FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2567

DATE FILMED 6/3/88 CAMERA NO. 2

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- MUR/ 2567

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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December 1, 1987

Federal Election Commission
Washington, DC 20463

COMPLAINT CONCERNING VIOLATION OF "FECA"

TO: The Commission and General Counsel

1. This complaint is directed at the National Broadcasting Company, the Gannett Company, and the Public Broadcasting Service, NYSE Foundation, Inc. and all other organizations which have sponsored presidential candidate debates for the 1988 presidential election.

2. Applicable Commission Rules. This complaint is filed pursuant to the Federal Election Campaign Act ("FECA") and specifically 11 CFR §110.13. In §110.13, the Commission has established ground rules for exempting candidate debates from contribution limits and other legal restrictions. The Commission's rules appear to require that "such debates are nonpartisan in that they do not promote or advance one candidate over another."

3. According to the Commission's records, approximately sixteen (16) candidates have met the Commission's standards for presidential candidate status, i.e. they have satisfied the Commission's requirements as candidates who have expended or received funds in the requisite amount under the FECA.

4. Attached hereto is an advertizement from the New York Times, noting that a debate will promote only twelve of the more than twelve qualified candidates. It is obvious that a "debate" that includes less than all qualified candidates "promotes" and "advances" the candidacies of those who are included in the TV programs and acts to the detriment of those who are excluded. By giving free exposure to some candidates, but not all qualified candidates, the NBC Company can hardly be said to be acting in a nonpartisan spirit; it is obviously partisan towards some campaigns/candidates, and, on the other hand, partisan against other campaigns/candidates. In addition, NBC has solicited and received corporate sonsorship for the debates. A program which includes some, but not all, qualified candidates cannot by any reasoned definition do anything but advance or promote the favored few to the detriment of those who are excluded. On information and belief, there do not appear to be any standards governing whose candidacies may be favored or promoted and whose candidacies are not to be favored or promoted by free TV exposure.

The Gannett Company has scheduled a "debate" for Republican/Democratic candidates at the Des Moines Register, in Des Moines, Iowa. It appears that some, but not all, FEC-qualified candidates will be invited to appear.

5. The complainant is a nonpartisan voter. He has not endosed any candidate. He has not contributed to any candidate. He wishes to know who all of the candidates are and he wants to see all of the candidates debate the issues, not just some of the candidates.

6. The Public Broadcasting Service has sponsored similar debates, which included some candidates and excluded some candidates. The Service ("PBS") is obviously taxpayer supported and tax exempt. By what means can it promote and advance the campaigns of some candidates, who are given television exposure, to the detriment of other candidates who are denied equal exposure.

7. Throughout American political history, minority candidates and minority movements have played a pivotal role in American political development. By allowing the PBS, or NBC, or the Gannett Company, to use their funds to offer de facto endorsements of candidates who are deemed worthy, by some unspecified standards, to receive free TV exposure, these companies or organizations are allowed to control and determine who can effectively become a candidate for the presidency. Anyone who is excluded from the circle of favored few, is automatically placed at an extreme and insuperable disadvantage, by being excluded from nationwide media functions. The cost of purchasing a New York Times Newspaper advertizement is significant; yet NBC has placed an ad which cannot help but adbance and promote the campaigns of the candidates it has advertized vis a vis those whose pictures have been excluded.

8. Likewise, the New York Stock Exchange foundation has placed newspaper ads with the pictures of some candidates, though apparently not all candidates. Obviously, a candidate whose receives a free picture in a commercial advertizement is favored vis a vis a candidate who is not given a free picture in the nation's leading newspaper. A copy of one such ad is attached hereto. To allow tax exempt foundations to advertize candidates and place their pictures in general circulation newspapers violates the law.

9. It would appear that the failure of the Commission to initiate any actions has allowed the use of tax exempt and corporate funds to be used in a manner never contemplated by the authors of the FECA. The NYSE Foundation, Inc. ads are obviously beneficial to candidates whose campaigns are "promoted" by free ads, and a candidate who gets a free ad is "advanced" vis a vis candidates who do not receive free ads. All of the foregoing debates, corporate and foundation and taxpayer sponsored "interviews" and "debates" violate the letter and spirit of the FECA.

Edward S Kanbar

EDWARD S. KANBAR
4 E. 77 Street
New York, NY 10021

STATE OF NEW YORK
COUNTY OF NEW YORK ss.:

NOTARIZATION

I hereby certify that Edward Kanbar appeared persoanlly before me and after being sworn stated that he executed the foregoing as a true and correct statement of law and fact, this 21st day of December, 1987

Date: 12/21/87 Notary Public:

~~13190~~

THIS WEEK, AMERICA DOES ITS HOMEWORK FOR NEXT TERM.

Candidates '88 with Marvin Kalb

A conversation with Pete du Pont.

This week, Marvin Kalb will host an in-depth conversation with Pete du Pont, Republican candidate for President. This 60-minute program will air on your local PBS station.

Pete du Pont will have the opportunity to share his views on a number of topics and respond to questions from a live audience.

Candidates '88 with Marvin Kalb is made possible by a grant from The New York Stock Exchange Foundation, Inc. as a public educational service.

NYSE Foundation, Inc.

The New York Stock Exchange Foundation, Inc.

This series is a co-production of WGBH Boston, the Joan Shorenstein Barone Center on the Press, Politics and Public Policy, the Institute of Politics, and the John F. Kennedy School of Government at Harvard University.

Check your local listings for time, date and station.

