Stories, Commentaries, And Editorials Carried By A Broadcast Station.

Title 2 U.S.C. §431(9)(B)(i) provides that the cost of any

^{4/}See also AO 1980-22 [CCH ¶ 5479] (the Commission held that an incorporated trade association, and its corporate members, could sponsor a series of town meetings in which Senators and Congressmen participated); AO 1979-2 [CCH ¶ 5399] (the Commission approved corporate sponsorship of political conferences in which a Congressman would appear as a primary participant); AO 1978-15 [CCH ¶ 5304]; and AO 1977-54 [CCH ¶ 5301].

news story, commentary, or editorial by any station, newspaper, magazine, or other periodical publication will be exempt from the definition of expenditure unless the facilities are owned or controlled by a political party, a political committee, or candidate. Although there has been some question about the applicability of Section 431(9)(B)(i) to the separate definition of contribution and expenditure in Section 441b(b)(2), the plain language of Section 431 demonstrates that Congress intended it to apply across the board. Nothing in the legislative history of Section 431 evinces any other intent. Furthermore, in its decision in AO 1978-76 [CCH ¶ 5370], the Commission appears to have assumed that Section 431 (f)(4)(a), the predecessor of Section 431(9)(B)(i), applies to the definition of contribution and expenditure in Section 441b. In that Advisory Opinion, the Commission was asked if broadcast by a television station of a film showing the facilities that were available to a Congressman's constituents would constitute a corporate contribution or expenditure. The Commission answered in the negative on the grounds that such a broadcast fell within the ambit of Section 431(f)(4)(a).

Moreover, as the Commission's staff has recognized, the legislative history of Section 441b and its predecessors demonstrates that when it prohibited corporate contributions, Congress did not

intend to interfere in any way with the historic role of newspapers and broadcast stations as providers of information to the electorate.^{5/} Therefore, even if the Commission concludes that Section 431(9)(B)(i) does not apply directly to Section 441b, it would nevertheless be justified in using Section 431(9)(B)(i) as a guide to a proper interpretation of Section 441b.

Governor Brown's appearances as a guest on the Midday Show fall within the ambit of Section 431(9)(B)(i), which excludes the cost of "news stories" from the definition of contribution and expenditure. The broadcast of a candidate's press conference would certainly qualify as a news story, and there is no significant difference between the broadcast of a press conference during which Governor Brown would respond to questions from journalists and the broadcast of a call-in program during which Governor Brown responds to questions from the radio audience.

Furthermore, we submit that even if KSDO had simply provided Governor Brown with time to make statements in support of a candidacy for federal office, such a program would still have come within the scope of Section 431(9)(B)(i). Congress must have intended the language of Section 431(9)(B)(i) to cover the broadcast

^{5/}FEC Agenda Document #79-324, December 6, 1979, at 13.

of statements by candidates in support of their candidacy, as well as the broadcast of other campaign coverage. Any other interpretation of Section 441b's restrictions on corporate contributions would put them in direct conflict with Congress' clear intention, as manifested in Section 312(a)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §312(a)(7) (1976), to encourage broadcasters to make broadcast time available to candidates for federal offices. Moreover, construing Section 441b to prohibit absolutely the provision of free time to federal candidates would bring Section 441b in direct conflict as well with Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. §315 (1976). Section 315 states that if the licensee of a broadcast station permits a candidate to use the station, it must give equal time to all other candidates for the same office. Section 315 reflects a Congressional determination to allow licensees to give free time to candidates for the expression of their views, conditioned on their providing equal time to other candidates. The Congressional scheme created by Section 315 would be nullified, however, if Section 441b was interpreted to prohibit radio and television licensees from giving broadcast time to federal candidates. Section 441b must be construed, therefore, to permit broadcast stations, like KSDO, to provide candidates for federal elective office with time in which to advocate their candidacy.

E. Conclusion.

Gannett respectfully submits that the complaints filed by Mr. Bruinsma and the Wertz Committee do not provide any reason to believe that Gannett has violated Section 441b of the Federal Election Campaign Act, as amended, and, therefore, their complaints should be dismissed.

Respectfully submitted,

GANNETT CO., INC.

By

John J. Duffy

PIERSON, BALL & DOWD
1200 18th Street, N.W.
Washington, D.C. 20036

January 28, 1982

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EXHIBIT I

8 2 0 4 0 3 1 4 3 5 2

I, the undersigned, John Mainelli, under oath, depose and say that:

1. I am the News Director at radio broadcast station KSDO, San Diego, California.

2. During the Fall of 1981, I heard Edmund G. Brown, Jr., the Governor of California, appearing on a call-in program on another radio station. During that call-in program, Governor Brown indicated that he would like to appear on other such programs throughout the state. Believing that Governor Brown's appearance would appeal to our audience and would be in the public interest, I contacted the Governor's staff on behalf of KSDO and extended to the Governor an invitation to appear on the KSDO Midday Show with Laurence Gross ("Midday Show").

3. The Midday Show is one of a number of talk shows that are broadcast by KSDO. It is presented Monday through Friday, from 9:00 a.m. to noon. The Midday Show has a set format. Laurence Gross, the host, appears with a guest, and he and the guest receive telephone calls from listeners. Discussions are sometimes directed towards a single topic area in which the guest has a particular expertise; but at other times, the subject area is not limited, and the guest responds to a wide range of questions from the station's audience. Governor Brown appeared on the Midday Show three times: On October 12, 1981 from 10:00 a.m. to 11:30 a.m.; on October 28, 1981 from 9:00 a.m. to noon; and on December 21, 1981 from 9:00 a.m. to noon. On each occasion, Governor Brown appeared as a guest with Laurence Gross, the regular host.

4. Public officials frequently appear on the Midday Show. Some of the public figures who have appeared recently are listed in the attached Appendix A.

5. Governor Brown was asked to appear on the Midday Show because he was the Governor of California and, therefore, his appearance was likely to be attractive to our audience and would serve the public interest by providing residents of the San Diego area with an opportunity to question him about state policies.


6. To the best of my knowledge, Governor Brown was not at the time he appeared a candidate for any federal elective office.

7. To the best of my recollection, and that of Host Gross, during his appearances on the Midday Show, Governor Brown did not solicit contributions on behalf of any candidate for federal office nor advocate the election or defeat of any candidate for federal office.



JOHN MAINELLI

Subscribed and sworn to before me this ____ day of
January, 1982.



Notary Public



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APPENDIX A

NAME & TITLE

Date on the show

Time

Lucy Goldman
Cand. date for city Council

Aug. 4 & Oct. 9

9-10 & 10-11

KEN BREHAN
CANDIDATE for city Council

July 24 & Aug. 25

10-11 & 10¹⁵-11

Dick Murphy
Councilman

July 22, 24 & Oct. 9

10-11, 9-9³⁰ 10-11

Mike Gotch
Councilman

July 17

10-11

PETE McCloskey
Congressman

July 29

10-11

Pete Chacon
State Assemblyman

JUNE 12

11-11:30

Edwin Miller
District Attorney

June 11

9-10

Lionel vanDerland
Ex Congressman

June 10 & Oct. 1

10-11 & 9-10

Bill Bolander
Police Chief

June 1

9-10

Sheriff John Duffy
Sheriff

Aug 11

9-10

Bill Lowery
Congressman

Aug. 7

9:30-11

ROGER HEDGELOCK
Supervisor

Aug 19

9-10

March Fong Eu
Sec. of State

Aug 25

11-12

S. I. Hayakawa
Senator

Sept. 2

9:30-10:30

Noel Neudeck
Candidate for city council

Sept. 3

10:30-11

Jim Bates
Supervisor

Sept. 8

11-12

Alan Cranston
Senator

Jan. 7.

10-11

Jerry Brown
Governor

Dec 21
Oct. 28
Oct. 12

9-12
9-12
10-11³⁰

Duncan Hunter
Congressman

Nov 24

9-10

John Garamendi
CA Senate majority Leader

Nov. 4

10-11

Kerry Stirling
M State Assemblyman

Oct. 23

10-11

Dec 28

9-12 (Guest
host)

Jamie Brierton
Council Candidate

Oct. 22

10-11

Susan Golding
Councilman

Oct. 22

10-11

Bill Mitchell
Councilman

Oct. 20

9-10

Ed Mabue
Council Candidate

Oct. 20

9-10

Eugene McCarthy
Senator

Oct. 2

11-12

Clarence Pendleton

Dec. 1

11-12

Pres. U.S. Civil Rights Com.

Comment Sheet

12 Day Report

MUR # 1414Staff Member TaylorDate 1-25-82Time of Transmittal 12582 3:45pmExpiration of 72-hour Comment Period: 1-28-82

Comments:

approve _____

object _____

no comment _____

initials _____

conference date/time _____

32040359

Comment Sheet

12 Day Report

MUR # 1419Staff Member TaylorDate 1-25-82Time of Transmittal 1-25-82 2:45pmExpiration of 72-hour Comment Period: 1-28-82

Comments:

approve [Signature]object no comment initials [Signature]conference date/time

82040514360

cocket

Comment Sheet

12 Day Report

MUR # 1419

Staff Member Taylor

Date 1-25-82

Time of Transmittal 1-25-82 3:45pm

Expiration of 72-hour Comment Period: 1-28-82

Comments:

approve _____

object _____

no comment _____

initials _____

conference date/time _____

820403124361

12 Day Report
January 12, 1982

MUR NO. 1418 and 1419

Staff: William Taylor

Date Assigned to Staff
12/23/81
12/28/81

Source of MUR: Complaints Theodore A. Bruinsma filed and the
Wertz for Senate Campaign filed

Respondent's Names: Edmund G. Brown, Jr. (1418 and 1419)

Brown for U.S. Senate Committee (1419)
American Broadcasting Company (1418 and 1419)
McClatchy Broadcasting Corp. (1418 and 1419)
Gannett Company (1418)
Columbia Broadcasting Company (1419)

Statement of the Case

The complaints contend that:

- 1) Jerry Brown is a candidate for federal office, namely, the United States Senate;
- 2) he has appeared on various radio talk show programs for the purpose of promoting his candidacy for this office;
- 3) he did not pay to appear on these programs and the free air time given Jerry Brown is the receipt of something of value;
- 4) the radio stations that gave this free air time are corporations. Thus, Mr. Brown received something of value from corporations; and
- 5) the free air time was given for the purposes of influencing a federal election.

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On April 7, 1981, the Brown for Senate Committee was formed; it was organized, according to its Statement of Organization, as Jerry Brown's principal campaign committee and has raised over one million dollars. As of yet, Jerry Brown has not filed a statement, pursuant to section 432(e)(1), designating this committee as his principal campaign committee. RAD has sent to Mr. Brown a letter requesting either a disavowal letter or a Statement of Candidacy.

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Ultimately, Jerry Brown will acknowledge the fact that this committee is his principal campaign committee. (According to RAD, he intends to file this week; with over one million dollars in the treasury, it is highly unlikely he will disavow the Committee). When he does acknowledge the committee or if he fails to disavow the committee within 30 days, (see section 100.3(a)(3)), he will be subject to Commission action for his failure to comply with section 432(e)(1). However, the major issues in these complaints are not direct at a Section 432(e)(1) statement, but the purpose of Mr. Brown's appearances (See AO 1981-37 and AO 1977-42), i.e., whether Mr. Brown is a candidate.

The facts involved in AO 1977-41 closely parallel the facts presented in these MURs. The AO requestor, Ken Hechler, hosted two talk show programs that ran from August 1977 through October 1977. Prior to appearing on these shows, Mr. Hechler filed with the Commission as a candidate for federal office but did not qualify under West Virginia as a candidate until

January 11, 1978. The Commission found that neither the broadcast company nor the program sponsors made a contribution to Hechler's campaign. The Commission applied the "major purpose" test in reaching this decision.

Statement of Preliminary Discovery Plan

Only information needed will be radio program tapes.

Statement of Track Designation

Track II.

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DOW, LOHNES & ALBERTSON

1225 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

TELEPHONE (202) 862-8000

TELECOMER (202) 862-0088

CABLE "DOWLOHNES"
TELEX 86-563

WRITER'S DIRECT DIAL NO.

(202) 862-8072

FAYETTE S. DOW (1904-1982)

MORRIS L. LOHNES (1907-1984)

WILLIAM F. BISH
THOMAS H. WALL
EARL R. STANLEY
JOHN A. BAFFER
RICHARD L. BRAUNSTEIN
JOHN D. MATTHEWS
CHARLES J. HERNES
S. DWIGHT PERRY
DANIEL M. REDMOND
L. ADAM ROBERTS
DANIEL W. TOCHET
BERNARD J. LOHN, JR.
CHARLES H. HELEN
ALAN C. CAMPBELL
RICHARD F. SWIFT

PATRICK H. ALLEN
RALPH W. HARRY, JR.
JAMES A. TREANOR, II
WERNER S. NUTTENDENBER
JONATHAN S. HILL
BRENT H. RUSHFORTH
J. DONNIE HONANAN
MARSHALL F. BERMAN
J. MICHAEL HINES
RICHARD D. HARRIS
JOHN L. DAVIS
ARNOLD F. LUTHER
LEONARD J. BART
MICHAEL B. GOLDSTEIN
JOHN A. FEENE, JR.

