



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3557

DATE FILMED 9/25/92 CAMERA NO. 3

CAMERAMAN EES

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STEPHEN C. MEYERS

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

JUL 16 11 20 AM '92

July 10, 1992

MUR 3557

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Sir or Madam:

Under the rights accorded in 2 U.S.C. S 437g(a)1, I hereby file a complaint against USA Today, NBC News, and the vendor(s) used by them to conduct a poll of contributors to the Presidential campaigns.

Respondents:

USA Today
1000 Wilson Blvd.
Arlington, VA 22229

NBC News
30 Rockefeller Plaza
New York, NY 10112

I have attached a copy of the article from USA Today outlining the poll results as proof that these organizations and their vendors engaged in illegal commercial use of contributor files [2 U.S.C. S438(a)(4)].

I am a \$1,000 contributor to the Bush - Quayle '92 re-election campaign. In late May, I received a call from a polling firm representing USA Today/NBC regarding a survey of presidential donors.

Following completion of the survey, the individual making the telemarketing call told me the names were from Federal Election Commission (FEC) reports of contributors to the presidential campaigns.

It is my belief that a vendor for these organizations copied the FEC reports, keypunched the names, matched phone numbers against the contributor list. The normal course of business suggests that this vendor received payment from USA Today and/or NBC News for these polling lists. This is a clear illegal commercial use of the contribution files in violation of the Federal Election Campaign Laws.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 JUL 16 PM 3:43

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Office of the General Counsel
July 10, 1992
Page 2

The attached article clearly states the illegality committed:

"A USA Today/NBC News poll of 750 people who have given at least \$200 to the George Bush or Bill Clinton campaign..."

USA Today, June 25, 1992

"Source: USA Today/NBC poll of 350 contributors to the Bush campaign and 400 contributors to the Clinton campaign. A random sample of contributors was selected from those who gave at least \$200 between October 1991 and January 1992."

USA Today, June 25, 1992

I request that you initiate immediate action against these organizations and the vendor(s) used to conduct the poll.

Signed on the 10th day of July, Nineteen hundred and ninety-two, under the penalty of perjury and subject to the provisions of section 1001 of title 18, United States Code.

Sincerely,

Stephen C. Meyers

Stephen C. Meyers

SCM:afm

25 Union Park
Boston, MA 02118

Notarized: *David M. Connell*

Signed and sworn to before me.

Date: 7/10/92

DAVID M. CONNELL
Notary Public
My Commission Expires April, 8, 1999

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92 JUL 16 PM 3:44

Donors: 48% expect access to candidates

By Judi Hasson
USA TODAY

Does money talk in politics? Hundreds of contributors to both political parties seem to think it does.

A USA TODAY/NBC News poll of 750 people who've given at least \$200 to the George Bush or Bill Clinton campaign finds nearly half believe their contribution would get them top-level access.

While most — 78% — said they dug into their pockets for ideological reasons, 48% thought their donation would pave the way for a meeting with a top Clinton or Bush aide.

"Certainly they may get a phone call returned," says Republican National Committee spokesman Gary Koops. "But there's a difference between getting your phone call returned and getting action."

Says Ginny Terzano of the Democratic National Committee: There's no "quid pro quo."

Other findings:

► 28% thought the gift would help their businesses; 15% their careers.

► 57% have met Bush or wife Barbara; 78% have met Bill or Hillary Clinton.

► Who, why of donations, 7A

USA TODAY subscription

92040923449

92 JUL 16 PM 3:44

Political donors: Money talks

Giving to candidates is a way to take a stand

By Judi Hasson
and Jacqueline Blais
USA TODAY

Philip Bigler, a McLean, Va., high school government teacher, gave \$250 to President Bush's re-election campaign to do something that's impossible in the classroom — take a stand on the presidential race.

Michael Fink, a lawyer from Huntingdon Valley, Pa., became a Democrat this spring. His motivation for giving Bill Clinton \$1,000: "His views are closer to mine than either of the other opponents."