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NBC NEWS PRESENTS

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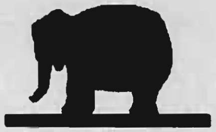
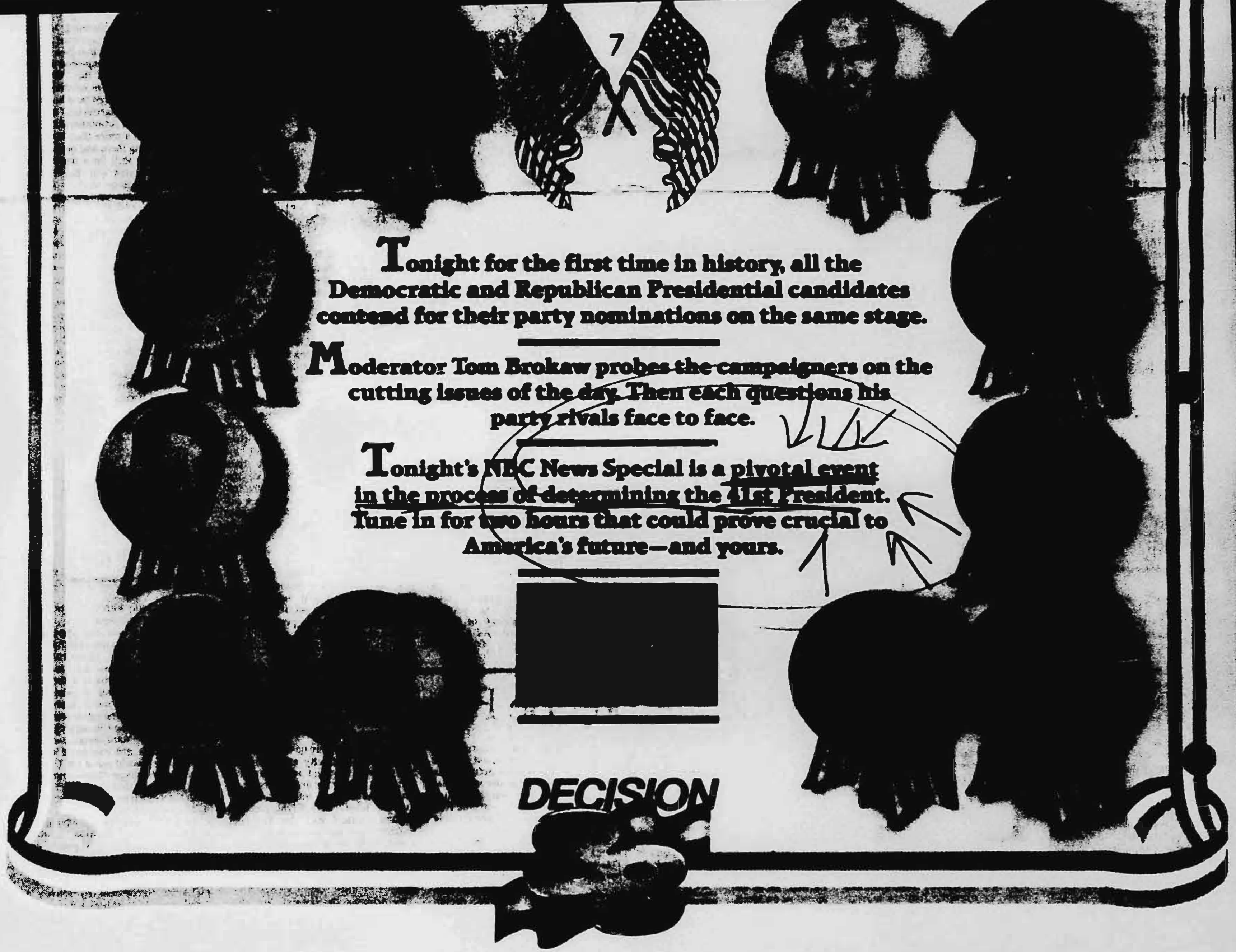


A PRESIDENTIAL DEBATE

LIVE
KENNEDY CENTER
WASHINGTON DC

Tonight for the first time in history, all the Democratic and Republican Presidential candidates

7



Tonight for the first time in history, all the Democratic and Republican Presidential candidates contend for their party nominations on the same stage.

Moderator Tom Brokaw probes the campaigners on the cutting issues of the day. Then each questions his party rivals face to face.

Tonight's NBC News Special is a pivotal event in the process of determining the 41st President. Tune in for two hours that could prove crucial to America's future—and yours.

9-11 TONIGHT NBC NEWS 4

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is a considerable improvement over his standing last May, when he wa viewed favorably by only 23 perce and unfavorably by 38 percent.

Mr. Jackson has tried to expand beyond his base in the black community by portraying himself as the champion of the average worker, white or black

Asked if they thought it was a good or bad idea "to put limits on imports of reign products," 68 percent of Americans thought it was a good idea. Virtually the same proportion of Americans 70 percent, thought that in June 1985 long before anyone contemplated a crash in the stock market.

Commercial Sponsors Will Claim Equal Time in Presidential Debate

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, Nov. 30 — Each of the 12 Presidential candidates in Tuesday night's televised debate from the Kennedy Center will probably have about the same amount of time as each of the three sponsors' commercials in the two-hour program.

According to ground rules set by NBC News, which is staging the debate, the six Democrats and six Republicans will have one minute each to respond to questions posed by the moderator, Tom Brokaw, in each one-hour segment of the show. Each of them will also address a question to one rival in the same party in that hour, eliciting a one-minute answer.

The first section, starting at 9 P.M. Eastern standard time, will be devoted to foreign policy, with the Democrats appearing for the first 30 minutes and the Republicans for the second 30-minute segment. The second hour is to deal with domestic affairs, with the parties appearing in the same order, based on an earlier toss of the coin.

3-Question Allotment

An NBC spokesman said that, after commercials, there will be about 25 minutes of air time for debate in each half-hour. Under the one-minute limit for answers, assuming realistically that each uses his full allotment, Mr. Brokaw will have time for only three questions to each panelist, followed by one question by each candidate to another, or a total of four minutes before the camera for each on foreign policy and four more on domestic issues.

Although the network was unable to provide precise figures for advertising time, it estimated that the total would be five or six minutes for each half-hour, or 20 to 24 minutes for the full program. Thus sponsors of the program—the Ford Motor Company, the Travellers Corporation and Wang Laboratories Inc.—will get seven or eight minutes each.

The League of Women Voters, which is sponsoring Presidential debates this year as in the past, officially opposes presenting commercials during debate broadcasts. Janice Kaplan, director of public affairs for the league, said the organization felt such advertising "interrupts the flow of the debate." The league, a nonprofit group, accepts contributions from corporations to help finance its debates.

Television networks have been sponsoring Presidential campaign debates periodically since 1956 when ABC News broadcast a confrontation between Adlai E. Stevenson and Senator Estes Kefauver from Miami in the preconvention competition. In 1960, the televised debates between Vice President Nixon, a Republican, and Senator John F. Kennedy, Democrat of Massachusetts, were sponsored jointly by NBC, CBS and ABC,

Each of the Democratic and Republican candidates has drawn the name of a rival of the same party to whom his question will be addressed. This assignment system will prevent several candidates who rank lower in the polls from joining forces to ask a single front-runner a series of questions.

Panelists for the Democrats are former Gov. Bruce Babbitt of Arizona, Gov. Michael S. Dukakis of Massachusetts, Representative Richard A. Gephardt of Missouri, Senator Albert Gore Jr. of Tennessee, the Rev. Jesse L. Jackson and Senator Paul Simon of Illinois.

Republican panelists scheduled are Vice President Bush, Senator Bob Dole of Kansas, former Gov. Pete du Pont of Delaware, Alexander M. Haig Jr., Representative Jack Kemp of upstate New York, and Pat Robertson.

ɔut Democratic Field Still Lacks Fire

But 37 percent say they would be villing to pay more in taxes to cut the eficit. New York Times/CBS News ırveys, using a slightly different ques- found substantially less support ıx increase in both January 1984 ıary 1985. The shift may re- ensive attention given the dget negotiations that market's plunge. t a majority of 50,000 a year. ere will-

within their own party. And neither is yet broadly known or broadly popular.

Underlining the Democratic difficulties is the fact that Senator Bob Dole of Kansas, a Republican Presidential candidate, had a better rating among Democratic primary voters — 29 percent favorable, 15 percent unfavorable — than any of the party's own candidates.

The Rev. Jesse Jackson leads among registered Democratic primary voters with 25 percent, up from 17 percent last month. Mr. Simon has 10 percent, no

On the Republican side, the bad news for the Reagan Administration has so far left Vice President Bush largely unscathed.