LESLIE H. WISCHENFELDER
MICHAEL J. MCCARTHY
KEVIN F. DEED
RAYMOND S. SENDER, JR.
WILLIAM A. SILVERMAN
DONNA GLENNAN BREDS
JOYCE TRIMBLE OWADI
DAVID A. FLEHINS
STUART A. SHELDON
MICHAEL A. PRICE
FREDERICK D. COOKE, JR.
ALBERT H. TURNER
HELEN E. DISSENHAUS
KENNETH D. BALOGH
CHRISTOPHER C. SHALHOOD

ANDREW A. HERDEK
JOHN C. JOSE
JOHN B. WARD
TODD S. BART
JOHN A. POWEROY
ROSE C. R. GUNTHER
JOHN P. SCHMITZER
D. BRUCE BITCHNER
BERNARD JOHN BARRETT, JR.
MARIE D. HOWARD
BLAIR S. RUTHER

OF COUNSEL
FRED W. ALBERTSON THOMAS W. WILSON

January 22, 1982

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention: William Taylor, Office of General Counsel

Re: Response of McClatchy Newspapers
to MUR-1419

Dear Mr. Taylor:

This letter is in response to a complaint filed against McClatchy Newspapers (hereafter "McClatchy") by Will Wertz, a candidate for the Democratic nomination for the U.S. Senate from the State of California. McClatchy is the licensee of Radio Stations KFBK, Sacramento, KBEE, Modesto, and KMJ 1/, Fresno, all California. In his complaint, Mr. Wertz alleges that the appearance of California Governor Edmund G. (Jerry) Brown, Jr. on radio programs produced by McClatchy constituted illegal campaign contributions from McClatchy to Brown. In response, McClatchy hereby submits that Brown's appearances were not contributions within the meaning of the Federal Election Campaign Act, 2 U.S.C. §431 et seq.

INTRODUCTION

Jerry Brown, a Democrat, is the current Governor of California, a position he has held since his election in 1974.

1/ Mr. Wertz's complaint erroneously refers to this station as "KMG."

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100-22-26

As Governor, Brown heads the executive branch of the nation's most populous, and often most politically controversial, state. It is reported that Brown intends to run for the U.S. Senate in 1982.

Brown's position has required his participation and leadership in numerous politically sensitive decisions that have been newsworthy and of interest to the 25 million residents of California. Recent examples of such decisions are his appointments to the California Supreme Court, his handling of the Mediterranean fruit fly crisis, and his public opposition to the Interior Department's plans for oil exploration off the California coast and the Nuclear Regulatory Commission's sanctioning of the Diablo Canyon nuclear power plant.

These and other actions by Brown justifiably establish his position as one of California's most newsworthy citizens, and the people of California undoubtedly have substantial interest in the opinions and activities of their governor. Thus, a radio program through which Californians are permitted to question Brown concerning his actions, while many more listen in, would clearly serve the public interest. In keeping with its statutory obligation to serve this interest,^{2/} McClatchy in fact agreed to present programs of this nature on three of its radio stations. Each of the programs was broadcast more than one year before the next general election and more than seven months before the Democratic primary.

BROWN'S APPEARANCES WERE NOT CONTRIBUTIONS
OR EXPENDITURES AS DEFINED BY THE FECA

1. The Programs Presented by McClatchy Were "News Stories" Exempted By The FECA.

The Federal Election Campaign Act (hereafter "FECA" or "the Act") prohibits political "contributions" and "expenditures" by corporations. 2 U.S.C. §441b(a) (1976). However, Section 431(9)(B)(i) of the Act provides that the term "expenditure" does not include "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." Similarly, the definitions of both "contribution" and "expenditure" in

^{2/} See p. 6, infra.

the FEC's Regulations exclude "any cost incurred in covering or carrying any news story, commentary, or editorial by any broadcasting station," with the same exception for stations owned or controlled by candidates, committees or parties. 11 CFR §§100.7(b)(2), 100.8(b)(2) (1981).^{3/} These provisions, as interpreted by the FEC and the Courts, exempt from the Act programs such as those broadcast by the McClatchy stations.^{4/}

The Commission interpreted the above statutory and regulatory provisions in an Advisory Opinion in 1978. In AO 1978-76 (Answer to Carole Shotwell, Legal Counsel to Representative Robert B. Duncan) (hereafter "Duncan"), the Commission held that a film produced by a Congressman, showing the facilities that were available to the Congressman's constituents, could be broadcast by a television station without constituting a campaign contribution. Referring to the news story exception, the FEC stated that, "this exception is available where in the exercise of its responsibility to serve the public interest, convenience and necessity, the station carries a film . . . as a public service announcement." Id.

The situation found to be lawful in the Duncan opinion is similar to that presented in this case. Both situations involved incumbent political figures and concerned matters of interest to the general public. Both situations involved the appearance of one political figure only, in a format that

^{3/} Congress' failure to expressly exempt news stories, etc., from its definition of "contribution" is not material. If a corporate broadcaster's programming could be considered a contribution, but not an expenditure, the exemption for expenditures would be since §441b prohibits both contributions and expenditures equally. Furthermore, the Supreme Court, in its review of FECA, determined that the Act "exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties." Buckley v. Valeo, 424 U.S. 1, 50 n.56 (1976) (emphasis added).

^{4/} Neither McClatchy Newspapers nor any of its broadcast facilities are owned or controlled by any political party, political committee, or candidate.

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would increase the politician's exposure to the community.^{5/} Lastly, it appears that neither Congressman Duncan's film nor Governor Brown's commentary was edited by the stations broadcasting these programs. Faced with these facts, the Commission in Duncan found that the station's exercise of its responsibility to serve the public interest was conclusive of the program's legality. The same result should be reached with regard to McClatchy's radio programming decisions.

The Federal courts have also given the "news story" exception a broad interpretation. In Reader's Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981), the court discussed the exception while narrowing the FEC's permissible investigation of press entities:

[T]he express statutory exemption in favor of dissemination of information or opinion by the press seems intended to bar the FEC from even investigating incidents that are exempted exercises of the press' prerogatives [T]his dispute involves First Amendment considerations based on a recognition that freedom 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.

Thus, where the FEC determines that a press entity is acting as a press entity and is not owned or controlled by a candidate, the Commission may not investigate the subject matter of any complaint against the entity. Federal Election Commission v. Phillips Publishing, Inc., 517 F.Supp. 1308 (D.D.C. 1981) (citing Reader's Digest Association); see also Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396 (D.C. Cir. 1981) (citing Reader's Digest Association with approval). In determining whether a press entity is acting as such, and is thus protected from FEC investigation of its activities, the Commission is required to view broadly those

^{5/} In fact, Congressman Duncan's film was produced with his campaign funds.

functions that relate to the dissemination of information. For example, the activity at issue in Reader's Digest Association was the distribution to television stations of a videotape concerning Senator Edward Kennedy's automobile accident on Chappaquiddick Island. The court found that this distribution could be exempt from FECA scrutiny, despite its obvious tendency to influence Senator Kennedy's 1980 presidential bid, even if its sole purpose was to publicize a magazine article published by "Reader's Digest" on a similar subject. Thus, the news story exemption would apply even though the videotape was not intended directly to communicate information concerning a news event. Reader's Digest Association, supra, at 1215.

Applying these rules to the present case, there is no doubt that McClatchy's radio stations were engaged in activity "that fall[s] broadly within the press entity's legitimate press function." Reader's Digest Association, supra, at 1214. Through the appearance of Governor Brown on its station's programs, McClatchy broadcast to its listeners commentary and information concerning important news events. As a result, the FEC is prohibited from inquiring further into McClatchy's decision to have Governor Brown appear on its radio programs.^{6/} The subject radio programs fall squarely within the Act's news story exemption.

2. McClatchy Did Not Permit Brown's Radio Appearances
For the Purpose of Influencing a Federal Election.

McClatchy's radio programs, in addition to being covered by the news story exemption, also fall outside the FECA's definition of "contributions" and "expenditures." As used in the Act, the term "contribution" means "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." 2 U.S.C. §431(8)(A)(i)(1976) (emphasis added). Similarly, the term "expenditure," as used in the Act, means "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." 2 U.S.C. §431(9)(A)(i)(1976) (emphasis added). Thus, McClatchy's

^{6/} In the interest of promptly and conclusively terminating this matter, McClatchy has voluntarily submitted affidavits concerning the decision to broadcast these radio programs. See p. 6, *infra*. By submitting these affidavits, McClatchy does not thereby waive its constitutional and statutory rights with respect to any further FEC investigation of this matter.

decision to permit Brown's appearance on its radio programs, even assuming that such radio time constituted the "gift" of something "of value" to Brown, and without regard to the news story exemption, would not contravene the Act if McClatchy lacked an intent to influence the upcoming Senatorial election.

The Wertz complaint offers no evidence of improper intent on the part of McClatchy. Instead, Mr. Wertz merely concludes that "upon information and belief, such appearances [were] exclusively designed to promote Jerry Brown's senatorial campaign." Complaint, at 2. A few paragraphs later, Mr. Wertz weakens his position, stating only that "upon information and belief," the appearances were permitted with "the clear understanding" that they promoted Brown's campaign. Id. Neither of these statements is supported by specific allegations of fact.

In contrast to these unsupported allegations, McClatchy submits the affidavits of the station managers of each of the McClatchy-owned stations named in Mr. Wertz's complaint. Exhibits A, B, and C, attached hereto.^{7/} These affidavits establish that the decision to permit Brown's appearance on the stations was motivated solely by a desire to present the public with useful and informative public affairs programming. This purpose reflects the fact that radio stations are required by the Communications Act of 1934 to serve the public interest,^{8/} and that a station's public affairs programming is crucial in determining how well this obligation is met.^{9/} The affidavits further establish that there was no intent to influence Brown's candidacy in any way. Since the statutorily-mandated purpose of serving the public interest was undeniably furthered by the Governor's appearances, it would be impermissible to infer,

^{7/} Copies of these executed affidavits were originally submitted with McClatchy's letter response in MUR 1418 (Complaint of Theodore A. Bruinsma), dated January 19, 1982. In a letter dated January 21, 1982, and hand delivered that day, the executed originals of these affidavits were submitted to the Commission.

^{8/} 47 U.S.C. §§307, 309(a) (1976).

^{9/} See The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC2d 1, 10 (1974); see also, e.g., West Coast Media, Inc., 79 FCC2d 610 (1980).

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merely from allegations of possible benefit to Brown's campaign, that McClatchy also proposed to serve another, illegitimate interest.^{10/}

The Advisory Opinions of the Federal Election Commission have consistently endorsed the view that no violation of FECA occurs in cases such as this "where the major purpose of activities involving appearances of candidates for Federal office was not to influence their nomination or election." AO 1977-42 (Answer to Ken Hechler) (hereafter "Hechler"). In the Hechler opinion, the Commission applied this rule to the hosting of a public affairs call-in program by Congressional candidate (and former Congressman) Ken Hechler. The program was broadcast one hour per day, five days per week, and Hechler was paid for his appearances. On these facts, the Commission found that the radio station producing the program had not made a "contribution" or "expenditure" on Hechler's behalf since the programs were presumably not conducted for the purpose of influencing the election.

Wertz's attempt to distinguish this Advisory Opinion is unavailing. First, Wertz states that neither Brown nor his campaign committee has paid for the broadcast time and that Brown has not received "continuing reimbursement" for the appearances. Although both these statements are true, the first does not distinguish this case from Hechler and the second is immaterial. Mr. Hechler also did not pay to appear on the programs involved in that opinion. Furthermore, although Hechler received payment for his hosting of one series of programs, it is illogical to suggest that providing a newsworthy public figure with broadcast time can be deemed a campaign contribution when providing both broadcast time and money is not. Second, Wertz incorrectly attempts to distinguish Hechler by claiming, without evidentiary support, that "no other senatorial candidate has been or will be offered, upon information and belief, similar guest host responsibilities." Complaint, at 2. In Hechler, at least one of the two programs involved was hosted solely by the candidate. The Commission's Opinion does not indicate that the appearance of other officials on one of the programs was in any way determinative of their decision, nor does it indicate whether these other officials

^{10/} The Act's definitions of "contribution" and "expenditure" refer only to the state of mind of the "donor." That Governor Brown may have accepted, or even solicited, the opportunity to appear on McClatchy's stations for the purpose of influencing the election is immaterial.

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included any of Mr. Hechler's competitors in the Congressional election. Finally, even if the facts in the present case were somehow distinguishable from those in Hechler, the appearance of the California governor alone on McClatchy's programs would not reflect a purpose to influence Brown's candidacy. Of all the possible candidates for the Senate from California, only Brown is the state's Governor. Obviously, the appearance of Governor Brown, in contrast to the appearance of most other candidates, would be highly newsworthy without regard to the upcoming Senatorial election.

In addition, the Hechler opinion has been strongly reaffirmed in a more recent Advisory Opinion of the Commission. AO 1981-37 (Answer to Representative Richard A. Gephardt). Representative Gephardt proposed to host a public affairs program that would be broadcast at a corporation's expense. The Commission, citing Hechler, declared that no prohibited corporate contribution results when the major purpose of an activity is not to influence a Federal election. Significantly, the Opinion added that "[a]lthough it is possible that [Gephardt's] involvement in the public affairs program may indirectly benefit future campaigns, the Commission concludes the major purpose of the activity contemplated would not be the nomination or election of [Gephardt] or any other candidate to Federal office." This holding forcefully defeats any contention that a possible enhancement of Brown's name recognition or popularity requires a finding that unlawful campaign contributions were made.