When USA TODAY and NBC News polled 750 political contributors, the results showed that what givers have in common cuts across party lines: They're idealists — 96% said they gave money because they believe in what the candidate stands for.

What they expect in return: good government and someone to listen to them.

"People really do want to be engaged in politics. Sending a check, whether it's \$1 or \$50, is one way of expressing that engagement," says William Greider, author of *Who Will Tell the People*, about the Washington power structure.

Bigler would agree:

"I figure it's my civic responsibility. It's the one thing I can do," he says. "I get nothing in return except a Christmas card."

Nearly a third of those polled — people who gave at least \$200 to the Bush or Clinton campaigns by Jan. 31 — never gave money to a presidential candidate before.

Contributor profile: 68% are professionals, including lawyers and managers. More than two-thirds are men.

About half thought they have access to Clinton's or Bush's top aides and could arrange a meeting — but it seemed to be a moot point. Some said they already have access; some wouldn't know what to do with it.

For Sean Lane, a New Hampshire lawyer who gave \$1,000 to Bush's campaign, the idea of calling on top aides for a meeting is puzzling.

"I wouldn't really know how to," he says.

In Arkansas, says school administrator Betty Ruth Morris of Fort Smith, "it doesn't take money to get access



By Marta Lavandier, AP

THANKS: Geza Jako, a Hungarian refugee living in Meirose, Mass., says his \$500 Bush contribution is a 'small repayment.'



By Bob Ocken, AP

BOTTOM LINE: 'I'm just a regular citizen with regular money,' says Carrie Handley, Pine Bluff, Ark., who gave \$250 to Clinton.

to Bill Clinton. But if it did, my little dab would be a drop in the bucket." She gave him \$500.

Alan Kranowitz of the National Association of Wholesaler-Distributors in Washington has access.

"I used to work at the White House myself," says Kranowitz, an assistant to the president for legislative affairs from 1985 to 1989. He contributed \$500 to Bush.

Gladys Barnett of El Paso, who turns 76 on July 4, says she expects good government in exchange for her \$1,000 contribution to Bush.

"I don't expect a single thing personally," she says. "I just put mine in to try to get us back on track."

Many readily say they are not "big bucks" givers, as Morris of Arkansas puts it.

Lane, the lawyer, says his \$1,000 contribution is a good investment, even though it's a stretch. "With two kids, a mortgage and house, it is an expense."

Carolyn Ellis Staton, a University of Mississippi law professor, also says finding \$1,000 to donate was hard. But she wanted to support her former Yale Law School classmate, Clinton. "I guess the more you believe in somebody, the more you're willing to stretch," she says.

Carrie Handley of Pine Bluff, Ark., budgeted \$250 from her

household money for the Clinton campaign. Like others, she says she believes her contribution counts.

"I'm just a regular citizen with regular money ... but I do know when a person runs for office they need money," says Handley.

The motivation to contribute can be purely personal. Geza Jako, a Meirose, Mass., surgeon, fled Hungary in 1957. His \$500 contribution to the Bush campaign is a "small repayment" for his success in the United States.

"By the time I became a citizen and could vote, I was kind of anxious to participate in politics," he says.

"I wanted to be different from people who are always criticizing this country."

► Does money talk? 1A

► Campaign index, 9A

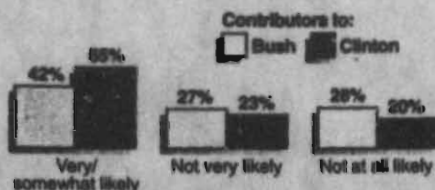
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Why political contributors give

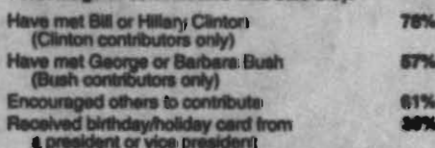


Most contributors to presidential campaigns say they are motivated by political or philosophical concerns. A new USA TODAY/NBC Poll of contributors to the campaigns of President Bush and Bill Clinton, however, shows that access to the candidate also plays an important role.