Mr. Bush has slightly expanded his nationwide lead over Mr. Dole. This month, Mr. Bush led Mr. Dole, 48 percent to 20 percent; last month, Mr. Bush was ahead of Mr. Dole by 43 percent to 22 percent. In the current survey, all the other Republicans lagged far behind: Pat Robertson had 7 percent, Representative Jack F. Kemp of upstate New York 5 percent, forme-

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 11, 1988

Mr. Edward S. Kanbar
4 East 77th Street
New York, NY 10021

RE: MUR 2567

Dear Mr. Kanbar:

This letter acknowledges receipt of your complaint, received on December 28, 1988, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the National Broadcasting Company, the New York Stock Exchange Foundation, Inc., the Gannett Company, and the Public Broadcasting Service. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 2567. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 11, 1988

Mr. C. B. Dunnam
Vice President and
General Counsel
National Broadcasting Co.
30 Rockefeller Plaza
New York, NY 10112

RE: MUR 2567
National Broadcasting
Company

Dear Mr. Dunnam:

The Federal Election Commission received a complaint which alleges that the National Broadcasting Company may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2567. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact Michael Marinelli, the staff member assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 11, 1988

Mr. James E. Buck
Senior Vice President
New York Stock Exchange
Foundation, Inc.
11 Wall Street
6th Floor
New York, NY 10005

RE: MUR 2567
New York Stock Exchange
Foundation, Inc.

Dear Mr. Buck:

The Federal Election Commission received a complaint which alleges that the New York Stock Exchange Foundation, Inc. may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2567. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact Michael Marinelli, the staff member assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 11, 1988

Mr. Douglas H. McCorkindale
Vice Chairman and Legal Officer
Gannett Company
PO Box 7958
Washington, DC 20044

RE: MUR 2567
Gannett Company

Dear Mr. McCorkindale:

The Federal Election Commission received a complaint which alleges that the Gannett Company may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2567. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact Michael Marinelli, the staff member assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 11, 1988

Ms. Paula Jameson
Senior Vice President and
General Counsel
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

RE: MUR 2567
Public Broadcasting
Service

Dear Ms. Jameson:

The Federal Election Commission received a complaint which alleges that the Public Broadcasting Service may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2567. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact Michael Marinelli, the staff member assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

OGC# 6206

Law Department

GANNETT

January 27, 1988

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RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

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

Re: MUR 2567

Dear Mr. Steele:

This letter responds to the January 11, 1988 letter from Lois G. Lerner concerning a complaint by Edward S. Kanbar concerning the Des Moines Register's sponsorship of a presidential candidate debate for the 1988 presidential election. There is no basis for the Federal Election Commission taking any action against Gannett with regard to this matter.

The regulation cited by Mr. Kanbar contradicts the argument he makes. The crux of his complaint against Gannett appears to be that the Des Moines Register (owned by Gannett) sponsored a debate of Republican and Democratic presidential candidates at which "some, but not all" candidates qualifying for federal matching funds appeared. (Complaint, ¶ 4). He extrapolates from this the contention that the failure to have all similarly qualifying candidates participate violates the requirement that debates be "non-partisan" within the meaning of Section 110.13 of the Commission's regulations. (Complaint, ¶ 4).

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OFFICE OF GENERAL COUNSEL

Mr. Kanbar has provided only a selective quotation from the controlling regulation. (Complaint, ¶ 2). Section 110.13(a)(2) authorizes newspapers like the Register to stage debates that comply with subsection (b). Subsection (b) expressly states: "The structure of debates staged in accordance with 11 C.F.R. 110.13 . . . is left to the discretion of the staging organization. . . ."

The Commission's rules place only two limits on the discretion of the Register in staging the debate that is the subject of the complaint.

First, the debate must "include at least two candidates." 11 C.F.R. § 110.13(b) (emphasis added). In fact, 13 candidates appeared from both parties in the Register's debate. Indeed, the Commission's use of "at least" in the regulation appears to contemplate a situation where there are multiple candidates and only requires two to be present.

1100 Wilson Blvd. Arlington, VA 22209 703/284-6000 Mailing address: P.O.Box 7858, Washington, DC 20044

Second, the debate must be "non-partisan in that [it] not promote or advance one candidate over another", the language quoted by the complainant. 11 C.F.R. § 110.13(b). Given the first restriction, this can only refer to how the debate itself is conducted with regard to the actual participants. That is, the Register can have a debate with 13 candidates so long as no one candidate who participates is promoted over the others. Here Mr. Kanbar does not fault in any way the manner in which the Register staged its debate with respect to the participants. He only contends that unspecified non-participants should have been included, a position inconsistent with the law and with the Commission's regulations.

Accordingly, Gannett requests that the Commission find no reason to believe that any provision of the Federal Election Campaign Act or the Commission's rules has been violated.

Please direct any questions to the undersigned.

Sincerely yours,

Alice Neff Lucan

Alice Neff Lucan
Assistant General Counsel

cc: Charles C. Edwards, Jr.
Publisher, The Des Moines Register

James P. Gannon
Editor, The Des Moines Register

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2657

NAME OF COUNSEL: Alice Neff Lucan

ADDRESS: Assistant General Counsel
Law Department
Gannett Co. Inc.
1100 Wilson Blvd. Arlington, Virginia 22209

TELEPHONE: (703)284-6944

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.

1/22/88
Date

Signature

RESPONDENT'S NAME: Douglas H. McCorkindale

ADDRESS: Vice Chairman/Chief Financial & Administrative Officer
Gannett Co. Inc.
1100 Wilson Blvd.
Arlington, Virginia 22209

HOME PHONE:

BUSINESS PHONE: (703)284-6901

GCC#6258

PBS

February 1, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 FEB -1 PM 5:11

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2567
Public Broadcasting Service

Dear Mr. Noble:

This letter responds to the above-referenced complaint that Edward S. Kanbar has filed against the Public Broadcasting Service ("PBS") and others.

Mr. Kanbar's complaint is premised on the notion that if a candidate debate includes some candidates and excludes others, it necessarily promotes or advances one candidate over another in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. Section 431 et seq. (the "Act"). In particular, Mr. Kanbar alleges that such debates are not entitled to the exemption for nonpartisan candidate debates provided in Section 110.13 of the Federal Election Commission's ("FEC") rules, 11 C.F.R. Section 110.13. This interpretation of the FEC's rules is incorrect.

There is nothing in the FEC rules to suggest that a debate must include all legally qualified candidates to be deemed "nonpartisan." On the contrary, Section 110.13(b) specifically provides that

> "[t]he structure of debates staged in accordance with 11 CFR 110.13 and 114.4(e) is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another." 11 C.F.R. Section 110.13(b).

In accordance with this rule, a staging organization has broad discretion to structure a candidate debate as it chooses, subject to only two requirements. The first requirement is that "at least two candidates" be invited to participate in the debate. Thus, the rule does not require

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Public Broadcasting Service
1320 Braddock Place Alexandria, VA 22314-1698 (703)739-5000

that all legally qualified candidates be included in a debate; on the contrary, it explicitly provides that two candidates is sufficient to satisfy its minimum requirements.

The second requirement is that the debate be "nonpartisan." The Explanation and Justification for adopting Section 110.13(b) makes it clear that this requirement is directed at the manner in which the debate participants are selected and treated:

> "[s]uch debates must, however, be nonpartisan in nature and they must provide fair and impartial treatment of candidates. The primary question in determining nonpartisanship is the selection of candidates to participate in such debates." 44 Fed. Reg. 76,735 (1979).

Thus, it was anticipated that candidates would be "selected" for participation in the debates, i.e. that not all of the legally qualified candidates would be included. As long as fair and impartial selection criteria are used, this selection process does not deprive a debate of its nonpartisan status; nor does it mean that the debate "promote[s] or advance[s] one candidate over another" in an impermissible manner.