Lastly, the FEC's application of the "purpose" standard has been upheld by the Federal courts. In Epstein v. Federal Election Commission, No. 81-0336 (D.D.C. Sept. 23, 1981), the District Court upheld the FEC's refusal to find that a newspaper advertisement constituted a corporate campaign contribution. The court stated that "[w]hile the contours of the 'purpose test' for application of section 441b remain indistinct, its intuitive appeal has been recognized by the courts There seems to be no basis . . . to hold the purpose test inherently arbitrary." On the facts in Epstein, the FEC and the court found that an advertisement placed by "Reader's Digest" magazine was intended to sell magazines and not to influence an election.

In sum, the FECA and the Commission's advisory opinions conclusively establish that intent to influence a Federal election is a required element of an unlawful campaign contribution. Mr. Wertz's complaint offers no evidence that McClatchy had such an intent, and the attached affidavits of the station managers establish that no such intent existed. Thus, the decision to

8 2 0 4 0 3 1 4 3 7 2

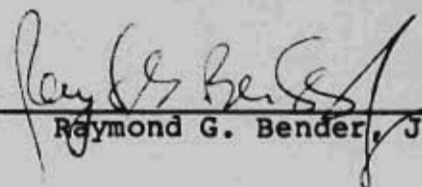
permit radio appearances by Governor Brown does not constitute a prohibited campaign contribution.

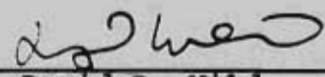
CONCLUSION

The foregoing demonstrates that McClatchy Newspapers, through its broadcasting activities, has not violated the Federal Election Campaign Act. Accordingly, the Office of General Counsel is requested to recommend this conclusion to the Commission, and the Commission is requested to close its file with respect to MUR-1419.

Respectfully submitted,

MCCLATCHY NEWSPAPERS

By 
Raymond G. Bender, Jr.

By 
David D. Wild

Its Attorneys

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82040314374

EXHIBIT A

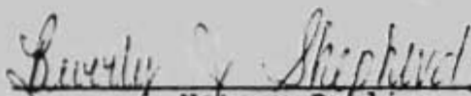
A F F I D A V I T

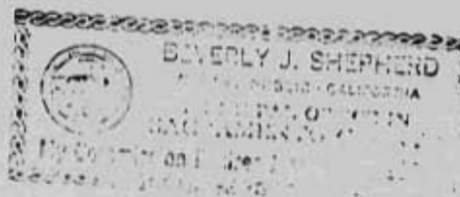
I, RICHARD F. SHEPPARD, am Station Manager of Radio Station KFBK, Sacramento, California. In this position, I have ultimate responsibility for the station's day-to-day programming decisions.

In September 1981, I learned that Governor Brown would be willing to host a call-in radio program on KFBK. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other newsworthy public issues, such as oil exploration off the California coast and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable public affairs program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U. S. Senate.


Richard F. Sheppard

Subscribed and sworn to before
me this 18th day of January, 1982.


Notary Public
for the County of Sacramento, State
of California.



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EXHIBIT B

A F F I D A V I T

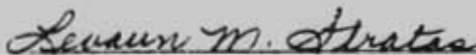
I, ROBERT E. NEUTZLING, am Station Manager of Radio Station KBEE, Modesto, California.

In this position, I have ultimate responsibility for the station's day-to-day programming decisions.

In, September 1981, I learned that Governor Brown would be willing to host a call-in Radio Program on KBEE. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other news worthy public issues, such as oil exploration off the California coast, and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable Public Affairs Program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U.S. Senate.


ROBERT E. NEUTZLING

Subscribed and sworn to before me
this 19th day of January, 1982


Notary Public in and for the
County of Stanislaus, State of California



8 2 0 4 0 3 1 4 3 7 8

EXHIBIT C


A F F I D A V I T

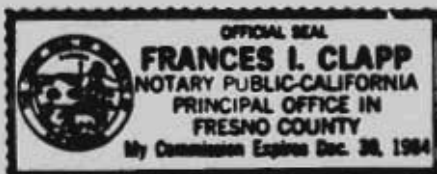
I, James R. Wilson, am Station Manager of Radio Station KMJ, Fresno, California. In this position, I have ultimate responsibility for the station's day-to-day programming decisions.

In September 1981, I learned that Governor Brown would be willing to host a call-in radio program on KMJ. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other newsworthy public issues, such as oil exploration off the California coast and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable public affairs program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U.S. Senate.


James R. Wilson

Subscribed and sworn to before me the 18th day of January, 1982.


Notary Public for the county of Fresno, State of California.



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OF COUNSEL

FRED W. ALBERTSON

THOMAS W. WILSON

January 22, 1982

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention: William Taylor, Office of General Counsel

Re: Response of McClatchy Newspapers
to MUR-1419

Dear Mr. Taylor:

This letter is in response to a complaint filed against McClatchy Newspapers (hereafter "McClatchy") by Will Wertz, a candidate for the Democratic nomination for the U.S. Senate from the State of California. McClatchy is the licensee of Radio Stations KFBK, Sacramento, KBEE, Modesto, and KMJ 1/, Fresno, all California. In his complaint, Mr. Wertz alleges that the appearance of California Governor Edmund G. (Jerry) Brown, Jr. on radio programs produced by McClatchy constituted illegal campaign contributions from McClatchy to Brown. In response, McClatchy hereby submits that Brown's appearances were not contributions within the meaning of the Federal Election Campaign Act, 2 U.S.C. §431 et seq.

INTRODUCTION

Jerry Brown, a Democrat, is the current Governor of California, a position he has held since his election in 1974.

1/ Mr. Wertz's complaint erroneously refers to this station as "KMG."

As Governor, Brown heads the executive branch of the nation's most populous, and often most politically controversial, state. It is reported that Brown intends to run for the U.S. Senate in 1982.

Brown's position has required his participation and leadership in numerous politically sensitive decisions that have been newsworthy and of interest to the 25 million residents of California. Recent examples of such decisions are his appointments to the California Supreme Court, his handling of the Mediterranean fruit fly crisis, and his public opposition to the Interior Department's plans for oil exploration off the California coast and the Nuclear Regulatory Commission's sanctioning of the Diablo Canyon nuclear power plant.

These and other actions by Brown justifiably establish his position as one of California's most newsworthy citizens, and the people of California undoubtedly have substantial interest in the opinions and activities of their governor. Thus, a radio program through which Californians are permitted to question Brown concerning his actions, while many more listen in, would clearly serve the public interest. In keeping with its statutory obligation to serve this interest,^{2/} McClatchy in fact agreed to present programs of this nature on three of its radio stations. Each of the programs was broadcast more than one year before the next general election and more than seven months before the Democratic primary.

BROWN'S APPEARANCES WERE NOT CONTRIBUTIONS
OR EXPENDITURES AS DEFINED BY THE FECA

1. The Programs Presented by McClatchy Were "News Stories" Exempted By The FECA.

The Federal Election Campaign Act (hereafter "FECA" or "the Act") prohibits political "contributions" and "expenditures" by corporations. 2 U.S.C. §441b(a)(1976). However, Section 431(9)(B)(i) of the Act provides that the term "expenditure" does not include "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." Similarly, the definitions of both "contribution" and "expenditure" in

^{2/} See p. 6, infra.

the FEC's Regulations exclude "any cost incurred in covering or carrying any news story, commentary, or editorial by any broadcasting station," with the same exception for stations owned or controlled by candidates, committees or parties. 11 CFR §§100.7(b)(2), 100.8(b)(2) (1981).^{3/} These provisions, as interpreted by the FEC and the Courts, exempt from the Act programs such as those broadcast by the McClatchy stations.^{4/}

The Commission interpreted the above statutory and regulatory provisions in an Advisory Opinion in 1978. In AO 1978-76 (Answer to Carole Shotwell, Legal Counsel to Representative Robert B. Duncan) (hereafter "Duncan"), the Commission held that a film produced by a Congressman, showing the facilities that were available to the Congressman's constituents, could be broadcast by a television station without constituting a campaign contribution. Referring to the news story exception, the FEC stated that, "this exception is available where in the exercise of its responsibility to serve the public interest, convenience and necessity, the station carries a film . . . as a public service announcement." Id.

The situation found to be lawful in the Duncan opinion is similar to that presented in this case. Both situations involved incumbent political figures and concerned matters of interest to the general public. Both situations involved the appearance of one political figure only, in a format that

^{3/} Congress' failure to expressly exempt news stories, etc., from its definition of "contribution" is not material. If a corporate broadcaster's programming could be considered a contribution, but not an expenditure, the exemption for expenditures would be since §441b prohibits both contributions and expenditures equally. Furthermore, the Supreme Court, in its review of FECA, determined that the Act "exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties." Buckley v. Valeo, 424 U.S. 1, 50 n.56 (1976) (emphasis added).

^{4/} Neither McClatchy Newspapers nor any of its broadcast facilities are owned or controlled by any political party, political committee, or candidate.

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would increase the politician's exposure to the community.^{5/} Lastly, it appears that neither Congressman Duncan's film nor Governor Brown's commentary was edited by the stations broadcasting these programs. Faced with these facts, the Commission in Duncan found that the station's exercise of its responsibility to serve the public interest was conclusive of the program's legality. The same result should be reached with regard to McClatchy's radio programming decisions.

The Federal courts have also given the "news story" exception a broad interpretation. In Reader's Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981), the court discussed the exception while narrowing the FEC's permissible investigation of press entities:

[T]he express statutory exemption in favor of dissemination of information or opinion by the press seems intended to bar the FEC from even investigating incidents that are exempted exercises of the press' prerogatives
[T]his dispute involves First Amendment considerations based on a recognition that freedom 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.

Thus, where the FEC determines that a press entity is acting as a press entity and is not owned or controlled by a candidate, the Commission may not investigate the subject matter of any complaint against the entity. Federal Election Commission v. Phillips Publishing, Inc., 517 F.Supp. 1308 (D.D.C. 1981) (citing Reader's Digest Association); see also Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396 (D.C. Cir. 1981) (citing Reader's Digest Association with approval). In determining whether a press entity is acting as such, and is thus protected from FEC investigation of its activities, the Commission is required to view broadly those

^{5/} In fact, Congressman Duncan's film was produced with his campaign funds.

functions that relate to the dissemination of information. For example, the activity at issue in Reader's Digest Association was the distribution to television stations of a videotape concerning Senator Edward Kennedy's automobile accident on Chappaquiddick Island. The court found that this distribution could be exempt from FECA scrutiny, despite its obvious tendency to influence Senator Kennedy's 1980 presidential bid, even if its sole purpose was to publicize a magazine article published by "Reader's Digest" on a similar subject. Thus, the news story exemption would apply even though the videotape was not intended directly to communicate information concerning a news event. Reader's Digest Association, supra, at 1215.

Applying these rules to the present case, there is no doubt that McClatchy's radio stations were engaged in activity "that fall[s] broadly within the press entity's legitimate press function." Reader's Digest Association, supra, at 1214. Through the appearance of Governor Brown on its station's programs, McClatchy broadcast to its listeners commentary and information concerning important news events. As a result, the FEC is prohibited from inquiring further into McClatchy's decision to have Governor Brown appear on its radio programs.^{6/} The subject radio programs fall squarely within the Act's news story exemption.

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For the Purpose of Influencing a Federal Election.

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The Wertz complaint offers no evidence of improper intent on the part of McClatchy. Instead, Mr. Wertz merely concludes that "upon information and belief, such appearances [were] exclusively designed to promote Jerry Brown's senatorial campaign." Complaint, at 2. A few paragraphs later, Mr. Wertz weakens his position, stating only that "upon information and belief," the appearances were permitted with "the clear understanding" that they promoted Brown's campaign. Id. Neither of these statements is supported by specific allegations of fact.

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8/ 47 U.S.C. §§307, 309(a) (1976).

9/ See The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC2d 1, 10 (1974); see also, e.g., West Coast Media, Inc., 79 FCC2d 610 (1980).

merely from allegations of possible benefit to Brown's campaign, that McClatchy also proposed to serve another, illegitimate interest.^{10/}

The Advisory Opinions of the Federal Election Commission have consistently endorsed the view that no violation of FECA occurs in cases such as this "where the major purpose of activities involving appearances of candidates for Federal office was not to influence their nomination or election." AO 1977-42 (Answer to Ken Hechler) (hereafter "Hechler"). In the Hechler opinion, the Commission applied this rule to the hosting of a public affairs call-in program by Congressional candidate (and former Congressman) Ken Hechler. The program was broadcast one hour per day, five days per week, and Hechler was paid for his appearances. On these facts, the Commission found that the radio station producing the program had not made a "contribution" or "expenditure" on Hechler's behalf since the programs were presumably not conducted for the purpose of influencing the election.

