



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

THIS IS THE BEGINNING OF MUR # 3624

DATE FILMED 6/23/93 CAMERA NO. 4

CAMERAMAN E.E.S.

93040945283

OGC 6464

August 8, 1992

Mr. John Warren McGarry, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

92 SEP 16 PM 12:59

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Chairman McGarry:

May I refer you to the attached two letters to Radio Station WBT wherein I have charged a federal election violation, registered a formal complaint and requested WBT solicit a ruling from the Federal Election Commission and the Federal Communications Commission.

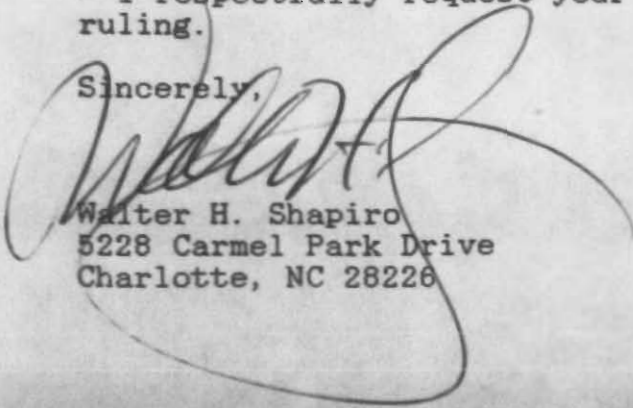
As you will note, WBT and some additional 500 (as claimed) radio stations are broadcasting daily that which is tantamount to a three hour political advertisement for one of the national presidential candidacies during this election year. Hundreds of radio tapes will so attest, I charge.

And this, I formally complain to you, represents a massive, undeclared, political contribution by each of said radio stations.

I respectfully request the two letters to WBT attached hereto serve as the basis of, and explanation for, my complaint to the Federal Election Commission, and similarly for my request for a ruling by the Commission; each as now formally registered.

In view of the massive federal election impact of this alleged violation - in both mass audience influence (over 12 million weekly claimed), and massive in-kind political-contribution dollar volume - I respectfully request your earliest possible ruling.

Sincerely,


Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

VIA: CERTIFIED MAIL

93040945284

July 10, 1992

Mr. Richard Jackson, General Mgr.
Radio Station WBT
1 Julian Price Place
Charlotte, NC 28208

Dear Mr. Jackson:

Several years ago it was my privilege to be on your air, during which time I created and broadcast daily some several hundred money and investing educational features.

However, notwithstanding I am an admirer of WBT, the subject of this letter nonetheless is that of broadcast fairness; fairness, going to the question of how WBT logs the daily Rush Limbaugh radio program. Why is this an issue?

Insofar as this is an election year, and insofar as Limbaugh has openly and formally announced on the air that as a "political host" he supports the Bush-Quayle Republican candidates, the question clearly exists as to whether or not WBT is making a 'soft money' contribution or 'in kind' contribution to the Bush-Quayle Campaign and/or the Republican National Committee by effectively airing three hours daily (less paid advertising and local-national news time) of pro Bush-Quayle advertising promotion. All this aside from Limbaugh's anti Clinton-Perot derogation.

By any reasonable election year standard such air time usage constitutes a blatant and incessant promotion of the national presidential candidates of the Republican Party - courtesy WBT and the other radio stations airing the Limbaugh endorsed candidate promotion - at no cost to the Republican presidential and vice presidential candidates' campaign and/or the Republican Party.

Accordingly, in my view, as a citizen owner of our national airwaves, this air time (as defined above) ought be logged as commercial time (non programming) by WBT and the participating radio stations utilizing our airwaves under licensing by the Federal Communications Commission.

Hence, should WBT not not be logging the subject air time as commercial time - political or otherwise - I herein register a formal complaint.

Further, I respectfully and formally request, that in turn, WBT formally request of the Federal Communications Commission, an official ruling as to whether the above referenced portions of the daily Rush Limbaugh radio program be logged as (1) programming or (2) commercials - political or otherwise - by those radio stations carrying the Limbaugh program.