This interpretation is consistent with the Commission's determination regarding a similar complaint filed by Stephen A. Koczak (MUR 1617) during the last Presidential election campaign. Mr. Koczak alleged that he was a Democratic candidate for President and that failure to include him in a Democratic candidate debate, sponsored by Dartmouth College and distributed by PBS, violated the FEC regulation requiring that candidate debates be "nonpartisan in that they do not promote or advance one candidate over another." 11 C.F.R. Section 110.13(b)(2). The General Counsel's Report in that matter concluded that Mr. Koczak's exclusion did not violate Section 110.13(b). In reaching this conclusion, the General Counsel reviewed the criteria that Dartmouth had employed in selecting candidates to participate in the debate and found that those criteria were

> "fair and impartial and were aimed at selecting those individuals who had significant candidacies. Mr. Koczak's candidacy did not meet the standards

> when evaluated by Dartmouth. Dartmouth's evaluation was reasonable and fair." General Counsel's Report at 7.

Mr. Kanbar's complaint is directed at "organizations which have sponsored presidential candidate debates for the 1988 presidential election." Complaint at 1. He has included PBS within this group because he alleges that "[t]he Public Broadcasting Service has sponsored similar debates . . . ." Complaint at 2. However, Mr. Kanbar has mischaracterized PBS's role with respect to the debates that it has distributed.

PBS is a nonprofit membership corporation whose members are licensees of noncommercial educational television stations throughout the United States and its territories. PBS was established by public television stations to operate the distribution facilities that enable its members to share programming on a national basis. At present, such program distribution is accomplished via the public television satellite interconnection system. PBS also assists its member stations to acquire, schedule, publicize, and promote programming. However, PBS does not itself produce any programming and, indeed, is barred from doing so by its Articles of Incorporation.

The candidate debates that PBS distributes to its member stations are of two general types. The Dartmouth debate was an example of the first type of debate: it was conducted and controlled by a third party, and public television's role was limited to providing broadcast coverage of the event. The FIRING LINE debates are an example of the second type: they were produced as part of the campaign coverage provided by an established public affairs/news program that appears regularly on public television. In both cases, the debates are produced and controlled by an entity other than PBS, and it is that entity that is responsible for making the journalistic judgments involved in selecting the participants and subject matter.

Mr. Kanbar has not identified any specific debates, distributed by PBS, that he believes violate the FEC's rules. Instead, he rests his allegation that PBS has acted to "promote and advance the campaigns of some candidates, who are given television exposure, to the detriment of other candidates who are denied equal exposure" on the mere fact that debates distributed by PBS have not necessarily included all candidates. Complaint at 2. As shown above, Mr. Kanbar errs in presuming that just because a debate does not include all candidates, it is not "nonpartisan" within the meaning of Section 110.13(b). To conclude that a candidate debate was not "nonpartisan" would require additional evidence of unfairness, partiality, or partisan purpose on the part of the staging organization. PBS has no reason to believe that the organizations that have staged the candidate debates distributed by PBS have conducted those debates in anything but a fair, impartial, and nonpartisan manner.

As described above, PBS's role is that of program distributor, not program producer. PBS's distribution of candidate debates to its member stations falls squarely within the press exemption of the Act's reporting requirements and limitations on expenditures and contributions. The Act expressly exempts traditional journalistic activities, such as those PBS engages in, from the definition of "expenditure." Section 431(9)(B)(i) provides that

> "The term 'expenditure' does not include -- (i) 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. Section 431(9)(B)(i).

The regulations implementing the Act incorporate this press exemption in the definitions of both "contribution" (<u>see</u> 11 C.F.R. Section 100.7(b)(2)) and "expenditure" (<u>see</u> 11 C.F.R. Section 100.8(b)(2)).

As the Court of Appeals for the District of Columbia Circuit has recognized,

> "The legislative history of this section further indicates that Congress meant for the [press] exemption to be a broad one:

> [I]t is not the intent of the Congress in the present legislation to limit or burden *in any way* the first amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the . . . media to cover and comment on political campaigns.

H. Rep. No. 93-943, 93d Cong., 2d Sess. at 4 (1974 (emphasis added)." *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1312 (D.D.C. 1981).

It is beyond question that candidate debates fall within the meaning of this exemption. To the extent that those debates are broadcast through the facilities of PBS and its member stations, those facilities are neither owned nor controlled by any political party, political committee, or candidate. Accordingly, PBS's role in distributing those debates can in no way be construed as an impermissible contribution or expenditure of funds to advance a particular candidacy. Any other result would severely burden the media's right to cover and comment on political campaigns and would raise serious first amendment issues.

Sincerely,

Nancy H. Hendry

Nancy H. Hendry
Deputy General Counsel

Paula A. Jameson
Senior Vice President and
General Counsel

cc: Michael Marinelli

STATEMENT OF DESIGNATION OF COUNSEL

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88 FEB -1 PM 5:11

MUR 2567

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NANCY H. HENDRY

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Alexandria, Virginia 22314

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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.

2/1/88
Date

Nancy H. Hendry
Signature

RESPONDENT'S NAME: PUBLIC BROADCASTING SERVICE

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February 1, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 FEB -1 PM 3:24

BY HAND

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2567

Dear Mr. Noble:

This is the response of The New York Stock Exchange Foundation, Inc. ("NYSE Foundation") to the complaint in the above matter. The complaint alleges that the NYSE Foundation violated the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 *et seq.* ("FECA"), by placing newspaper advertisements publicizing television broadcasts of a series of presidential candidate appearances before audiences at Harvard University.

FACTS

The NYSE Foundation is a not-for-profit corporation organized under the laws of the State of New York. Its general mission is charitable and educational. It provides funding to non-profit educational and charitable organizations, such as libraries and schools, that are exempt from federal taxation under 26 U.S.C. § 501(c)(3).

On October 30, 1987, the NYSE Foundation entered into an agreement1/ with the President and Fellows of Harvard College ("Harvard") and the WGBH Educational Foundation ("WGBH")2/ concerning the production, broadcast, and promotion of a series of presidential candidate forums. The idea for

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1/ A copy of the agreement is attached hereto.

2/ WGBH is a charitable, non-profit Massachusetts corporation engaged primarily in the business of producing, distributing and broadcasting educational programs on radio and television.

the series originated with Harvard, which approached WGBH with respect to providing television coverage. Harvard and WGBH then contacted the NYSE Foundation, which agreed to provide funding for the broadcasts.

The series, which concluded on January 17, 1988, consisted of separate, one-hour appearances by twelve presidential candidates before an audience of Harvard students, faculty members and guests of Harvard in an auditorium at the John F. Kennedy School of Government at Harvard. The appearances were broadcast on public television stations nationwide. In each program in the series, the candidate was questioned by moderator Marvin Kalb and members of the audience.

The agreement between Harvard, WGBH and the NYSE Foundation provides that Harvard would be solely responsible for, among other things, determining the number of programs to be held, selecting a moderator and determining which candidates would appear, and deciding upon the format of the programs. WGBH would be responsible for producing the televised coverage of each appearance in the series and for arranging broadcast distribution to public television stations. Under the agreement, all copyright and other similar rights with respect to the televised versions of the programs are the property of WGBH, except that Harvard and the NYSE Foundation are each entitled to one videotape copy of the series, which may be used for non-profit educational purposes.

Pursuant to the agreement, the NYSE Foundation provided funding to Harvard in support of the series. Harvard remitted a portion of those funds to WGBH to cover the costs of production and broadcast of the programs. The agreement provides that any such funds received by WGBH that have not been spent on production or related costs are to be returned to Harvard, which is to remit those funds to the NYSE Foundation.