Wertz's attempt to distinguish this Advisory Opinion is unavailing. First, Wertz states that neither Brown nor his campaign committee has paid for the broadcast time and that Brown has not received "continuing reimbursement" for the appearances. Although both these statements are true, the first does not distinguish this case from Hechler and the second is immaterial. Mr. Hechler also did not pay to appear on the programs involved in that opinion. Furthermore, although Hechler received payment for his hosting of one series of programs, it is illogical to suggest that providing a newsworthy public figure with broadcast time can be deemed a campaign contribution when providing both broadcast time and money is not. Second, Wertz incorrectly attempts to distinguish Hechler by claiming, without evidentiary support, that "no other senatorial candidate has been or will be offered, upon information and belief, similar guest host responsibilities." Complaint, at 2. In Hechler, at least one of the two programs involved was hosted solely by the candidate. The Commission's Opinion does not indicate that the appearance of other officials on one of the programs was in any way determinative of their decision, nor does it indicate whether these other officials

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Lastly, the FEC's application of the "purpose" standard has been upheld by the Federal courts. In Epstein v. Federal Election Commission, No. 81-0336 (D.D.C. Sept. 23, 1981), the District Court upheld the FEC's refusal to find that a newspaper advertisement constituted a corporate campaign contribution. The court stated that "[w]hile the contours of the 'purpose test' for application of section 441b remain indistinct, its intuitive appeal has been recognized by the courts There seems to be no basis . . . to hold the purpose test inherently arbitrary." On the facts in Epstein, the FEC and the court found that an advertisement placed by "Reader's Digest" magazine was intended to sell magazines and not to influence an election.

In sum, the FECA and the Commission's advisory opinions conclusively establish that intent to influence a Federal election is a required element of an unlawful campaign contribution. Mr. Wertz's complaint offers no evidence that McClatchy had such an intent, and the attached affidavits of the station managers establish that no such intent existed. Thus, the decision to

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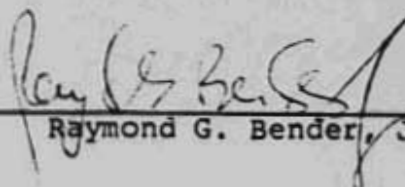
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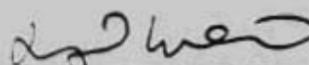
CONCLUSION

The foregoing demonstrates that McClatchy Newspapers, through its broadcasting activities, has not violated the Federal Election Campaign Act. Accordingly, the Office of General Counsel is requested to recommend this conclusion to the Commission, and the Commission is requested to close its file with respect to MUR-1419.

Respectfully submitted,

MCCLATCHY NEWSPAPERS

By 
Raymond G. Bender, Jr.

By 
David D. Wild

Its Attorneys

82040314388

EXHIBIT A

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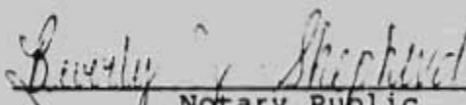
A F F I D A V I T

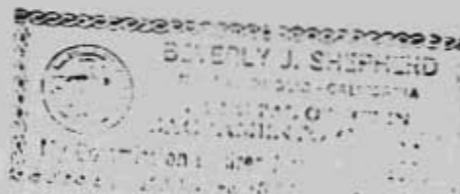
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In September 1981, I learned that Governor Brown would be willing to host a call-in radio program on KFBK. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other newsworthy public issues, such as oil exploration off the California coast and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable public affairs program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U. S. Senate.


Richard F. Sheppard

Subscribed and sworn to before
me this 18th day of January, 1982.


Notary Public
for the County of Sacramento, State
of California.



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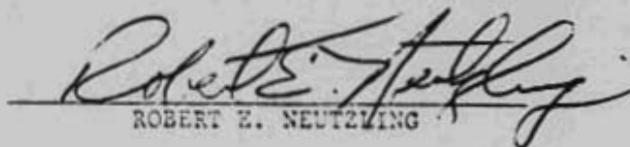
EXHIBIT B

A F F I D A V I T

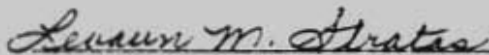
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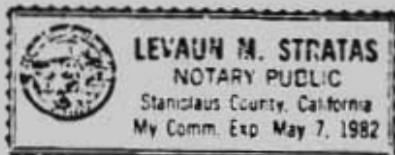
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ROBERT E. NEUTZLING

Subscribed and sworn to before me
this 18th day of January, 1982


Notary Public in and for the
County of Stanislaus, State of California



82040314392

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EXHIBIT C

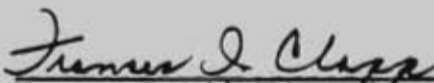
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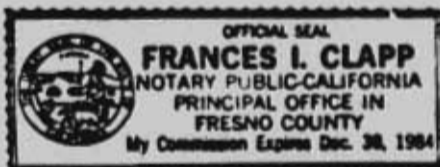
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James R. Wilson

Subscribed and sworn to before me the 18th day of January, 1982.


Notary Public for the county of Fresno, State of California.



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OF COUNSEL

FRED W. ALBERTSON

THOMAS W. WILSON

January 22, 1982

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention: William Taylor, Office of General Counsel

Re: Response of McClatchy Newspapers
to MUR-1419

Dear Mr. Taylor:

This letter is in response to a complaint filed against McClatchy Newspapers (hereafter "McClatchy") by Will Wertz, a candidate for the Democratic nomination for the U.S. Senate from the State of California. McClatchy is the licensee of Radio Stations KFBK, Sacramento, KBEE, Modesto, and KMJ 1/, Fresno, all California. In his complaint, Mr. Wertz alleges that the appearance of California Governor Edmund G. (Jerry) Brown, Jr. on radio programs produced by McClatchy constituted illegal campaign contributions from McClatchy to Brown. In response, McClatchy hereby submits that Brown's appearances were not contributions within the meaning of the Federal Election Campaign Act, 2 U.S.C. §431 et seq.

INTRODUCTION

Jerry Brown, a Democrat, is the current Governor of California, a position he has held since his election in 1974.

1/ Mr. Wertz's complaint erroneously refers to this station as "KMG."

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As Governor, Brown heads the executive branch of the nation's most populous, and often most politically controversial, state. It is reported that Brown intends to run for the U.S. Senate in 1982.

Brown's position has required his participation and leadership in numerous politically sensitive decisions that have been newsworthy and of interest to the 25 million residents of California. Recent examples of such decisions are his appointments to the California Supreme Court, his handling of the Mediterranean fruit fly crisis, and his public opposition to the Interior Department's plans for oil exploration off the California coast and the Nuclear Regulatory Commission's sanctioning of the Diablo Canyon nuclear power plant.

These and other actions by Brown justifiably establish his position as one of California's most newsworthy citizens, and the people of California undoubtedly have substantial interest in the opinions and activities of their governor. Thus, a radio program through which Californians are permitted to question Brown concerning his actions, while many more listen in, would clearly serve the public interest. In keeping with its statutory obligation to serve this interest,^{2/} McClatchy in fact agreed to present programs of this nature on three of its radio stations. Each of the programs was broadcast more than one year before the next general election and more than seven months before the Democratic primary.

BROWN'S APPEARANCES WERE NOT CONTRIBUTIONS
OR EXPENDITURES AS DEFINED BY THE FECA

1. The Programs Presented by McClatchy Were "News Stories" Exempted By The FECA.

The Federal Election Campaign Act (hereafter "FECA" or "the Act") prohibits political "contributions" and "expenditures" by corporations. 2 U.S.C. §441b(a)(1976). However, Section 431(9)(B)(i) of the Act provides that the term "expenditure" does not include "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." Similarly, the definitions of both "contribution" and "expenditure" in

^{2/} See p. 6, infra.

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the FEC's Regulations exclude "any cost incurred in covering or carrying any news story, commentary, or editorial by any broadcasting station," with the same exception for stations owned or controlled by candidates, committees or parties. 11 CFR §§100.7(b)(2), 100.8(b)(2) (1981).^{3/} These provisions, as interpreted by the FEC and the Courts, exempt from the Act programs such as those broadcast by the McClatchy stations.^{4/}

The Commission interpreted the above statutory and regulatory provisions in an Advisory Opinion in 1978. In AO 1978-76 (Answer to Carole Shotwell, Legal Counsel to Representative Robert B. Duncan) (hereafter "Duncan"), the Commission held that a film produced by a Congressman, showing the facilities that were available to the Congressman's constituents, could be broadcast by a television station without constituting a campaign contribution. Referring to the news story exception, the FEC stated that, "this exception is available where in the exercise of its responsibility to serve the public interest, convenience and necessity, the station carries a film . . . as a public service announcement." Id.

The situation found to be lawful in the Duncan opinion is similar to that presented in this case. Both situations involved incumbent political figures and concerned matters of interest to the general public. Both situations involved the appearance of one political figure only, in a format that

^{3/} Congress' failure to expressly exempt news stories, etc., from its definition of "contribution" is not material. If a corporate broadcaster's programming could be considered a contribution, but not an expenditure, the exemption for expenditures would be since §441b prohibits both contributions and expenditures equally. Furthermore, the Supreme Court, in its review of FECA, determined that the Act "exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties." Buckley v. Valeo, 424 U.S. 1, 50 n.56 (1976) (emphasis added).

^{4/} Neither McClatchy Newspapers nor any of its broadcast facilities are owned or controlled by any political party, political committee, or candidate.

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would increase the politician's exposure to the community.^{5/} Lastly, it appears that neither Congressman Duncan's film nor Governor Brown's commentary was edited by the stations broadcasting these programs. Faced with these facts, the Commission in Duncan found that the station's exercise of its responsibility to serve the public interest was conclusive of the program's legality. The same result should be reached with regard to McClatchy's radio programming decisions.

The Federal courts have also given the "news story" exception a broad interpretation. In Reader's Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981), the court discussed the exception while narrowing the FEC's permissible investigation of press entities:

[T]he express statutory exemption in favor of dissemination of information or opinion by the press seems intended to bar the FEC from even investigating incidents that are exempted exercises of the press' prerogatives
[T]his dispute involves First Amendment considerations based on a recognition that freedom 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.

Thus, where the FEC determines that a press entity is acting as a press entity and is not owned or controlled by a candidate, the Commission may not investigate the subject matter of any complaint against the entity. Federal Election Commission v. Phillips Publishing, Inc., 517 F.Supp. 1308 (D.D.C. 1981) (citing Reader's Digest Association); see also Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396 (D.C. Cir. 1981) (citing Reader's Digest Association with approval). In determining whether a press entity is acting as such, and is thus protected from FEC investigation of its activities, the Commission is required to view broadly those

^{5/} In fact, Congressman Duncan's film was produced with his campaign funds.

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functions that relate to the dissemination of information. For example, the activity at issue in Reader's Digest Association was the distribution to television stations of a videotape concerning Senator Edward Kennedy's automobile accident on Chappaquiddick Island. The court found that this distribution could be exempt from FECA scrutiny, despite its obvious tendency to influence Senator Kennedy's 1980 presidential bid, even if its sole purpose was to publicize a magazine article published by "Reader's Digest" on a similar subject. Thus, the news story exemption would apply even though the videotape was not intended directly to communicate information concerning a news event. Reader's Digest Association, supra, at 1215.

Applying these rules to the present case, there is no doubt that McClatchy's radio stations were engaged in activity "that fall[s] broadly within the press entity's legitimate press function." Reader's Digest Association, supra, at 1214. Through the appearance of Governor Brown on its station's programs, McClatchy broadcast to its listeners commentary and information concerning important news events. As a result, the FEC is prohibited from inquiring further into McClatchy's decision to have Governor Brown appear on its radio programs.^{6/} The subject radio programs fall squarely within the Act's news story exemption.

2. McClatchy Did Not Permit Brown's Radio Appearances
For the Purpose of Influencing a Federal Election.

McClatchy's radio programs, in addition to being covered by the news story exemption, also fall outside the FECA's definition of "contributions" and "expenditures." As used in the Act, the term "contribution" means "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." 2 U.S.C. §431(8)(A)(i)(1976) (emphasis added). Similarly, the term "expenditure," as used in the Act, means "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." 2 U.S.C. §431(9)(A)(i)(1976) (emphasis added). Thus, McClatchy's

^{6/} In the interest of promptly and conclusively terminating this matter, McClatchy has voluntarily submitted affidavits concerning the decision to broadcast these radio programs. See p. 6, infra. By submitting these affidavits, McClatchy does not thereby waive its constitutional and statutory rights with respect to any further FEC investigation of this matter.

decision to permit Brown's appearance on its radio programs, even assuming that such radio time constituted the "gift" of something "of value" to Brown, and without regard to the news story exemption, would not contravene the Act if McClatchy lacked an intent to influence the upcoming Senatorial election.

The Wertz complaint offers no evidence of improper intent on the part of McClatchy. Instead, Mr. Wertz merely concludes that "upon information and belief, such appearances [were] exclusively designed to promote Jerry Brown's senatorial campaign." Complaint, at 2. A few paragraphs later, Mr. Wertz weakens his position, stating only that "upon information and belief," the appearances were permitted with "the clear understanding" that they promoted Brown's campaign. Id. Neither of these statements is supported by specific allegations of fact.