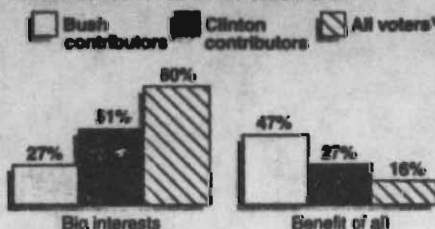
Almost half of contributors (48%) said an important element in their decision to give was the ability to make their views known to top officials. How likely contributors say it is that they could arrange a meeting with the candidate's top aides:



Percentage of contributors who said they:



Percentage of contributors who think the government is run by big interests looking out for themselves or run for the benefit of all:



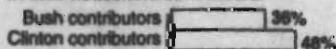
1 - April USA TODAY/CNN/Gallup Poll

MOST DONORS HAVE HISTORY OF GIVING

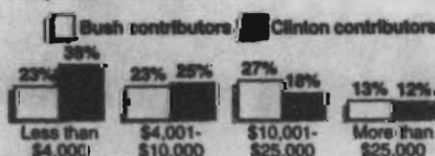
Those who donated to presidential candidates before this election:



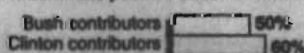
Those who say more than one person in their household contributed:



Amount contributed to candidates and parties over lifetime:



Percentage who favor campaign finance reform to eliminate political action committees:



Source: USA TODAY/NBC Poll of 350 contributors to the Bush campaign and 400 contributors to the Clinton campaign. A random sample of contributors was selected from those who gave at least \$200 between October 1991 and January 1992. Margin of error: 4 percentage points.

By J.L. Albert and Regi Ransdell, USA TODAY



Reuters

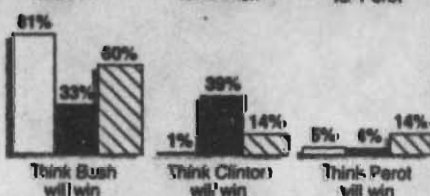
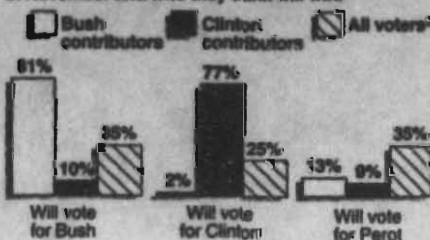


AP

BUSH CLINTON

SOME CLINTON CONTRIBUTORS DON'T THINK HE'LL WIN...

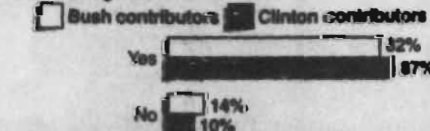
How contributors to the two campaigns plan to vote in November and who they think will win:



2 - June USA TODAY/CNN/Gallup Poll

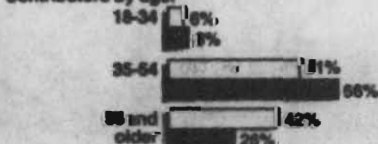
BUT WOULD STAND BY THEIR DECISION

Those who would still give it they had it to go over again:



BUSH CAMP DRAWS OLDER, RICHER CONTRIBUTORS

Contributors by age:



Contributors by household income:





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 22, 1992

Stephen C. Meyers
25 Union Park
Boston, MA 02118

RE: MUR 3557

Dear Mr. Meyers:

This letter acknowledges receipt on July 16, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by USA Today and NBC News. 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 3557. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

George F. Rishel
Assistant General Counsel

Enclosure
Procedures

92040923452



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 22, 1992

Thomas Curley, President
Gannett Co., Inc./ USA Today
1000 Wilson Blvd.
Arlington, VA 22229

RE: MUR 3557

Dear Mr. Curley:

The Federal Election Commission received a complaint which indicates that USA Today 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 3557. 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 USA Today in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