The NYSE Foundation received credit as underwriter on all public television broadcasts of the series, and is informed that it received such credit in all copies of the series reproduced or distributed by Harvard or WGBH, and in all promotional materials relating to the series. In addition, the NYSE Foundation itself publicized each broadcast in the series by placing advertisements in a number of newspapers, including *The New York Times*. The advertisements for each program were similar in content to the one attached to the complaint and, as required by the agreement, were submitted to WGBH for approval to ensure the accuracy and nonpartisan nature of the materials.

ARGUMENT

The complaint appears to contend that the advertisements placed by the NYSE Foundation violated the FECA's prohibition of corporate contributions and expenditures, 2 U.S.C. § 441b, because they "promoted" the candidacies of only certain selected candidates.

The short answer to this contention is that it is clear from their text that the advertisements were placed for the sole purpose of publicizing the series that was organized by Harvard and produced and broadcast by WGBH.[3] Because, as shown below, the broadcasts of the candidate appearances themselves are protected by the FECA's press exemption, 2 U.S.C. § 431(9)(B)(i), the actions undertaken by the NYSE

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[3] Each advertisement identified the candidate who was the subject of that particular week's program and invited the public to tune in to the broadcast. For example, the text of the advertisement attached to the complaint states in its entirety:

> **THIS WEEK,**
> **AMERICA DOES ITS HOMEWORK**
> **FOR NEXT TERM.**
>
> Candidates '88 with Marvin Kalb
> A conversation with Pete du Pont.
>
> This week, Marvin Kalb will host an in-depth conversation with Pete du Pont, Republican candidate for President. This 60-minute program will air on your local PBS station.
>
> Pete du Pont will have the opportunity to share his views on a number of topics and respond to questions from a live audience.
>
> *Candidates '88 with Marvin Kalb* is made possible by a grant from The New York Stock Exchange Foundation, Inc. as a public education service.

Foundation with regard to these broadcasts -- including the placing of advertisements publicizing the broadcasts -- are similarly protected. *See FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981); *Reader's Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).4/

The FECA generally prohibits any corporation from making a contribution or expenditure in connection with any presidential election, or in connection with any primary election or political convention or caucus held to select presidential candidates. 2 U.S.C. § 441b(a). For purposes of this provision, the term "contribution or expenditure" includes any direct or indirect payment or gift of money or services, or anything of value, to any candidate or campaign committee in connection with any federal election. 2 U.S.C. § 441b(b)(2).

In its general definitions, the FECA defines "contribution" to include any 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(8)(A)(i). The term "expenditure" is defined to include any payment 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).

The FECA, however, specifically excludes from the definition of expenditure "any news story, commentary, or

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4/ Furthermore, none of the NYSE Foundation's actions described above constitutes a "contribution" or "expenditure" in the first instance, because, on their face, none of these actions was undertaken "for the purpose of influencing" a federal election within the meaning of the FECA. *See FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. 616, 621-623 (1986). The NYSE Foundation's actions also do not qualify as an "expenditure" for the additional reason that they do not constitute express advocacy in support of, or in opposition to, a particular candidate. *Id.* at 623. The Commission need not consider these alternative grounds for dismissal of the complaint, however, because it is readily apparent that the NYSE Foundation's actions are fully protected by the FECA's press exemption.

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). The Commission's regulations similarly exclude from the definitions of contribution and expenditure "[a]ny cost incurred in covering or carrying" a news story, commentary, or editorial by any broadcasting station, magazine or other periodical publication. 11 C.F.R. §§ 100.7(b)(2), 100.8(b)(2).

The activities of WGBH in producing the television broadcasts, and of the NYSE Foundation in underwriting those broadcasts, are fully covered by the press exemption. This is confirmed by the Commission's recent decision in A.O. 1987-8, which involved facts quite similar to those in this case.

In A.O. 1987-8, U.S. News & World Report ("U.S. News") formulated a presidential candidate interview project. As proposed, the project would involve separate interviews of twelve major presidential candidates. The interviews would be published in a magazine, broadcast on television, and excerpted in book form. U.S. News entered into an agreement with American International Group, Inc. ("AIG") under which AIG would pay U.S. News a sponsorship fee of more than $4 million and would be designated as the sole advertising sponsor of the interview project. The agreement further provided that AIG would have no control over any substantive feature of the project, including the selection of the candidates and the production and distribution of the television broadcasts.

Based on these facts, the Commission concluded that magazine publication and television broadcast of the candidate interviews by U.S. News would come squarely within the press exemption of the FECA. The Commission further held that AIG's sponsorship of the magazine and television interview series "would not result in a contribution or expenditure in connection with a Federal election." A.O. 1987-8, at p. 6. The Commission explained that, because AIG would have no control over any substantive aspect of the project, it viewed "AIG's proposed sponsorship of the Magazine Series and the Television Series as a permissible activity under the Act and Commission regulations." *Id.* (footnote omitted).

This case, like A.O. 1987-8, involves television coverage of the appearances of certain presidential candidates. Here, as in A.O. 1987-8, the appearances were broadcast through facilities that are neither owned nor controlled by any party or candidate. Thus, the activities of WGBH in producing the broadcasts, like the proposed activities of U.S. News, fit comfortably within the press exemption of the FECA.

Moreover, the activities of the NYSE Foundation here in support of WGBH's permissible activities are substantially similar to those of AIG in support of U.S. News' proposed activities. The NYSE Foundation, like AIG, exercised no control over, and had no involvement in, the selection of candidates and the form or content of the programs. By the same token, the NYSE Foundation, like AIG, did not participate in the production of the programs and has no ownership rights in the programs. It therefore follows that the activities of the NYSE Foundation, like those of AIG, are covered by the FECA's press exemption.5/

5/ The only distinction between this case and A.O. 1987-8 is that AIG was to be involved as a commercial advertiser with "no responsibility for the production costs," *id.* at 6, whereas the NYSE Foundation, as "underwriter," provided funds to cover WGBH's production costs. This distinction is meaningless, however, because it arises only as a result of the different methods of funding commercial and public television. Moreover, the distinction cannot be regarded as meaningful in this context because it would produce absurd results. For example, it would mean that any company acting as an underwriter of news broadcasts on public television could be found to have violated the FECA whenever those broadcasts happen to include segments concerning federal elections. This outcome, which would raise serious First Amendment questions, could not have been intended by Congress and the Commission when they established the press exemption.

CONCLUSION

The actions of the NYSE Foundation in connection with the television coverage of the candidate appearances, including the placement of advertisements publicizing the broadcasts of those appearances, are fully protected by the FECA's press exemption. Accordingly, the Commission should find no reason to believe that the NYSE Foundation has violated any provision of the FECA and it should dismiss the complaint immediately insofar as it relates to the NYSE Foundation.

Respectfully submitted,

Elliott Schulder

Gregory M. Schmidt
Elliott Schulder

Attorneys for The
New York Stock Exchange
Foundation, Inc.

Attachments

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2567

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Washington, D.C. 20044

TELEPHONE: 202-662-6000

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.