In contrast to these unsupported allegations, McClatchy submits the affidavits of the station managers of each of the McClatchy-owned stations named in Mr. Wertz's complaint. Exhibits A, B, and C, attached hereto.^{7/} These affidavits establish that the decision to permit Brown's appearance on the stations was motivated solely by a desire to present the public with useful and informative public affairs programming. This purpose reflects the fact that radio stations are required by the Communications Act of 1934 to serve the public interest,^{8/} and that a station's public affairs programming is crucial in determining how well this obligation is met.^{9/} The affidavits further establish that there was no intent to influence Brown's candidacy in any way. Since the statutorily-mandated purpose of serving the public interest was undeniably furthered by the Governor's appearances, it would be impermissible to infer,

^{7/} Copies of these executed affidavits were originally submitted with McClatchy's letter response in MUR 1418 (Complaint of Theodore A. Bruinsma), dated January 19, 1982. In a letter dated January 21, 1982, and hand delivered that day, the executed originals of these affidavits were submitted to the Commission.

^{8/} 47 U.S.C. §§307, 309(a) (1976).

^{9/} See The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC2d 1, 10 (1974); see also, e.g., West Coast Media, Inc., 79 FCC2d 610 (1980).

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merely from allegations of possible benefit to Brown's campaign, that McClatchy also proposed to serve another, illegitimate interest.^{10/}

The Advisory Opinions of the Federal Election Commission have consistently endorsed the view that no violation of FECA occurs in cases such as this "where the major purpose of activities involving appearances of candidates for Federal office was not to influence their nomination or election." AO 1977-42 (Answer to Ken Hechler) (hereafter "Hechler"). In the Hechler opinion, the Commission applied this rule to the hosting of a public affairs call-in program by Congressional candidate (and former Congressman) Ken Hechler. The program was broadcast one hour per day, five days per week, and Hechler was paid for his appearances. On these facts, the Commission found that the radio station producing the program had not made a "contribution" or "expenditure" on Hechler's behalf since the programs were presumably not conducted for the purpose of influencing the election.

Wertz's attempt to distinguish this Advisory Opinion is unavailing. First, Wertz states that neither Brown nor his campaign committee has paid for the broadcast time and that Brown has not received "continuing reimbursement" for the appearances. Although both these statements are true, the first does not distinguish this case from Hechler and the second is immaterial. Mr. Hechler also did not pay to appear on the programs involved in that opinion. Furthermore, although Hechler received payment for his hosting of one series of programs, it is illogical to suggest that providing a newsworthy public figure with broadcast time can be deemed a campaign contribution when providing both broadcast time and money is not. Second, Wertz incorrectly attempts to distinguish Hechler by claiming, without evidentiary support, that "no other senatorial candidate has been or will be offered, upon information and belief, similar guest host responsibilities." Complaint, at 2. In Hechler, at least one of the two programs involved was hosted solely by the candidate. The Commission's Opinion does not indicate that the appearance of other officials on one of the programs was in any way determinative of their decision, nor does it indicate whether these other officials

^{10/} The Act's definitions of "contribution" and "expenditure" refer only to the state of mind of the "donor." That Governor Brown may have accepted, or even solicited, the opportunity to appear on McClatchy's stations for the purpose of influencing the election is immaterial.

included any of Mr. Hechler's competitors in the Congressional election. Finally, even if the facts in the present case were somehow distinguishable from those in Hechler, the appearance of the California governor alone on McClatchy's programs would not reflect a purpose to influence Brown's candidacy. Of all the possible candidates for the Senate from California, only Brown is the state's Governor. Obviously, the appearance of Governor Brown, in contrast to the appearance of most other candidates, would be highly newsworthy without regard to the upcoming Senatorial election.

In addition, the Hechler opinion has been strongly reaffirmed in a more recent Advisory Opinion of the Commission. AO 1981-37 (Answer to Representative Richard A. Gephardt). Representative Gephardt proposed to host a public affairs program that would be broadcast at a corporation's expense. The Commission, citing Hechler, declared that no prohibited corporate contribution results when the major purpose of an activity is not to influence a Federal election. Significantly, the Opinion added that "[a]lthough it is possible that [Gephardt's] involvement in the public affairs program may indirectly benefit future campaigns, the Commission concludes the major purpose of the activity contemplated would not be the nomination or election of [Gephardt] or any other candidate to Federal office." This holding forcefully defeats any contention that a possible enhancement of Brown's name recognition or popularity requires a finding that unlawful campaign contributions were made.

Lastly, the FEC's application of the "purpose" standard has been upheld by the Federal courts. In Epstein v. Federal Election Commission, No. 81-0336 (D.D.C. Sept. 23, 1981), the District Court upheld the FEC's refusal to find that a newspaper advertisement constituted a corporate campaign contribution. The court stated that "[w]hile the contours of the 'purpose test' for application of section 441b remain indistinct, its intuitive appeal has been recognized by the courts There seems to be no basis . . . to hold the purpose test inherently arbitrary." On the facts in Epstein, the FEC and the court found that an advertisement placed by "Reader's Digest" magazine was intended to sell magazines and not to influence an election.

In sum, the FECA and the Commission's advisory opinions conclusively establish that intent to influence a Federal election is a required element of an unlawful campaign contribution. Mr. Wertz's complaint offers no evidence that McClatchy had such an intent, and the attached affidavits of the station managers establish that no such intent existed. Thus, the decision to

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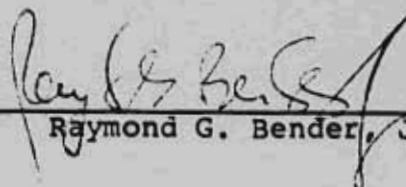
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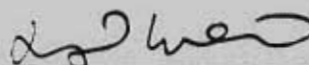
CONCLUSION

The foregoing demonstrates that McClatchy Newspapers, through its broadcasting activities, has not violated the Federal Election Campaign Act. Accordingly, the Office of General Counsel is requested to recommend this conclusion to the Commission, and the Commission is requested to close its file with respect to MUR-1419.

Respectfully submitted,

MCCLATCHY NEWSPAPERS

By 
Raymond G. Bender, Jr.

By 
David D. Wild

Its Attorneys

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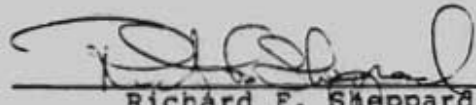
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EXHIBIT A

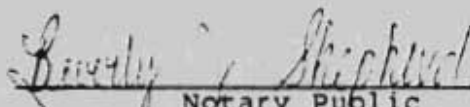
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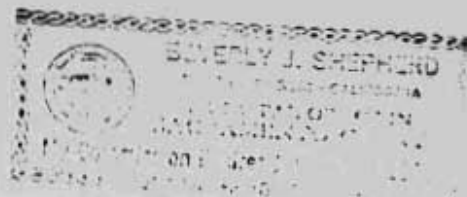
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Richard F. Sheppard

Subscribed and sworn to before
me this 18th day of January, 1982.


Notary Public
for the County of Sacramento, State
of California.



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EXHIBIT B

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A F F I D A V I T

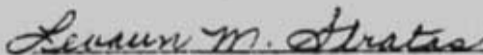
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ROBERT E. NEUTZLING

Subscribed and sworn to before me
this 18th day of January, 1982


Notary Public in and for the
County of Stanislaus, State of California



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EXHIBIT C


A F F I D A V I T

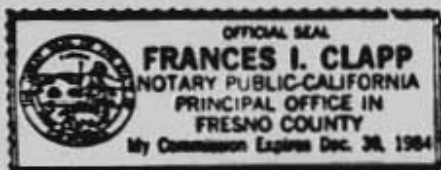
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James R. Wilson

Subscribed and sworn to before me the 18th day of January, 1982.


Notary Public for the county of Fresno, State of California.



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(202) 862-8072

FAYETTE S. DOW (1881-1962)

HORACE L. LOHNES (1887-1964)

WILLIAM P. SHIR
THOMAS H. MALL
EARL R. STALEY
JOHN A. RAFTER
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S. DONOHY PERRY
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JOHN P. SCHWITZER
S. BRUCE BECKNER
BERNARD JOHN BARRETT, JR.
MARISE D. HOWARD
BLAIR S. BUTNER

OF COUNSEL

FRED W. ALBERTSON

THOMAS W. WILSON

January 22, 1982

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention: William Taylor, Office of General Counsel

Re: Response of McClatchy Newspapers
to MUR-1419

Dear Mr. Taylor:

This letter is in response to a complaint filed against McClatchy Newspapers (hereafter "McClatchy") by Will Wertz, a candidate for the Democratic nomination for the U.S. Senate from the State of California. McClatchy is the licensee of Radio Stations KFBK, Sacramento, KBEE, Modesto, and KMJ 1/, Fresno, all California. In his complaint, Mr. Wertz alleges that the appearance of California Governor Edmund G. (Jerry) Brown, Jr. on radio programs produced by McClatchy constituted illegal campaign contributions from McClatchy to Brown. In response, McClatchy hereby submits that Brown's appearances were not contributions within the meaning of the Federal Election Campaign Act, 2 U.S.C. §431 et seq.

INTRODUCTION

Jerry Brown, a Democrat, is the current Governor of California, a position he has held since his election in 1974.

1/ Mr. Wertz's complaint erroneously refers to this station as "KMG."

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As Governor, Brown heads the executive branch of the nation's most populous, and often most politically controversial, state. It is reported that Brown intends to run for the U.S. Senate in 1982.

Brown's position has required his participation and leadership in numerous politically sensitive decisions that have been newsworthy and of interest to the 25 million residents of California. Recent examples of such decisions are his appointments to the California Supreme Court, his handling of the Mediterranean fruit fly crisis, and his public opposition to the Interior Department's plans for oil exploration off the California coast and the Nuclear Regulatory Commission's sanctioning of the Diablo Canyon nuclear power plant.

These and other actions by Brown justifiably establish his position as one of California's most newsworthy citizens, and the people of California undoubtedly have substantial interest in the opinions and activities of their governor. Thus, a radio program through which Californians are permitted to question Brown concerning his actions, while many more listen in, would clearly serve the public interest. In keeping with its statutory obligation to serve this interest,^{2/} McClatchy in fact agreed to present programs of this nature on three of its radio stations. Each of the programs was broadcast more than one year before the next general election and more than seven months before the Democratic primary.

BROWN'S APPEARANCES WERE NOT CONTRIBUTIONS
OR EXPENDITURES AS DEFINED BY THE FECA

1. The Programs Presented by McClatchy Were "News Stories" Exempted By The FECA.

The Federal Election Campaign Act (hereafter "FECA" or "the Act") prohibits political "contributions" and "expenditures" by corporations. 2 U.S.C. §441b(a)(1976). However, Section 431(9)(B)(i) of the Act provides that the term "expenditure" does not include "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." Similarly, the definitions of both "contribution" and "expenditure" in

^{2/} See p. 6, infra.

the FEC's Regulations exclude "any cost incurred in covering or carrying any news story, commentary, or editorial by any broadcasting station," with the same exception for stations owned or controlled by candidates, committees or parties. 11 CFR §§100.7(b)(2), 100.8(b)(2) (1981).^{3/} These provisions, as interpreted by the FEC and the Courts, exempt from the Act programs such as those broadcast by the McClatchy stations.^{4/}

The Commission interpreted the above statutory and regulatory provisions in an Advisory Opinion in 1978. In AO 1978-76 (Answer to Carole Shotwell, Legal Counsel to Representative Robert B. Duncan) (hereafter "Duncan"), the Commission held that a film produced by a Congressman, showing the facilities that were available to the Congressman's constituents, could be broadcast by a television station without constituting a campaign contribution. Referring to the news story exception, the FEC stated that, "this exception is available where in the exercise of its responsibility to serve the public interest, convenience and necessity, the station carries a film . . . as a public service announcement." Id.

The situation found to be lawful in the Duncan opinion is similar to that presented in this case. Both situations involved incumbent political figures and concerned matters of interest to the general public. Both situations involved the appearance of one political figure only, in a format that

^{3/} Congress' failure to expressly exempt news stories, etc., from its definition of "contribution" is not material. If a corporate broadcaster's programming could be considered a contribution, but not an expenditure, the exemption for expenditures would be since §441b prohibits both contributions and expenditures equally. Furthermore, the Supreme Court, in its review of FECA, determined that the Act "exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties." Buckley v. Valeo, 424 U.S. 1, 50 n.56 (1976) (emphasis added).

^{4/} Neither McClatchy Newspapers nor any of its broadcast facilities are owned or controlled by any political party, political committee, or candidate.

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would increase the politician's exposure to the community.^{5/} Lastly, it appears that neither Congressman Duncan's film nor Governor Brown's commentary was edited by the stations broadcasting these programs. Faced with these facts, the Commission in Duncan found that the station's exercise of its responsibility to serve the public interest was conclusive of the program's legality. The same result should be reached with regard to McClatchy's radio programming decisions.

The Federal courts have also given the "news story" exception a broad interpretation. In Reader's Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981), the court discussed the exception while narrowing the FEC's permissible investigation of press entities:

[T]he express statutory exemption in favor of dissemination of information or opinion by the press seems intended to bar the FEC from even investigating incidents that are exempted exercises of the press' prerogatives
[T]his dispute involves First Amendment considerations based on a recognition that freedom 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.

Thus, where the FEC determines that a press entity is acting as a press entity and is not owned or controlled by a candidate, the Commission may not investigate the subject matter of any complaint against the entity. Federal Election Commission v. Phillips Publishing, Inc., 517 F.Supp. 1308 (D.D.C. 1981) (citing Reader's Digest Association); see also Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 396 (D.C. Cir. 1981) (citing Reader's Digest Association with approval). In determining whether a press entity is acting as such, and is thus protected from FEC investigation of its activities, the Commission is required to view broadly those

^{5/} In fact, Congressman Duncan's film was produced with his campaign funds.