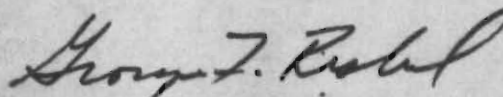
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

92040923453

Thomas Curley, President
Gannett Co., Inc./USA Today
Page 2

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

Sincerely,



George F. Rishel
Assistant General Counsel

Enclosures

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

92040923454



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 22, 1992

Judy Girard, Director of Programming
and Broadcast Operations

NBC News
30 Rockefeller Center
New York, NY 10112

RE: MUR 3557

Dear Ms. Girard:

The Federal Election Commission received a complaint which indicates that NBC News 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 3557. 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 NBC News in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

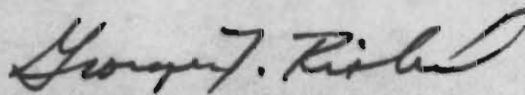
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92040923455

Judy Girard
NBC News
Page 2

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Sincerely,



George F. Rishel
Assistant General Counsel

Enclosures

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

92040923456

AUG 10 1 05 PM '92

GANNETT

August 5, 1992

VIA FAX AND REGISTERED MAIL

George F. Rishel, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: M.U.R. 3557

Dear Mr. Rishel:

We are responding to your letters to USA TODAY and NBC News dated July 22, 1992 concerning the complaint which the Federal Election Commission ("FEC") has numbered M.U.R. 3557.

The letters ask for a response to a complaint submitted by Stephen C. Meyers which claims that USA TODAY and NBC News, by conducting a poll of contributors to the campaigns of President George Bush and Governor Bill Clinton, violated section 438(a)(4) of the Federal Election Campaign Act of 1971, as amended ("the Act"). According to Mr. Meyers, the poll constituted a "commercial use of contributor files".

In accordance with procedures attached to your letter, USA TODAY and NBC News request that the FEC Office of the General Counsel recommend that Mr. Meyers' complaint not be pursued. The use of contributor information at issue here was for news-gathering, not commercial purposes. Not only was such use of FEC information permissible, it is precisely the sort of activity that the Act was intended to promote. This position is supported by the legislative history of the Act, as well as the FEC's own regulations and advisory opinions.

The USA TODAY/NBC News poll at issue here was conducted in order to help determine what motivates political contributors to give money to presidential campaigns. Based on information derived from FEC reports, a number of contributors to the campaigns of President Bush and Governor Clinton were contacted and asked, among other things, about their reasons for contributing. The results of the poll and accompanying news stories were published in USA TODAY on June 22, 1992 (copy attached). NBC News did not broadcast the results of the poll on its national news programs, but did make them available for use on local news programs.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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The complaint alleges that the use by USA TODAY and NBC of FEC information violated section 438(a)(4) of the Act. Section 438(a)(4) requires the FEC to prepare reports containing information on political contributions, and to make those reports available for public inspection and copying within 48 hours. The only restriction imposed in the section is the "commercial purposes" exception, which states that the information in the reports may not "be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." It is this exception which Mr. Meyers asserts USA TODAY and NBC News violated.

As you are no doubt aware, the FEC has promulgated regulations outlining the types of commercial activities that fall within the exception outlined in Section 438(a)(4). Those regulations specifically state that newsgathering activities do not constitute commercial activity:

The use of information, which is copied or otherwise obtained from reports filed [with the FEC], in newspapers, magazines, books or other similar communications is permissible as long as the principle purpose of such communication is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

11 C.F.R. 104.15(c). Thus, the use of FEC information for the type of newsgathering purposes at issue here is specifically protected by the Commission's own regulations.

Additionally, the FEC has issued advisory opinions which make it clear that news organizations are free to use contributor information for newsgathering purposes. For example, in Advisory Opinion 1986-25, the FEC stated that the media may use contributor information in communications such as "news stories, commentaries or editorials although such use may be incident to the sale of such communications." FEC Advisory Opinion 1986-25 at 4. See also, FEC Advisory Opinion 1981-38.