Jan 26, 1988
Date

Milbank, Tweed, Hadley + McCloy
Attorneys for New York Stock Exchange Foundation, Inc.
Signature

RESPONDENT'S NAME: New York Stock Exchange Foundation, Inc

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N.Y., N.Y. 10005

HOME PHONE:

BUSINESS PHONE: 212-656-2039

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88 APR 15 PM 12:02

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 2567
DATE COMPLAINT RECEIVED BY OGC
12/28/88
DATE OF NOTIFICATION TO
RESPONDENTS 1/11/88
STAFF MEMBER Marinelli

COMPLAINANT: Edward S. Kanbar

RESPONDENTS: Gannett Company
National Broadcasting Company,
New York Stock Exchange Foundation
Public Broadcasting Service

RELEVANT STATUTES:
2 U.S.C. § 431(2)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 431(9)(B)(i)
2 U.S.C. § 441b
11 C.F.R. § 100.7(b)(2)
11 C.F.R. § 100.7(b)(21)
11 C.F.R. § 100.8(b)(23)
11 C.F.R. § 110.13
11 C.F.R. § 114.4(e)
Advisory Opinion 1982-44
Advisory Opinion 1986-37
Advisory Opinion 1987-8

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On December 8, 1987, Edward S. Kanbar filed a complaint alleging that the four respondents were in violation of the Federal Election Campaign Act, as amended (the "Act"), by the advertising, staging or sponsoring of events related to the 1988 Presidential campaign.

The respondents named are the Gannett Company ("Gannett"), a for-profit corporation engaged in newspaper publication, broadcasting, and outdoor advertising and the owner of the Des Moines Register; the National Broadcasting Company ("NBC"), a for-profit national network broadcasting corporation; the Public Broadcasting Service ("PBS"), a non-profit membership corporation engaged in the distribution of television programming for its members; and the New York Stock Exchange Foundation (the "NYSE Foundation"), a non-profit corporation, tax-exempt under 26 U.S.C. § 501(c)(3) and involved in educational and charitable funding. Gannett, PBS and the NYSE Foundation have responded to the complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. The Allegations

The complainant alleges that by sponsoring or staging the debates, three of the respondents were making corporate contributions or expenditures prohibited by 2 U.S.C. § 441b. The debates are listed as "America's Future: A Presidential Debate," the December 1, 1987 debate among major party candidates staged and broadcasted by NBC; a debate scheduled by the Des Moines Register for Republican and Democratic presidential candidates; and certain unspecified debates the complaint alleges were sponsored by PBS.

The complainant alleges that the debates did not merit the exemption from the definition of contribution and expenditure provided by 11 C.F.R. §§ 100.7(b)(21) and 100.8(b)(23). Section

110.13(b) requires that the debates be nonpartisan. The complainant alleges these debates were partisan because they failed to invite all individuals seeking the Presidency who qualified as candidates under the Act.[1] Of necessity, complainant argues, this supported the candidacies of those invited over those left out.

Besides the debates, the complainant alleges that the advertisement surrounding an interview series also violated 2 U.S.C. § 441b. The interview series was entitled "Candidates 88 with Marvin Kalb." The advertisements promoting the event were funded, according to the advertisement sample provided in the complaint, by the NYSE Foundation.

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[1] There are different definitions of candidate in Federal election campaign law. In the Federal Election Campaign Act of 1971, as amended (the "Act"), the provisions regarding the reporting and spending requirements applicable to Federal elections generally, a person becomes a candidate if that individual or one authorized to act on his behalf receives more than $5,000 in contributions or makes more than $5,000 in expenditures for the Federal election. See 2 U.S.C. § 431(2).

An individual is a presidential primary candidate for purposes of the Presidential Primary Matching Payment account if under state law he has qualified for the presidential nomination in a state primary election and he or an authorized person receives contributions or incurs expenses for that primary. See 26 U.S.C. § 9032(2). However, to actually qualify for the matching funds the Presidential primary candidate must file a certification letter and verify the receipt of more than $5,000 in contributions in twenty different states, in amounts of no more than $250 from any individual contributor. See 26 U.S.C. § 9033(b).

The Presidential Election Campaign Fund Act defines candidate as an individual who either has received the nomination of a major party or is on the presidential ballot in ten or more states. See 26 U.S.C. § 9002. A certification letter is necessary to qualify for matching funds. See 26 U.S.C. § 9003(a). There are further requirements, as well, before candidate can receive matching funds for either a primary or the general election. See 26 U.S.C. § 9003, 9004, 9033, and 9034. (Footnote continued)

The staging of these events, argues complainant, frustrate his desire as a nonpartisan voter to see and hear all of the candidates rather than a select few.

B. The Law

The Act prohibits a corporation from making contributions or expenditures in connection with a Federal election. 2 U.S.C. § 441b(a).[2/] Non-profit corporations are included in this prohibition. Under 2 U.S.C. § 441b(b)(2) the term "contribution" or "expenditure" includes "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..."

An exemption from the definition of expenditure is found at 2 U.S.C. § 431(9)(B)(i). Section 431(9)(B)(i) provides that "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication" will not be considered an

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(Footnote continued)

Commission records indicate that as of February 26, 1988, forty-four individuals seeking the Presidency had qualified as candidates under 2 U.S.C. § 431(2). Of that number, fourteen also qualified to receive matching funds in the primary.

[2/] The Act does, however, allow a corporation to establish and administer a separate segregated fund. The corporation may solicit voluntary contributions to the fund, and the separate segregated fund can use the amounts raised for Federal election purposes. 2 U.S.C. § 441b(b)(2)(C).

expenditure. This exemption is further extended to the definition of contribution by 11 C.F.R. § 100.7(b)(2). The qualification found both in 2 U.S.C. § 431(9)(B)(i) and 11 C.F.R. § 100.7(b)(2) is that the media facilities must not be under the control of "any political party, political committee or candidate."

The press exemption was an 1974 amendment to the Act designed to "make it plain that it is not the intent of the Congress...to limit or burden in any way the first amendment freedoms of the press and of association." H.R. Rep. No. 98-943, 93 Cong., 2d Sess. 4, <u>reprinted in</u> FEC, LEGISLATIVE HISTORY OF FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 at 638 (1977). Courts have interpreted the exemption broadly in order to protect "the unfettered right of the media to cover and comment on political campaigns." <u>FEC v. Phillips Publishing Inc.,</u> 517 F.Supp. 1308, 1312 (D.D.C. 1981); <u>see also</u>, <u>FEC v. Readers Digest Association</u>, 517 F.Supp. 1210, 1213 (S.D.N.Y. 1980).

The Commission has reinforced the policy behind the exemption by applying it in situations where the participation of third parties is necessary or assists the media function. In Advisory Opinion 1982-44, for example, the Commission found that a television broadcaster could donate time to political parties to allow leading party figures, including candidates, to discuss public issues. The Commission concluded that the commentary element of Section 431(9) extends to third party participation when related to the discussion of issues. In Advisory Opinion 1987-8, the Commission found that the corporate sponsorship of an interview series was covered by the press exemption and thus would not violate 2 U.S.C. § 441b.

The Commission's regulations on nonpartisan debates create another exemption from the contribution or expenditure definition. As stated in 11 C.F.R. § 100.7(b)(21) and 100.8(b)(23), "[f]unds used to defray costs incurred in staging nonpartisan candidate debates in accordance with the provisions of 11 C.F.R. 110.13 and 114(e)" will not be regarded either as a contribution or an expenditure. Section 114.4(e)(1) allows corporations and unions to provide funds to non-profit organizations to hold such debates. Broadcasters, newspapers, magazines and periodical publications may likewise use their own funds to fund the debates. See 11 C.F.R. § 114.4(e)(2). Certain non-profit, tax-exempt organizations or bona fide media entities may stage nonpartisan debates. See 11 C.F.R. § 110.13(a).