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functions that relate to the dissemination of information. For example, the activity at issue in Reader's Digest Association was the distribution to television stations of a videotape concerning Senator Edward Kennedy's automobile accident on Chappaquiddick Island. The court found that this distribution could be exempt from FECA scrutiny, despite its obvious tendency to influence Senator Kennedy's 1980 presidential bid, even if its sole purpose was to publicize a magazine article published by "Reader's Digest" on a similar subject. Thus, the news story exemption would apply even though the videotape was not intended directly to communicate information concerning a news event. Reader's Digest Association, supra, at 1215.

Applying these rules to the present case, there is no doubt that McClatchy's radio stations were engaged in activity "that fall[s] broadly within the press entity's legitimate press function." Reader's Digest Association, supra, at 1214. Through the appearance of Governor Brown on its station's programs, McClatchy broadcast to its listeners commentary and information concerning important news events. As a result, the FEC is prohibited from inquiring further into McClatchy's decision to have Governor Brown appear on its radio programs.^{6/} The subject radio programs fall squarely within the Act's news story exemption.

2. McClatchy Did Not Permit Brown's Radio Appearances
For the Purpose of Influencing a Federal Election.

McClatchy's radio programs, in addition to being covered by the news story exemption, also fall outside the FECA's definition of "contributions" and "expenditures." As used in the Act, the term "contribution" means "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." 2 U.S.C. §431(8)(A)(i)(1976) (emphasis added). Similarly, the term "expenditure," as used in the Act, means "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." 2 U.S.C. §431(9)(A)(i)(1976) (emphasis added). Thus, McClatchy's

^{6/} In the interest of promptly and conclusively terminating this matter, McClatchy has voluntarily submitted affidavits concerning the decision to broadcast these radio programs. See p. 6, *infra*. By submitting these affidavits, McClatchy does not thereby waive its constitutional and statutory rights with respect to any further FEC investigation of this matter.

decision to permit Brown's appearance on its radio programs, even assuming that such radio time constituted the "gift" of something "of value" to Brown, and without regard to the news story exemption, would not contravene the Act if McClatchy lacked an intent to influence the upcoming Senatorial election.

The Wertz complaint offers no evidence of improper intent on the part of McClatchy. Instead, Mr. Wertz merely concludes that "upon information and belief, such appearances [were] exclusively designed to promote Jerry Brown's senatorial campaign." Complaint, at 2. A few paragraphs later, Mr. Wertz weakens his position, stating only that "upon information and belief," the appearances were permitted with "the clear understanding" that they promoted Brown's campaign. Id. Neither of these statements is supported by specific allegations of fact.

In contrast to these unsupported allegations, McClatchy submits the affidavits of the station managers of each of the McClatchy-owned stations named in Mr. Wertz's complaint. Exhibits A, B, and C, attached hereto.^{7/} These affidavits establish that the decision to permit Brown's appearance on the stations was motivated solely by a desire to present the public with useful and informative public affairs programming. This purpose reflects the fact that radio stations are required by the Communications Act of 1934 to serve the public interest,^{8/} and that a station's public affairs programming is crucial in determining how well this obligation is met.^{9/} The affidavits further establish that there was no intent to influence Brown's candidacy in any way. Since the statutorily-mandated purpose of serving the public interest was undeniably furthered by the Governor's appearances, it would be impermissible to infer,

^{7/} Copies of these executed affidavits were originally submitted with McClatchy's letter response in MUR 1418 (Complaint of Theodore A. Bruinsma), dated January 19, 1982. In a letter dated January 21, 1982, and hand delivered that day, the executed originals of these affidavits were submitted to the Commission.

^{8/} 47 U.S.C. §§307, 309(a) (1976).

^{9/} See The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC2d 1, 10 (1974); see also, e.g., West Coast Media, Inc., 79 FCC2d 610 (1980).

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merely from allegations of possible benefit to Brown's campaign, that McClatchy also proposed to serve another, illegitimate interest.^{10/}

The Advisory Opinions of the Federal Election Commission have consistently endorsed the view that no violation of FECA occurs in cases such as this "where the major purpose of activities involving appearances of candidates for Federal office was not to influence their nomination or election." AO 1977-42 (Answer to Ken Hechler) (hereafter "Hechler"). In the Hechler opinion, the Commission applied this rule to the hosting of a public affairs call-in program by Congressional candidate (and former Congressman) Ken Hechler. The program was broadcast one hour per day, five days per week, and Hechler was paid for his appearances. On these facts, the Commission found that the radio station producing the program had not made a "contribution" or "expenditure" on Hechler's behalf since the programs were presumably not conducted for the purpose of influencing the election.

Wertz's attempt to distinguish this Advisory Opinion is unavailing. First, Wertz states that neither Brown nor his campaign committee has paid for the broadcast time and that Brown has not received "continuing reimbursement" for the appearances. Although both these statements are true, the first does not distinguish this case from Hechler and the second is immaterial. Mr. Hechler also did not pay to appear on the programs involved in that opinion. Furthermore, although Hechler received payment for his hosting of one series of programs, it is illogical to suggest that providing a newsworthy public figure with broadcast time can be deemed a campaign contribution when providing both broadcast time and money is not. Second, Wertz incorrectly attempts to distinguish Hechler by claiming, without evidentiary support, that "no other senatorial candidate has been or will be offered, upon information and belief, similar guest host responsibilities." Complaint, at 2. In Hechler, at least one of the two programs involved was hosted solely by the candidate. The Commission's Opinion does not indicate that the appearance of other officials on one of the programs was in any way determinative of their decision, nor does it indicate whether these other officials

^{10/} The Act's definitions of "contribution" and "expenditure" refer only to the state of mind of the "donor." That Governor Brown may have accepted, or even solicited, the opportunity to appear on McClatchy's stations for the purpose of influencing the election is immaterial.

included any of Mr. Hechler's competitors in the Congressional election. Finally, even if the facts in the present case were somehow distinguishable from those in Hechler, the appearance of the California governor alone on McClatchy's programs would not reflect a purpose to influence Brown's candidacy. Of all the possible candidates for the Senate from California, only Brown is the state's Governor. Obviously, the appearance of Governor Brown, in contrast to the appearance of most other candidates, would be highly newsworthy without regard to the upcoming Senatorial election.

In addition, the Hechler opinion has been strongly reaffirmed in a more recent Advisory Opinion of the Commission. AO 1981-37 (Answer to Representative Richard A. Gephardt). Representative Gephardt proposed to host a public affairs program that would be broadcast at a corporation's expense. The Commission, citing Hechler, declared that no prohibited corporate contribution results when the major purpose of an activity is not to influence a Federal election. Significantly, the Opinion added that "[a]lthough it is possible that [Gephardt's] involvement in the public affairs program may indirectly benefit future campaigns, the Commission concludes the major purpose of the activity contemplated would not be the nomination or election of [Gephardt] or any other candidate to Federal office." This holding forcefully defeats any contention that a possible enhancement of Brown's name recognition or popularity requires a finding that unlawful campaign contributions were made.

Lastly, the FEC's application of the "purpose" standard has been upheld by the Federal courts. In Epstein v. Federal Election Commission, No. 81-0336 (D.D.C. Sept. 23, 1981), the District Court upheld the FEC's refusal to find that a newspaper advertisement constituted a corporate campaign contribution. The court stated that "[w]hile the contours of the 'purpose test' for application of section 441b remain indistinct, its intuitive appeal has been recognized by the courts There seems to be no basis . . . to hold the purpose test inherently arbitrary." On the facts in Epstein, the FEC and the court found that an advertisement placed by "Reader's Digest" magazine was intended to sell magazines and not to influence an election.

In sum, the FECA and the Commission's advisory opinions conclusively establish that intent to influence a Federal election is a required element of an unlawful campaign contribution. Mr. Wertz's complaint offers no evidence that McClatchy had such an intent, and the attached affidavits of the station managers establish that no such intent existed. Thus, the decision to

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permit radio appearances by Governor Brown does not constitute a prohibited campaign contribution.

CONCLUSION

The foregoing demonstrates that McClatchy Newspapers, through its broadcasting activities, has not violated the Federal Election Campaign Act. Accordingly, the Office of General Counsel is requested to recommend this conclusion to the Commission, and the Commission is requested to close its file with respect to MUR-1419.

Respectfully submitted,

MCCLATCHY NEWSPAPERS

By Raymond G. Bender, Jr.
Raymond G. Bender, Jr.

By David D. Wild
David D. Wild

Its Attorneys

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EXHIBIT A

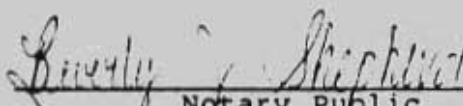
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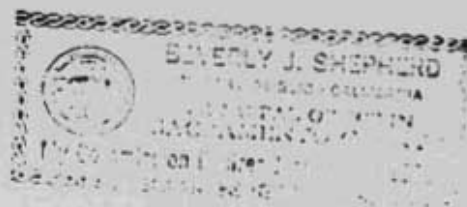
I, RICHARD F. SHEPPARD, am Station Manager of Radio Station KFBK, Sacramento, California. In this position, I have ultimate responsibility for the station's day-to-day programming decisions.

In September 1981, I learned that Governor Brown would be willing to host a call-in radio program on KFBK. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other newsworthy public issues, such as oil exploration off the California coast and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable public affairs program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U. S. Senate.


Richard F. Sheppard

Subscribed and sworn to before
me this 18th day of January, 1982.


Notary Public
for the County of Sacramento, State
of California.



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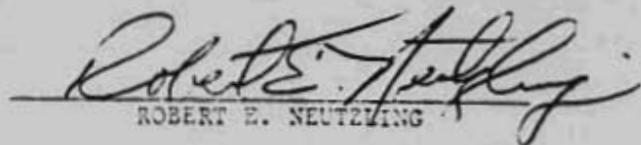
EXHIBIT B

A F F I D A V I T

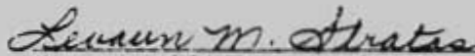
I, ROBERT E. NEUTZLING, am Station Manager of Radio Station KBEE, Modesto, California.

In this position, I have ultimate responsibility for the station's day-to-day programming decisions.

In, September 1981, I learned that Governor Brown would be willing to host a call-in Radio Program on KBEE. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other news worthy public issues, such as oil exploration off the California coast, and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable Public Affairs Program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U.S. Senate.


ROBERT E. NEUTZLING

Subscribed and sworn to before me
this 18th day of January, 1982


Notary Public in and for the
County of Stanislaus, State of California



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EXHIBIT C


A F F I D A V I T

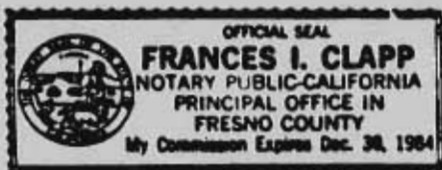
I, James R. Wilson, am Station Manager of Radio Station KMJ, Fresno, California. In this position, I have ultimate responsibility for the station's day-to-day programming decisions.

In September 1981, I learned that Governor Brown would be willing to host a call-in radio program on KMJ. During the program the Governor would answer questions phoned in by the station's listeners. Because of the Mediterranean fruit fly controversy concerning the Governor's handling of that problem, and other newsworthy public issues, such as oil exploration off the California coast and nuclear power, it was readily apparent that this format would result in a uniquely informative and valuable public affairs program. As a result, it was decided that Governor Brown should appear on this program. In no manner was the station's decision motivated by a desire or intent to influence Governor Brown's possible candidacy for the U.S. Senate.


James R. Wilson

Subscribed and sworn to before me the 18th day of January, 1982.


Notary Public for the county of Fresno, State of California.



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DOW, LOHNES & ALBERTSON

1225 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

TO:

DELIVERED BY HAND

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention: William Taylor
Office of General Counsel

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LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 861-2600

DIRECT DIAL NO.
2622

JAMES A. MCKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOLK
CARL R. RAMEY
EDWARD P. TAPTICH
NORMAN P. LEVENTHAL
STEVEN A. LERMAN
R. MICHAEL BENKOWSKI
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VIRGINIA S. CARSON
LAWRENCE J. MOVSHIN
JAMES S. BLASZAK
WILLIAM K. KEANE
DENNIS P. CORSETT
JAMES H. DEGRAFFENREIDT, JR.
JILL ABESHOUSE STERN

January 21, 1982

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR-1418 and
MUR-1419

Dear Sir:

This letter is written on behalf of American Broadcasting Companies, Inc. to respectfully request an extension of time in which to respond to the Commission's letters of inquiry with respect to the above-referenced complaint proceedings.

The Commission's letter regarding the complaint in MUR-1418 was received in New York on January 4, 1982; and the Commission's letter regarding the related complaint in MUR-1419 was received in New York on January 7, 1982. Both complaint letters were first received in Washington, D.C. by undersigned counsel on January 7, 1982 (after, apparently, having been addressed and first sent to counsel for the Democratic National Committee on New Hampshire Street in Washington). Based thereon, a single response to both complaints would be due on or about January 22, 1982 (utilizing the latter of the two applicable starting dates).