Indeed, legislative history demonstrates that USA TODAY and NBC News used the FEC reports in exactly the way that Congress intended when it passed the Act. The broad disclosure requirements and the discussion surrounding the enactment show that Congress's purpose was to promote public awareness of campaign contributions and contributors. Quoting Justice Brandeis, U.S. Senator Robert Griffin stated at the time: "publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best disinfectant; electric light the most efficient policeman." Brandeis, *What Publicity Can Do*, Harper's Weekly, Dec. 20, 1913 at 10. Quoted in Senate Comm. on Commerce, Federal Election Campaign Act of 1971, S. Rep. 96, 92d Cong., 2d Sess. (additional

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views of Sen. Griffin), reprinted in 1972 U.S. Code Cong. & Admin. News 1773, 1816. Further evidence of Congress's intent to promote publication of campaign information comes from an exchange between Senators Griffin, Bellmon, and Nelson, who agreed that "newspapers may, if they wish, run lists of contributors and amounts [without violating section 438(a)(4).]" 117 Cong. Rec. 30,058 (daily ed. Aug. 5, 1971).

The legislative history of the Act, FEC regulations, and the stated position of the FEC itself concerning section 438(a)(4) all clearly demonstrate that no action should be taken against USA TODAY or NBC News in response to Mr. Meyers' complaint. We trust that this letter will suffice to conclude this inquiry.

Sincerely,

Barbara W. Wall

Barbara W. Wall
Senior Legal Counsel
Gannett Co., Inc. (USA TODAY)

Ellen Miller-Wachtel

Ellen Miller-Wachtel
Senior General Attorney
National Broadcasting Company,
Inc.

Enclosure

cc: Thomas Curley, President, USA TODAY
Peter S. Prichard, Editor, USA TODAY
Michael Gartner, President, NBC News
William Wheatley, Jr, Exec. Producer, NBC

92040923459

Political donors: Money talks

Giving to candidates is a way to take a stand

By Judi Hasson
and Jacqueline Blais
USA TODAY

Philip Bigler, a McLean, Va., high school government teacher, gave \$250 to President Bush's re-election campaign to do something that's impossible in the classroom — take a stand on the presidential race.

Michael Fink, a lawyer from Huntingdon Valley, Pa., became a Democrat this spring. His motivation for giving Bill Clinton \$1,000: "His views are closer to mine than either of the other opponents."

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What they expect in return: good government and someone to listen to them.

"People really do want to be engaged in politics. Sending a check, whether it's \$1 or \$50, is one way of expressing that engagement," says William Greider, author of *Who Will Tell the People*, about the Washington power structure.

Bigler would agree:

"I figure it's my civic responsibility. It's the one thing I can do," he says. "I get nothing in return except a Christmas card."

Nearly a third of those polled — people who gave at least \$200 to the Bush or Clinton campaigns by Jan. 31 — never gave money to a presidential candidate before.

Contributor profile: 68% are professionals, including lawyers and managers. More than two-thirds are men.

About half thought they have access to Clinton's or Bush's top aides and could arrange a meeting — but it seemed to be a moot point. Some said they already have access; some wouldn't know what to do with it.

For Sean Lane, a New Hampshire lawyer who gave \$1,000 to Bush's campaign, the idea of calling on top aides for a meeting is puzzling.

"I wouldn't really know how to," he says.

In Arkansas, says school administrator Betty Ruth Morris of Fort Smith, "it doesn't take money to get access



By Maria Lavander, AP

THANKS: Geza Jako, a Hungarian refugee living in Melrose, Mass., says his \$500 Bush contribution is a 'small repayment.'



By Bob Ocken, AP

BOTTOM LINE: 'I'm just a regular citizen with regular money,' says Carrie Handley, Pine Bluff, Ark., who gave \$250 to Clinton.

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"I'm just a regular citizen with regular money... but I do know when a person runs for office they need money," says Handley.