When promulgating the debate regulations, the Commission stated that the purpose was to provide "a forum for significant candidates to communicate their views to the public." 44 Fed. Reg. 76,734 (1979). With regard to the structure of the debates, the regulations only provide that the debates must include at least two candidates and "not promote or advance one candidate over another." 11 C.F.R. § 110.13(b). The Explanation and Justification for these regulations emphasized the discretion left to the staging organization but cautioned that "such debates must, however, be nonpartisan in nature and they must provide fair and impartial treatment of candidates. The primary question in determining nonpartisanship is the selection of candidates to participate in such debates." *Id*. at 76,735. The Commission also noted that at the primary, caucus, or convention level, a staging organization can limit a debate to candidates from one party. *Id*. Past enforcement matters involving the interpretation of Section 110.13(b) have not added any additional requirements. *See* MURs 1167, 1168, 1170, 1278, 1617, 1629, and 1659. The Commission has not taken the position that all individuals running in an election who are qualified as candidates under the Act must be invited to a debate among the candidates. *See* MURs 1659 and 2516. Furthermore, such a position would seem inconsistent with the Commission's earlier statement on the need to provide a forum for *significant* candidates. *See* 44 Fed. Reg. 76,734 (1979).

C. Application of the Law to the Facts

With the foregoing in mind, the Office of the General Counsel concludes that the activities identified in the complaint did not violate the Act and recommends that the Commission find no reason to believe that NBC, Gannett, PBS, or the NYSE Foundation violated 2 U.S.C. § 441b and close the file in this matter.

1. NBC

The complainant alleges that by sponsoring "America's Future: A Presidential Debate," a debate that the complaint alleges did not meet the nonpartisan requirement of Section 110.13(b), NBC was making prohibited corporate contributions or expenditures to the campaigns of the invited candidates. This Office concludes that NBC's activity met the requirements of 11 C.F.R. § 110.13; and, therefore, the debate qualifies for the exemption provided by 11 C.F.R. §§ 100.7(b)(21) and 100.8(b)(23). Further, NBC is also entitled to claim the benefit of 2 U.S.C. § 431(9)(B)(i) and 11 C.F.R. § 100.7(b)(2).

As a broadcaster under 11 C.F.R. § 110.13(a)(2), NBC could stage as well as broadcast the debate. The complaint fails to make allegations, which, if true, would indicate that the staging violated the nonpartisan requirement of 11 C.F.R. § 110.13(b). There is no allegation that NBC used unfair criteria in selecting the debate participants. The allegation that NBC failed to invite all qualified candidates under the Act is by itself insufficient to show that Section 110.13(b)'s criteria was not met.

Moreover, given the reach of Section 431(9)(B)(i) to cover third party participation under the commentary element of 2 U.S.C. § 431(9)(B)(i), the Commission has not ruled that the exemption does not extend to the media when it stages as well as broadcasts the debate. The debate would be considered a news event. Also, the facilities of NBC are not controlled by any party or candidate. Accordingly, the broadcasting of the debate would meet the requirements of Section 431(9)(B)(i).

Whether viewed as a debate qualifying under Section 110.13(b) or a news event covered by the press exemption of Sections 431(9)(B)(i) and 100.7(b)(2), NBC's financing of the staging of "American's Future: A Presidential Debate" would not be considered a contribution or an expenditure under the Act. Therefore, the Office of the General Counsel recommends that the Commission find no reason to believe that NBC violated 2 U.S.C. § 441b.

2. PBS

The complainant alleges that PBS's sponsorship of several unidentified debates constituted prohibited corporate contributions or expenditures under Section 441b. The complaint alleges that the debates, by failing to include all qualified candidates under the Act, should not qualify as a nonpartisan event and should not receive the exemptions of Sections 100.7 and 100.8. PBS in its response states that the debates it was involved with were fair and nonpartisan according to the terms of Section 110.13(b). It avers that more than one candidate participated and that each was treated impartially.

PBS states that the complainant has mischaracterized its role in the debate process. As a membership corporation consisting of independent local licensees of public television, PBS does not itself produce programs. Rather, it operates a satellite interconnection system allowing independent members to share programming. PBS also states that it helps member stations "acquire, schedule, publicize, and promote programming." See Attachment 3 at 17. PBS declares that it has no control over the debates themselves which usually are staged by other non-profit institutions or public affairs news programs such as "Firing Line." To the extent that it facilitates the broadcasting of the debates, PBS argues its actions are protected by the press exemption of Section 431(9)(B)(i).

This Office agrees with PBS's position. The unique organization of public broadcasting, which leaves PBS with no independent power to produce programming, makes the debate regulations inapplicable.[3] PBS does not stage or produce debates, although its local members may do so. Therefore, PBS's role in assisting the distribution and transmission of the debates through its satellite facilities fits it more closely into the role of a broadcaster. This role brings into consideration the applicability of Section 431(9)(B)(i).

PBS's activity meets all the criteria of the press exemption. Its facilities are not controlled by any party or candidate. The debates were news stories that merited coverage. Accordingly, the broadcasting of the debates would not be considered a contribution under 11 C.F.R. § 100.7(b)(2) or an expenditure under 2 U.S.C. § 431(9)(B)(i). Therefore, the Office of the General Counsel recommends that the Commission find no reason to believe that PBS violated 2 U.S.C. § 441b.

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[3] PBS was created by the Corporation for Public Broadcasting (itself, a creation of the Public Broadcasting Act of 1967). The purpose was to create a link to unite all the local public television stations. PBS is owned by the local stations, resulting in an important distinction between public television and commercial television. The local stations, as members of PBS, function as owners and policy makers rather than as affiliates of a separate entity which sets its own policy or programming. See Head and Sterling, Broadcasting in America Survey of Electronic Media at 312 (1987).

3. Gannett

The complainant also asserts that the Commission should view the debate scheduled and held by the Des Moines Register as a corporate contribution or expenditure on behalf of the candidates invited. The complainant again raises the argument that the debates by excluding qualified candidates became partisan events and should not be excluded from the definition of contribution or expenditure under Sections 100.8 and 100.7.

Gannett's response admits that its paper, the Des Moines Register, did sponsor a presidential debate but contends this activity did not violate the Act. Gannett argues that the debate fulfilled all the requirements under 11 C.F.R. § 110.13 to qualify for the exemptions under the Act and regulations. Gannett cites the discretion available to staging organizations under Section 110.13(b). Gannett then points out that the two listed criteria for the structure of the debate were met: (1) more than two candidates were invited; and (2) as regards the participants, the event did not "promote one candidate over another". See 11 C.F.R. § 110.13(b).

This Office concludes that the debate sponsored by the Des Moines Register met Section 110.13(b)'s requirements. As with NBC, the complainant fails to allege circumstances illustrating how the criteria of Section 110.13(b) were not met.

Accordingly, the staging of the Des Moines Register debate qualifies as an exemption to the definitions of expenditure and contribution under Sections 100.7(b)(21) and 100.8(b)(23).

Therefore, the Office of the General Counsel recommends that the Commission find no reason to believe that Gannett violated 2 U.S.C. § 441b.