Because the subject complaints raise a number of matters which should be thoroughly examined before a response is formulated, a brief extension of time is needed. This is particularly so in light of the need to collect essential data and coordinate the response among

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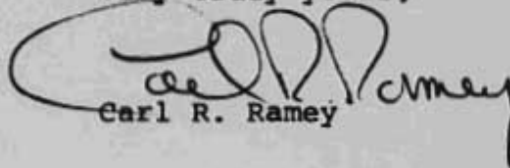
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Secretary
Federal Election Commission
January 21, 1982
Page Two

personnel and counsel in New York, Washington, D.C., Los Angeles, and San Francisco. For example, part of this process has involved the need for station personnel at KABC, Los Angeles and KGO, San Francisco to review lengthy and technically inferior tape recordings of each of the subject broadcasts.

Accordingly, ABC respectfully requests that the time for submitting any material responsive to these two complaints be extended by one week -- i.e., from January 22, 1982 to and including January 29, 1982.

Very truly yours,


Carl R. Ramey

cc: William E. Taylor, Esq.
Burton R. Cohn, Esq.
Mr. Martin Simon

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LAW OFFICES
McKENNA, WILKINSON & KITTNER
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JAMES H. DEGRAFFENREIDT, JR.
JILL ABESHOUSE STERN

DIRECT DIAL NO.
861-2622

January 21, 1982

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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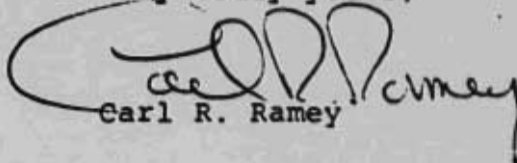
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Secretary
Federal Election Commission
January 21, 1982
Page Two

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Very truly yours,


Carl R. Ramey

cc: William E. Taylor, Esq.
Burton R. Cohn, Esq.
Mr. Martin Simon

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The Commission's letter regarding the complaint in MUR-1418 was received in New York on January 4, 1982; and the Commission's letter regarding the related complaint in MUR-1419 was received in New York on January 7, 1982. Both complaint letters were first received in Washington, D.C. by undersigned counsel on January 7, 1982 (after, apparently, having been addressed and first sent to counsel for the Democratic National Committee on New Hampshire Street in Washington). Based thereon, a single response to both complaints would be due on or about January 22, 1982 (utilizing the latter of the two applicable starting dates).

Because the subject complaints raise a number of matters which should be thoroughly examined before a response is formulated, a brief extension of time is needed. This is particularly so in light of the need to collect essential data and coordinate the response among

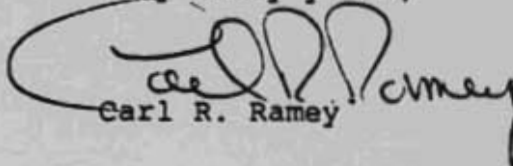
82040314430

Secretary
Federal Election Commission
January 21, 1982
Page Two

personnel and counsel in New York, Washington, D.C., Los Angeles, and San Francisco. For example, part of this process has involved the need for station personnel at KABC, Los Angeles and KGO, San Francisco to review lengthy and technically inferior tape recordings of each of the subject broadcasts.

Accordingly, ABC respectfully requests that the time for submitting any material responsive to these two complaints be extended by one week -- i.e., from January 22, 1982 to and including January 29, 1982.

Very truly yours,


Carl R. Ramey

cc: William E. Taylor, Esq.
Burton R. Cohn, Esq.
Mr. Martin Simon

82040314431

8 2 0 4 0 3 1 4 4 3 2

GENERAL COUNCIL

93:hd 12 NOV 79

Secretary
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

242

DOW, LOHNES & ALBERTSON

1225 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

TELEPHONE (202) 862-8000

TELECOPIER (202) 859-0059

CABLE "DOWLOHNES"

TELEX 89-553

WRITER'S DIRECT DIAL NO.

202/862-8072

PALETTE B. DOW (1981-1982)

HORACE L. LOHNES (1987-1984)

WILLIAM P. BIRD
THOMAS H. WALL
EARL R. STANLEY
JOHN A. RAFTER
RICHARD L. BRAUNSTEIN
JOHN B. MATTHEWS
CHARLES J. WICKERS
B. DOWNEY PERRY
DAVID W. REDMOND
L. ADRIAN ROBERTS
DAVID W. TOOMEY
BERNARD J. LONG, JR.
CHARLES H. WELSH
ALAN C. CAMPBELL
RICHARD F. SMITH

NORMAN H. ALLEN
RALPH B. HARDY, JR.
JAMES A. TREANOR, III
WERNER E. HARTENBERGER
JONATHAN B. HILL
BRENT W. RUSHFORTH
J. DOMINIC MORGAN
MARSHALL F. BERMAN
J. MICHAEL HINES
RICHARD D. HARRIS
JOHN L. DAVIS
ARNOLD A. LUTZNER
LEONARD J. BART
MICHAEL S. GOLDSTEIN
JOHN S. FEORE, JR.

LESLIE H. THRESENFELDER
MICHAEL J. MCCARTHY
KEVIN F. REED
RAYMOND G. BENDER, JR.
WILLIAM A. SILVERMAN
DONNA COLEMAN GREGG
JOYCE TRIMBLE SWADE
DAVID F. FLEMING
STUART A. SHELTON
MICHAEL A. FACE
FREDERICK S. CODAGE, JR.
ALBERT H. TURNER
HELEN E. GIBENHAUS
KENNETH S. SALADIN
CHRISTOPHER C. SHALLHOOD

ANDREW A. MERDEN
JOHN C. JOST
JOHN D. YARD
TODD D. GRAY
JOHN H. POMEROY
NOEL C. R. GUNTER
JOHN F. SCHMITZER
K. BRUCE BECKNER
BERNARD JOHN BARRETT, JR.
MARIE S. HOWARD
BLAIR S. BUTLER

OF COUNSEL

FRED W. ALBERTSON

THOMAS W. WILSON

January 12, 1982

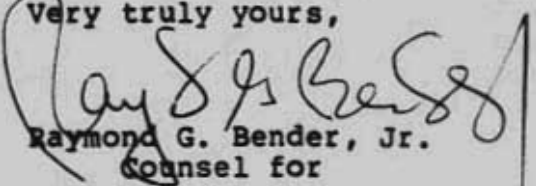
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

Gentlemen:

Transmitted herewith, on behalf of McClatchy Newspapers, licensee of Radio Stations KFBK, Sacramento, KBEE, Modesto, and KMJ, Fresno, all California, is a "Statement of Designation of Counsel" with regard to certain complaints filed with the Commission by the Wertz For Senate Campaign Committee (MUR-1419) and Theodore A. Bruinsma (MUR-1418).

Should any question arise with regard to this matter, kindly communicate with the undersigned.

Very truly yours,


Raymond G. Bender, Jr.
Counsel for
McClatchy Newspapers

cc: (Hand Delivered) William Taylor, Esquire
Office of General Counsel

STATEMENT OF DESIGNATION OF COUSEL

NAME OF COUNSEL: Dow, Lohnes & Albertson
Attention: Raymond G. Bender, Jr.
ADDRESS: 1225 Connecticut Avenue, N. W.
Washington, D. C. 20036
TELEPHONE: (202) 862-8000
or
Douglas T. Foster
P. O. Box 15779
Sacramento, CA 95852
(916) 446-9461

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.

January 5, 1981
Date

Signature

NAME: Douglas T. Foster, Legal Counsel
McClatchy Newspapers
ADDRESS: P. O. Box 15779
Sacramento, CA 95852

HOME PHONE: (916) 925-8609

BUSINESS PHONE: (916) 446-9461

8 2 0 4 7 : 1 5 1 4 2 3 5
WERTZ FOR SENATE
711 S. VERMONT AVE., #207
LOS ANGELES, CA 90005

RETURN RECEIPT
REQUESTED

CERTIFIED

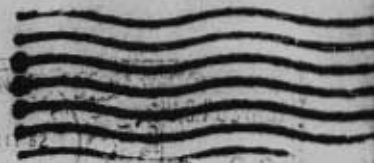
P 290 729 252

MAIL

Federal Election Commission
1325 K St., N.W.
Washington, D.C. 20005

20025

ATT: GENERAL COUNSEL
Bill Taylor





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 3, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James K. Parker, Esquire
General Counsel
Columbia Broadcasting Systems
51 West 52nd Street
New York, New York 10019

MUR 1419

Dear Mr. Parker:

This letter is to notify you that on December 28, 1981 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1419. Please refer to this number in all future correspondence.

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

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

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

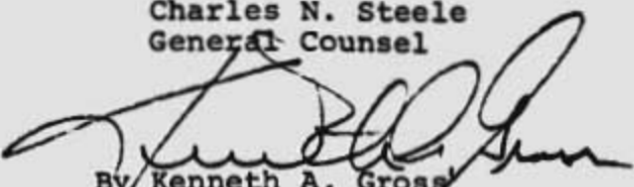
If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notification and other communications from the Commission.

92010314436

If you have any questions, please contact Bill Taylor, the attorney assigned to this matter at (202)-523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

8 2 0 0 3 1 4 4 3 7

Enclosures

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

7/40/19

SENDER: Complete items 1, 2, and 3. Add your address to the "RETURNED TO" space on back.		
1. The following service is requested (check one): <input type="checkbox"/> Show to whom and date delivered..... <input type="checkbox"/> Show to whom, date and address of delivery..... <input type="checkbox"/> RESTRICTED DELIVERY Show to whom and date delivered..... <input type="checkbox"/> RESTRICTED DELIVERY. Show to whom, date, and address of delivery..... (CONSULT POSTMASTER FOR FEES)		
2. ARTICLE DESCRIBED BY: <i>James H. Taylor</i> <i>Chd</i> <i>New York, N.Y. 10017</i>		
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO. 505546		
(Always obtain signature of addressee or agent)		
I have examined the article described above. SIGNATURE ADDRESS Date of delivery and <i>Wm Taylor</i>		
4. DATE OF DELIVERY		POSTMARK
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER REASON:		CLERK'S INITIALS

247

WERTZ FOR SENATE

711 South Vermont, Suite 207 Los Angeles, California 90005 (213) 383-2912
1824 Noriega Street San Francisco, California 94122 (415) 661-7663

102693
GCC# 7054
Ted Andromidas
Southern California
Chairman

Brian Lantz
Northern California
Chairman

Martin Simon
Treasurer

Federal Election Commission
1325 K St., NW
Washington, D.C. 20005

Att: Charles Steele
General Counsel

Re: Amendment to complaint against
Jerry Brown, et al.

Gentlemen:

As per my conversation with Mr. Bill Taylor of the
General Counsel's office please amend the complaint we filed
on December 15th to read:

1) 3 hours, KMF Fresno, McClatchy Broadcasting should read as
follows:

3 hours, KMJ Fresno, McClatchy Broadcasting

2) National Broadcasting Co., Inc, 3000 W. Alameda Ave., Burbank Ca, 91523
should read:

Columbia Broadcasting Co., Inc

6121 W. Sunset Blvd.
Los Angeles, Ca. 90028

3180 University Ave.
San Diego, Ca. 92104

Thank you for you consideration.

Sincerely,

Ted Andromidas

Ted Andromidas
Southern California Chairman

248

JAN 29 A10:55

RECEIVED

DON PILSON AND ASSOCIATES T ANDR
711 SOUTH VERMONT SUITE 207
LOS ANGELES CA 90005

Mailgram

1-0597748018 01/18/82 ICS IPMMTZZ CSP WSHA
2133832912 MGM TDMT LOS ANGELES CA 101 01-18 0719P EST

102612
6cc#6097

GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
1325 K ST NORTHWEST
WASHINGTON DC 20005

GENTLEMEN

PLEASE BE ADVISED THAT THE WERTZ FOR SENATE CAMPAIGN IS STILL
COMMITTED TO CONTINUING THE COMPLAINT PROCESS AGAINST GOVERNOR JERRY
BROWN, HIS CAMPAIGN COMMITTEE AND THE VARIOUS RADIO STATIONS THAT
PROVIDED HIM WITH FREE RADIO TIME. I HAVE SENT A COPY OF AMENDMENTS
TO OUR COMPLAINT TO YOUR OFFICE RETURN RECEIPT REQUESTED. AGAIN, I
REPEAT EVEN THOUGH REPUBLICAN CANDIDATE THEODORE BRUINSMA HAS
WITHDRAWN HIS COMPLAINT WE ON THE OTHER HAND ARE STILL COMMITTED TO
THIS COMPLAINT AND INVESTIGATION. SINCERELY

THEODORE ANDROMIDAS SOUTHERN CALIFORNIA CHAIRMAN WERTZ FOR SENATE
COMMITTEE

19:57 EST

MGMCOMP

JAN 20 P 4:06

249

40



Mailgram



THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY

82030

258

DDN/PILSON AND ASSOCIATES T ANDR
711 SOUTH VERMONT SUITE 207
LOS ANGELES CA 90005

 Mailgram 

1-0602505018 01/18/82 ICS IPMTZZ CSP WSHA
2133832912 MGM TDMT LOS ANGELES CA 124 01-18 0727P EST

102611
BCC# 6098

BILL TAYLOR
CARE GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
1325 K ST NORTHWEST
WASHINGTON DC 20005

DEAR SIR

AS PER OUR CONVERSATION OF LAST WEEK I HAVE SENT YOU ANOTHER
AMENDMENT TO THE COMPLAINT THAT WE FILED WITH YOUR OFFICE. I HAVE
SENT THIS ONE CERTIFIED MAIL RETURN RECEIPT REQUESTED. PLEASE BE
ADVISED THAT, THOUGH REPUBLICAN CANDIDATE THEODORE BRUINSMA HAS
WITHDRAWN HIS COMPLAINT, WE HAVE NO INTENTION OF WITHDRAWING OURS AND
WE ARE STILL COMMITTED TO CONTINUING THE COMPLAINT PROCESS AGAINST
GOVERNOR BROWN, HIS CAMPAIGN COMMITTEE AND THE VARIOUS RADIO STATIONS
WHICH PROVIDED HIM FREE TIME. YOU SHOULD BE RECEIVING A SECOND COPY
OF THE AMENDMENTS WEDNESDAY. PLEASE CALL ME IF YOU HAVE ANY
QUESTIONS. SINCERELY
THEODORE ANDROMIDAS SOUTHERN CALIFORNIA CHAIRMAN WERTZ FOR SENATE
COMMITTEE

19158 EST

MGMCOMP

10:07

142



Mailgram



82040

THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY

252



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 19, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Corydon Dunham, Esquire
General Counsel
National Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

MUR 1419

Dear Mr. Dunham:

This letter is to notify you that on December 28, 1981 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1419. Please refer to this number in all future correspondence.