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► Does money talk? 1A

► Campaign index, 9A

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USA TODAY

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► 57% have met Bush or wife Barbara; 78% have met Bill or Hillary Clinton.

► Who, why of donations, 7A

A TODAY subscription

Why political contributors give

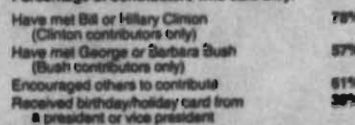


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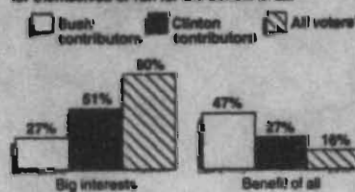
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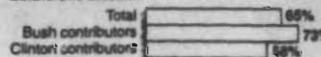
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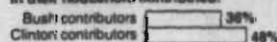
1 - April USA TODAY/CNN Gallup Poll

MOST DONORS HAVE HISTORY OF GIVING

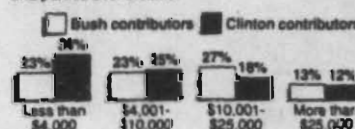
Those who donated to presidential candidates before this election:



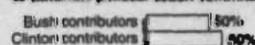
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Amount contributed to candidate and parties over lifetime:



Percentage who favor campaign finance reform to eliminate political action committees:

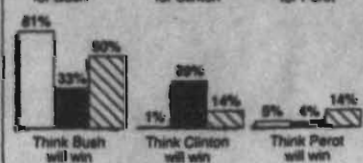
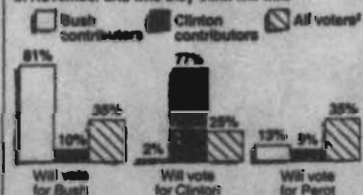


BUSH

CLINTON

SOME CLINTON CONTRIBUTORS DON'T THINK HE'LL WIN...

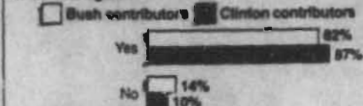
How contributors to the two campaigns plan to vote in November and who they think will win:



2 - June USA TODAY/CNN Gallup Poll

... BUT WOULD STAND BY THEIR DECISION

Those who would still give if they had it to do over again:



BUSH CAMP DRAWS OLDER, RICHER CONTRIBUTORS

Contributors by age:



Contributors by household income:



Source: USA TODAY/NBC Poll of 380 contributors to the Bush campaign and 400 contributors to the Clinton campaign. A random sample of contributors was selected from those who gave at least \$200 between October 1991 and January 1992. Margin of error: 4 percentage points.

By J.L. Albert and Regi Ranade. USA TODAY

RECEIVED
F.E.C.
SECRETARIAT

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

92 AUG 27 PM 2:06

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3557
DATE COMPLAINT RECEIVED
BY OGC: July 16, 1992
DATE OF NOTIFICATION TO
RESPONDENTS July 22, 1992
STAFF MEMBERS George F. Rishel
Jeffrey D. Long

COMPLAINANT: Stephen C. Meyers

RESPONDENTS: USA Today

NBC News

RELEVANT STATUTE: 2 U.S.C. § 438(a)(4)
11 C.F.R. § 104.15

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Stephen C. Meyers on July 16, 1992, alleging that USA Today and NBC News had violated 2 U.S.C. § 434(a)(4). Attachment 1. A joint response on behalf of USA Today and NBC News was received on August 6, 1992. Attachment 2.

II. FACTUAL AND LEGAL ANALYSIS

A. The Act and Regulations

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that the Commission shall, within 48 hours of receipt, make copies of reports and statements filed with the Commission available for public inspection and copying. 2 U.S.C. § 438(a)(4). This provision further provides, however, that "any

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information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." Id. Commission regulations further explain that the use of information copied from such reports or statements in "newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes." 11 C.F.R. § 104.15(c).