4. NYSE Foundation

The complainant further alleges that the NYSE Foundation placed newspaper advertisements picturing some of the presidential candidates and promoting the series of interviews, "Candidates 88 with Marvin Kalb," with major Democratic and Republican candidates. The series was funded by the NYSE Foundation. In the complaint, these advertisements are alleged to be corporate support prohibited by the Act under Section 441b.[4/] The NYSE Foundation's reply sets out its relationship to the interview series and argues that its support and publicizing efforts do not constitute a violation of the Act.

The contract which the NYSE Foundation provides in its response indicates that three parties were involved in the series: Harvard University, WGBH (the Boston public television station and a member of PBS), and the NYSE Foundation. Harvard was responsible for the content of the series, the selection of the participants, the general organization, and providing the facilities to hold the interviews. WGBH was responsible for the

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[4/] The complainant states that the advertisements illustrated only some, not all, of the candidates seeking the Presidency. The complainant is not clear regarding whether his allegations are attempting to extend the nonpartisan requirement of 11 C.F.R. § 110.13(b) for debates to the interview series as well. This Office notes that the Commission has interpreted the scope of the debate regulations to cover only face to face confrontations. Separate appearances by presidential candidates do not constitute a debate. *See* Advisory Opinion 1986-37. Therefore, Section 110.13(b) is inapplicable to the interview series.

television production and the broadcasting of the series. Under the contract signed by the parties WGBH would retain "all rights to the series including the copyright." See Attachment 2 at 11. The NYSE Foundation undertook to provide Harvard $600,000 to fund the project and to conduct promotion for the event at its own cost. Under the contract, Harvard reserved the right to approve all promotion to "ensure the accuracy and nonpartisan nature of all such materials." See Attachment 2 at 12. An unspecified portion of the $600,000 paid to Harvard was also to go into advertisements. In return for the funding, the NYSE Foundation received a video copy of the series and recognition both in the program and in all promotion of its role as sponsor.

The NYSE Foundation refers to the lack of control it could exercise over the series and the exemption the series would receive under 2 U.S.C. § 431(9)(B)(i) as it relates to WGBH. From this respondent proceeds to argue that the press exemption should likewise extend to cover its own activity, the funding and promotion of the series. As authority for this position the NYSE Foundation cites to Advisory Opinion 1987-8. There, the Commission stated that a for-profit corporation could act as an advertising sponsor for an interviewing project concerning the presidential candidates. The Commission concluded that the project fell under the provisions of 2 U.S.C. § 431(9)(B)(i) and that the corporate sponsorship would not violate Section 441b.

The parallels between the circumstances in Advisory Opinion 1987-8 and the present situation are strong enough to support the

NYSE Foundation's contention that it did not violate the Act. The arrangement among the parties in Advisory Opinion 1987-8 resembles the relationships here. American International Group ("AIG") wished to enter into an advertisement sponsorship with U.S. News and World Report ("U.S. News"). AIG would provide $4,377,500 so that U.S. News could produce a interview series involving the 1988 Democratic and Republican presidential candidates. The end products would be a television program, a book, and a magazine article. In return AIG was to receive space in the book and magazine and time on the television program for advertising, recognition of its sponsorship arrangement in any promotional activity, and a portion of the net proceeds from the book. AIG received no right of control or any copyright to the work produced.

The two elements which the Commission found determinative were: first, that the series was precisely the type of activity the press exemption was meant to protect so that it could not result in a contribution or expenditure for the participants; and second, that AIG exercised no influence or control over the interviews themselves. The Commission observed "AIG is only responsible for the payment of the sponsorship fee and thereafter will be involved in the project solely as a commercial advertiser." See Advisory Opinion 1987-8 at 4.

These same factors exist in the present case. First, the interview series staged by Harvard but produced and broadcast by

WGBH would be exempted from the definition of contribution and expenditure under 2 U.S.C. § 431(9)(B)(i) and 11 C.F.R. § 100.7(b)(2). It would be a legitimate news story, and WGBH's faciliites are not under the control of any party or candidate. Second, the NYSE Foundation's function is strictly limited to funding with no editorial role.

Therefore, the Office of the General Counsel recommends that the Commission find no reason to believe that the NYSE Foundation violated 2 U.S.C. § 441b.

III. RECOMMENDATIONS

1. Find no reason to believe that the following violated 2 U.S.C. § 441b:
    a. Gannett Company;
    b. National Broadcasting Company;
    c. New York Stock Exchange Foundation;
    d. Public Broadcasting Service.
2. Approve the attached letters.
3. Close the file.

Lawrence M. Noble
General Counsel

4/4/88
Date

BY: Lois
Lois G. Lerner
Associate General Counsel

Attachments
1. Response of Gannett
2. Response of the NYSE Foundation
3. Response of PBS
4. Proposed letters(5)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Gannett Company) MUR 2567
National Broadcasting Company,)
New York Stock Exchange Foundation)
Public Broadcasting Service)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 20, 1988, the Commission decided by a vote of 5-0 to take the following actions in MUR 2567:

1. Find no reason to believe that the following violated 2 U.S.C. § 441b:
    a. Gannett Company;
    b. National Broadcasting Company;
    c. New York Stock Exchange Foundation;
    d. Public Broadcasting Service.
2. Approve the letters, as recommended in the First General Counsel's report signed April 14, 1988.
3. Close the file.

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

Attest:

4-20-88 Marjorie W. Emmons
Date
Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary: Fri., 4-15-88, 12:02
Circulated on 48 hour tally basis: Mon., 4-18-88, 11:00
Deadline for vote: Wed., 4-20-88, 11:00

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1988

Paula A. Jameson, Esquire
Nancy H. Hendry, Esquire
Public Broadcasting Service
1320 Braddock Place
Alexandria, Virginia 22314

RE: MUR 2567
Public Broadcasting Service

Dear Ms. Jameson and Ms. Hendry:

On January 11, 1988, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 20, 1988, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Public Broadcasting Service violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1988

Mr. C. B. Dunnam, Esquire
National Broadcasting Co.
30 Rockefeller Plaza
New York, N.Y. 10112

RE: MUR 2567
National Broadcasting Co.

Dear Mr. Dunnam:

On January 11, 1988, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 20, 1988, the Commission found, on the basis of the information in the complaint, that there is no reason to believe the National Broadcasting Co. violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1988

Gregory M. Schmidt, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

RE: MUR 2567
New York Stock Exchange
Foundation

Dear Mr. Schmidt:

On January 11, 1988, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 20, 1988, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe the New York Stock Exchange Foundation violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1988

Alice Neff Lucan, Esquire
Gannett Co., Inc.
P.O. Box 7858
Washington, D.C. 20044

RE: MUR 2567
Gannett Co., Inc.

Dear Ms. Lucan:

On January 11, 1988, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 20, 1988, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Gannett Co., Inc. violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edward Kanbar
4 East 77th Street
New York, N.Y. 10027

RE: MUR 2567

Dear Mr. Kanbar:

On April 20, 1988, the Federal Election Commission reviewed the allegations of your complaint dated December 28, 1987, and found that on the basis of the information provided in your complaint and information provided by Gannett Co., Inc., the New York Stock Exchange Foundation and the Public Broadcasting Service, there is no reason to believe Gannett Co., Inc.; the New York Stock Exchange Foundation, the National Broadcasting Company and the Public Broadcasting Service, violated 2 U.S.C. § 441b. Accordingly, on April 20, 1988, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE END OF MUR # ____________

DATE FILMED ___________ CAMERA NO. ___

CAMERAMAN ________

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2567

DATE FILMED 6/3/88 CAMERA NO. 2

CAMERAMAN K.A.U.