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

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

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

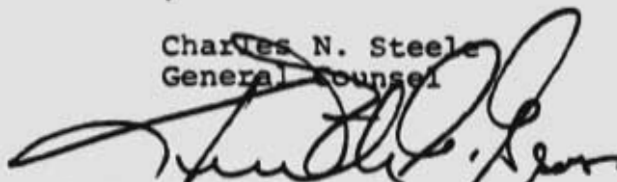
If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notification and other communications from the Commission.

820014443

If you have any questions, please contact Bill Taylor, the attorney assigned to this matter at (202)-523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel



By Kenneth A. Gross
Associate General Counsel

82010314444

Enclosures

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

1419 1-10-82

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

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

2. ARTICLE ADDRESSED TO:
 Condon D. Ashmore, Esq.
 G.C., n.c.
 New York, New York 10010

3. ARTICLE DESCRIPTION:
 REGISTERED NO. 9435176 CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)

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

4. DATE OF DELIVERY 1/22/82 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER REASON: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

U.S. POST OFFICE

#1419

82040314445

① CORYDON DUNHAM ESQ
General Counsel of The National
Broadcasting Company
30 Rockefeller Plaza
New York, New York 10020

② JAMES K. PERKINS ESQ
General Counsel of CBS..
51 W 52 ST
New York N.Y. 10019

256

MUR # 14/8 + 14/9
DATE 12/23/81

PLEASE PROVIDE THE NAMES AND ADDRESSES OF ALL RESPONDENTS WHICH ARE TO BE SENT A COPY OF THE COMPLAINT. IF A PRINCIPAL CAMPAIGN COMMITTEE IS A RESPONDENT, A CARBON COPY IS TO BE SENT TO THE CANDIDATE. PLEASE PROVIDE THE NAME AND ADDRESS OF THE CANDIDATE AND PUT A "CC" BESIDE THE CANDIDATE'S NAME. IF A CANDIDATE IS A RESPONDENT, A CARBON COPY IS TO BE SENT TO THE CANDIDATE'S PRINCIPAL CAMPAIGN COMMITTEE. PLEASE PROVIDE THE NAME AND ADDRESS OF THE PRINCIPAL CAMPAIGN COMMITTEE AND PUT A "CC" BESIDE THE COMMITTEE'S NAME. PLEASE PROVIDE THIS INFORMATION, ON THIS SHEET, WITHIN 24 HOURS OF RECEIPT OF THIS NOTICE. THANK YOU.

820000314416

① Honorable Edmund G. Brown Jr
Office of Governor / State Capital
Sacramento, Cal 95814

CC Jeremiah Halliday Esq
Treasurer
Brown For U.S. Senate
One California Street
San Francisco Ca 94111

③ MR FREDERICK S. PIERCE
American Broadcasting Company
1350 Avenue of the Americas
New York, New York 10019

CC of ABC
④ CARL P. Ramsey Esq
McKenna, McKenna & Attorneys
137 New Hampshire Ave NW
Washington DC

⑤ MR James B McCLatchy
McClatchy Broadcasting Corp
2151 Q
Sacramento Cal 95813

other
info



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 4, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alvin G. Flanagan
Gannett Company, Inc.
Lincoln Towers
Rochester, New York 14604

MUR 1419

Dear Mr. Flanagan:

This letter is to notify you that on December 28, 1981 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1419. Please refer to this number in all future correspondence.

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

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

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

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

82040314447



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 4, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Edmund G. Brown
Office of Governor, State Capitol
Sacramento, CA 95814

MUR 1419

Dear Mr. Brown:

This letter is to notify you that on December 28, 1981 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1419. Please refer to this number in all future correspondence.

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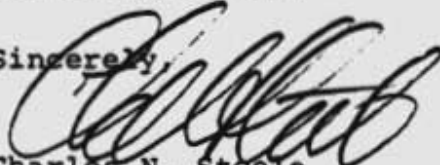
If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notification and other communications from the Commission.

32010314449

159

If you have any questions, please contact Bill Taylor, the attorney assigned to this matter at (202)-523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,


Charles N. Steele
General Counsel

Enclosures

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

cc: Jeremie Hallisey

149 1/4/82

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

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

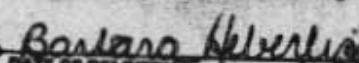
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Gov. E Brown Jr.
Sacramento, CA

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
943457

(Always obtain signature of addressee or agent)

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

4. 
DATE OF DELIVERY
01-05-82

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:
REASON'S INITIALS

1/4/82
1982
USPS

ST-570 : 5070-500-400



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 4, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James B. McClatchy
McClatchy Broadcasting Corporation
21 & Q Street
Sacramento, CA 95813

MUR 1419

Dear Mr. McClatchy:

This letter is to notify you that on December 28, 1981 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1419. Please refer to this number in all future correspondence.

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

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

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

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

92010314451

If you have any questions, please contact Bill Taylor, the attorney assigned to this matter at (202)-523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

1419 1/4/82

U.S. MAIL

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

2. ARTICLE ASSIGNED TO:
James McClatchy
Sacramento CA 95813

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 943453

(Always obtain signature of addressee or agent)

I have received the article described above.
 Signature: *R. B. B...* Date: *JAN 7 1982*

4. ADDRESS (Complete only if repeated)

5. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

STAR 970-000-000

Enclosures

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

8 2 0 4 0 3 1 4 4 3 2



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 4, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frederick S. Pierce
American Broadcasting Company
1330 Avenue of The Americas
New York, New York 10019

MUR 1419

Dear Mr. Pierce:

This letter is to notify you that on December 28, 1981 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1419. Please refer to this number in all future correspondence.

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

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

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

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

263

If you have any questions, please contact Bill Taylor, the attorney assigned to this matter at (202)-523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints

Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

82040314454

Enclosures

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

cc: Carl R. Ramey

1419 1/4/82

1. The following service is requested (check one.)

☐ Show to whom and date delivered.....

☐ Show to whom, date and address of delivery.....

☐ RESTRICTED DELIVERY

Show to whom and date delivered.....

☐ RESTRICTED DELIVERY.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 31, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Martin Simon
Treasurer, Wertz For Senate
711 S. Vermont Avenue, #207
Los Angeles, CA 90005

Dear Mr. Simon:

This letter is to acknowledge receipt of your complaint of December 15, 1981, against Governor Edmund G. Brown, Jr., Brown For Senate Committee, American Broadcasting Company, National Broadcasting Company, Inc., and McClatchy Broadcasting Corporation which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondents notification.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elissa T. Garr", is written over the typed name.

Elissa T. Garr
Docket Chief

Enclosure

102443

RECEIVED

81 DEC 28 AIO: 37

BCH# 5982

WERTZ FOR SENATE

711 South Vermont, Suite 207
Los Angeles, California 90005
(213) 383-2912

1826 Noriega Street
San Francisco, California 94122
(415) 661-7663

Federal Election Commission
1325 K St., N.W.
Washington, D.C. 20005

December 15, 1981

Attn: Charles Steele
General Counsel

DEC 28 P12:28

Re: Complaint against Jerry Brown
Brown for Senate Committee
and Various Broadcast Corporations

Gentlemen:

This is a complaint under the provisions of 2 U.S.C. 437 G (A) (1) against Jerry Brown, a candidate for the U.S. Senate in California, Capitol Building, Sacramento, CA 95814; the Brown for Senate Committee, Jerry Brown's campaign committee, 1125 W. 6th Street, third floor, Los Angeles, CA 90017; and the following radio stations and broadcasting corporations:

American Broadcasting Company
277 Golden Gate Avenue
San Francisco, CA 94102

National Broadcasting Co., Inc.
3000 W. Alameda Avenue
Burbank, CA 91523

McClatchy Broadcasting Corporation
Box 15779
21st and Q Street
Sacramento, CA 95813

The complainant is the Wertz for Senate Campaign Committee, 711 S. Vermont Avenue, Suite 207, Los Angeles, CA 90005, the designated campaign committee of Will Wertz, Democratic candidate for U.S. Senate in California. Martin Simon is the Treasurer of this committee and brings the complaint on its behalf.

Complainant believes that Mr. Brown, the campaign committee and the broadcasting corporations listed above have committed violations of 2 U.S.C. 441 (A) et seq. by the making and acceptance of corporate contributions to the Brown senatorial campaign. The facts known to the complainant concerning these activities are as follows.

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Since approximately October, 1981, Jerry Brown and the Brown for Senate Committee have sought to have Jerry Brown appear as the host of various radio talk shows in California. Upon information and belief such appearances are exclusively designed to promote Jerry Brown's senatorial campaign by providing him a public forum in which to explain his controversial views and actions as Governor and overcome the negative popular perception of such actions. Upon information and belief, Jerry Brown will not appear on the various talk shows as a guest -- he will only appear if the particular show offers him a guest host spot in which he can control the format of the program.

This complainant believes that Jerry Brown has appeared under these conditions on the following programs for the times indicated:

6 hours, Michael Jackson show, KABC radio, Los Angeles (ABC)
3 hours, Jim Eason show, KGO radio, San Francisco (ABC)
3 hours, Midday show, KSDO, San Diego (CBS)
5 hours, KFBK radio, Sacramento, McClatchy Broadcasting
3 hours, KBEE, Modesto, McClatchy Broadcasting
3 hours, KMF, Fresno, McClatchy Broadcasting

This complainant is aware that Kevin Keeshan of KNTB radio in Bakersfield, California was approached by representatives of Governor Brown for an appearance on his talk show. The representatives insisted that Brown be a host -- a guest spot was offered by the talk show host. Brown's representatives stated, upon information and belief, that his appearance was conditioned on hosting the program and that he would not appear as a guest.

Upon information and belief, these appearances have all occurred following the formation of the Brown for Senate Committee and no such appearances preceded the formation of that committee.

This complainant believes that the circumstances of these appearances are clearly distinguishable from the situation the Commission anticipated in Advisory Opinion 1977-42. Brown and/or the Brown for Senate Committee have not paid for the broadcast time and Brown has received no continuing reimbursement for the appearances. The broadcast time, upon information and belief, has been allotted with the clear understanding that it promotes Brown's senatorial campaign, although the programs may not contain express advocacy or solicitation. No other senatorial candidate has been or will be offered, upon information and belief, similar guest host responsibilities.

We urge the Commission's prompt attention to this complaint and will be happy to assist the Commission in any fashion in its investigation.

Martin Simon

Martin Simon
Treasurer, Wertz for Senate
711 S. Vermont Ave. #207
Los Angeles, CA 90005
(213) 383-2912

NOTARIAL ACKNOWLEDGEMENT

COUNTY OF LOS ANGELES)

ss:

STATE OF CALIFORNIA)

Rosario Rodriguez, a notary public in the County of Los Angeles, State of California, acknowledges that on December 15, 1981, before me appeared Martin Simon and that he signed the above referenced complaint in my presence and swore that the allegations contained therein were true to the best of his knowledge and as to those matters alleged upon information and belief he swore that he believed them to be true.

Rosario Rodriguez
NOTARY PUBLIC



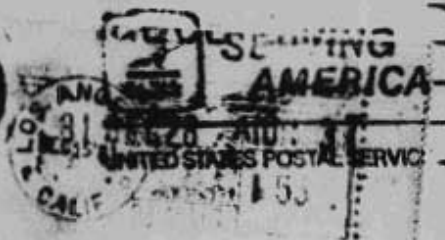
82040314458

8 2 7 4 0 3 1 0 4 5 9

WERTZ FOR SENATE
711 S. VERMONT AVE., #207
LOS ANGELES, CA 90005



**RETURN RECEIPT
REQUESTED**



Federal Election Commission
1325 K St., N.W.
Washington, D.C. 20005
Attn: Charles Steele

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FEDERAL ELECTION COMMISSION

1125 A STREET NW
WASHINGTON, D.C. 20463

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