The constitutionality of this provision applied to persons soliciting contributions or operating as list brokers was recently upheld in FEC v. International Funding Institute, No. 91-5013, slip op. (D.C. Cir. July 10, 1992) ("IFI"). In IFI, the court found that the prohibition on the use of names copied from reports filed with the Commission for purposes of soliciting contributions advanced an important governmental interest, i.e., preserving the value of a contributor list to the political committee that creates it, and that the prohibition is no broader than is necessary to that task. Id. at 13. The court did not reach the question of the governmental interest in protecting contributors from unwanted solicitations.

In an earlier decision, another federal appellate court in FEC v. Political Contributions Data, 943 F.2d 140 (2d Cir. 1991) ("PCD"), construed the regulation relating to the media's use of contributor information. The court said that the "similar

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communication" language should be read to include communications that further the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Id. at 195 (quoting New York Times v. Sullivan, 376 U.S. 254, 270 (1964)). The court also construed the "commercial purposes" language to encompass only those commercial purposes that could make contributors prime prospects for all kinds of solicitations, not just political or other solicitations for contributions, but also for "cars, credit cards, magazine subscriptions, cheap vacations, and the like." Id. at 197.¹

B. Complaint and Response

The complainant states that he is a \$1,000 contributor to Bush/Quayle 92. He adds that in late May he received a call from a polling firm representing USA Today and NBC News regarding a survey of presidential donors. He states that following completion of the survey, "the individual making the telemarketing call told me the names were from Federal Election Commission (FEC) reports of contributors to the presidential campaigns." He adds that it is his belief the vendor for the two news organizations copied the reports, keypunched the names, and matched phone numbers against the contributor list. He further states that the "normal course of business suggests that this vendor received payment from USA Today and/or NBC News for these polling lists." He contends that this use "is a clear illegal commercial use of the contributions files in violation of the Federal Election

1. See also, National Republican Congressional Committee v. Legi-Tech Corp., 795 F.2d 190 (D.C. Cir. 1986) ("Legi-Tech").

Campaign Laws." He asks that action be taken against the news organizations and the vendors used to conduct the poll.² He attached a copy of news articles that appeared in USA Today based on the poll.

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A joint response signed by attorneys for USA Today's parent organization, Gannett Co. Inc., and NBC, Inc. urged that no action be taken against these two respondents on the basis of the allegations in this matter. They argue that the contributor information was used for newsgathering, not commercial, purposes and that such use is not only permissible, but precisely the kind of activity the Act was intended to promote. They explain that the poll was "conducted in order to help determine what motivates political contributors to give money to presidential campaigns." They add that based on information from FEC files, a number of contributors to the Bush and Clinton campaigns were contacted and asked, among other things, about their reasons for contributing. They note that the results of the poll and accompanying news stories were published in USA Today on June 22, 1992, but that NBC News did not broadcast the results on its national news programs, but made them available for use on local news programs.³

The response cites to the regulation permitting use of contributor information by the news media and asserts that "the use of FEC information for the type of newsgathering purposes at

2. The complainant did not identify the vendors involved in conducting the poll. Therefore, it was not possible to send a copy of the complaint to them.

3. The response also does not identify the vendors used to conduct the poll.

issue here is specifically protected by the Commission's own regulations." The response also cites to two advisory opinions in support of its contention that the "legislative history demonstrates that USA Today and NBC News used the FEC reports in exactly the way that Congress intended when it passed the Act."

C. Analysis

There is no disagreement between the complainant and respondents that individual contributor information was copied from reports filed with the Commission and used to conduct a survey or poll in order to generate a news story. The issue, thus, comes down to whether this use of contributor information was done for a "commercial purpose" as that term has been defined and construed. As noted, Commission regulations explicitly permit the use of individual contributor information by the news media as long as the principal purpose of such communication is not to communicate such information for commercial purposes. Although on one level it may be possible to say that any use of such information by the news media to develop a story for publication or broadcast is done for a commercial purpose, such an interpretation would effectively preclude any use of such information by the news media, an interpretation that would eviscerate the regulation.⁴ See, e.g., PCD, 943 F.2d at 194-5 (quoting Legi-Tech, 795 F.2d at 192). Instead, it would seem that the regulation would, at a minimum, protect the news media when it

4. Also, as media outlets are themselves commercial enterprises, this reference to "commercial purpose" in the regulation was clearly intended to apply to other activities than a media outlet operating as such.

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copies and uses contributor information as part of an activity that falls "broadly within the press entity's legitimate press function," Reader's Digest Association, Inc. v. FEC, 509 F. Supp. 1210, 1214 (S.D. N.Y. 1981). Gathering information for the purposes of preparing a news story for publication or broadcast would clearly fall within a press entity's legitimate press function. There is no evidence that USA Today or NBC News have made any other use of the contributor information copied from reports filed with the Commission.⁵

D. Conclusion

Thus, we conclude that USA Today and NBC News have not used contributor information for commercial purposes as it is defined by 11 C.F.R. § 104.15(c). Accordingly, we recommend that the Commission find no reason to believe that they have violated 2 U.S.C. § 438(a)(4).

III. RECOMMENDATIONS

1. Find no reason to believe USA Today and NBC News violated 2 U.S.C. § 438(a)(4).
2. Approve the appropriate letters.

5. Since the unknown vendors were hired by the respondents to conduct the survey or poll, they would be considered the agents of USA Today and NBC News. Thus, their actions conducted pursuant to their contract with these news organizations would also be covered by the regulation. Furthermore, the conclusion in this report applies only to the vendors' use of such information as part of their work for USA Today and NBC News and, thus, would not necessarily apply if the vendors made other uses of this information. Also, this report does not address other uses of the information by the media respondents.

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3. Close the file.

Lawrence M. Noble
General Counsel

August 27, 1992
Date

BY:

Lois G. Lerner *gb*
Lois G. Lerner
Associate General Counsel

Attachments

1. Complaint
2. Response

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

USA Today;
NBC News.

)
)
) MUR 3557
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 1, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3557:

1. Find no reason to believe USA Today and NBC News violated 2 U.S.C. § 438(a)(4).
2. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 27, 1992.
3. Close the file.

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

Attest:

9-1-92
Date

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

Received in the Secretariat: Thurs., August 27, 1992 2:06 p.m.
Circulated to the Commission: Thurs., August 27, 1992 4:00 p.m.
Deadline for vote: Tues., September 1, 1992 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 14, 1992

CLOSED

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stephen C. Meyers
25 Union Park
Boston, Massachusetts 02118

RE: MUR 3557

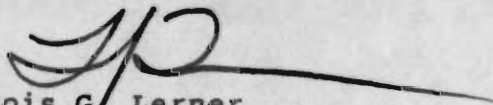
Dear Mr. Meyers:

On September 1, 1992, the Federal Election Commission reviewed the allegations of your complaint dated July 10, 1992, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe Gannett Co., Inc./USA TODAY and NBC News violated 2 U.S.C. § 438(a)(4). Accordingly, on September 1, 1992, 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).

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 14, 1992

Barbara W. Wall, Esquire
Gannett Co., Inc./ USA TODAY
1000 Wilson Boulevard
Arlington, Virginia 22229

RE: MUR 3557
Gannett Co., Inc./ USA TODAY

Dear Ms. Wall:

On July 22, 1992, the Federal Election Commission notified Gannett Co., Inc./ USA TODAY, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On September 1, 1992, 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./ USA TODAY violated 2 U.S.C. § 438(a)(4). Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 14, 1992

Ellen Miller-Wachtel, Esquire
National Broadcasting Company, Inc.
30 Rockefeller Center
New York, New York, 10112

RE: MUR 3557
NBC News

Dear Ms. Miller-Wachtel:

On July 22, 1992, the Federal Election Commission notified NBC News of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On September 1, 1992, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe NBC News violated 2 U.S.C. § 438(a)(4). Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3557

DATE FILMED 9/25/92 CAMERA NO. 3

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