93040945285

Mr. Richard Jackson
Radio Station WBT
July 10, 1992
Page two

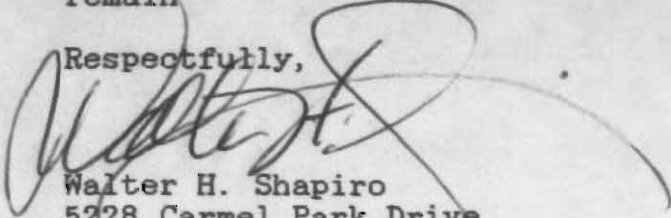
In the interest of clarity, please be advised my very narrow and specific FCC ruling request does not go to the question of Limbaugh's rights per se; rather only as to how WBT and participating radio stations will be required to log such content retroactively and henceforth. This, as a consequence of the requested FCC ruling based upon Limbaugh's endorsed presidential ticket promotional content and its unfair political impact upon our national presidential election process.

Lastly, may I ask you kindly advise me, as a copy recipient, of your timely request to the FCC and their timely response, your progress in procuring the aforementioned FCC ruling.

Please know, despite my deep admiration and respect for your esteemed radio station, my sense of fairness requires I pursue this matter; albeit with regret.

With my every good wish for your continuing success and that of WBT, and in appreciation of your earliest attention, I remain

Respectfully,


Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

cc: Federal Communications Commission

93040945286

September 8, 1992

Mr. Richard Jackson
Radio Station WBT
1 Julian Price Place
Charlotte, NC 28208

CERTIFIED MAIL

Re: WBT DAILY POLITICAL CONTRIBUTIONS

Dear Mr. Jackson:

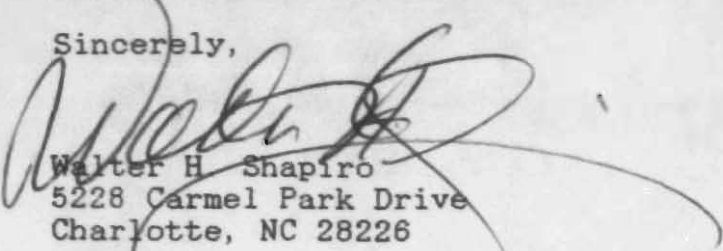
Not having received an acknowledgement of my requests relative the above (as contained in my July 10, 1992 letter to WBT, copy attached) or evidence you have acted upon same, I hereby issue my second request for your action.

Additionally, I now expand my original July, 10 demand, i.e., whereby WBT seek my stated ruling request from the Federal Communications Commission - to now include also my similar demand WBT solicit a federal election violation ruling from the Federal Election Commission. This, due to the increased intensity and stridency of your Bush/Quayle presidential-campaign political advertisement aired daily by WBT as the Rush Limbaugh portion of your daily broadcasting.

Further, in view of your failure to respond to my formal request and complaint of July 10, instant, I myself am now formally requesting the Federal Communications Commission, as a copy recipient of this and my referenced July 10 letter to you, rule on the question of the proper logging of the Rush Limbaugh portion of your daily WBT broadcasting, retroactive to the appropriately effective date.

Similarly, I am formally requesting a federal election violation ruling from the Federal Election Commission, retroactive to the appropriately effective date.

Sincerely,


Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

cc: Federal Communications Commission
Federal Elections Commission

93040945287



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 17, 1992

Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

Dear Mr. Shapiro:

This is to acknowledge receipt on September 16, 1992, of your letter dated August 8, 1992. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

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

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission. The file regarding this correspondence will remain confidential for a 15 day time period during which you may file an amended complaint as specified above. If the defects are not cured and the allegations are not refiled, no additional notification will be provided and the file will be closed.

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

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Radio Station WBT

93040945288

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

September 19, 1992

SEP 28 10 36 AM '92

Ms. Retha Dixon, Docket Chief
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Docket Chief Dixon:

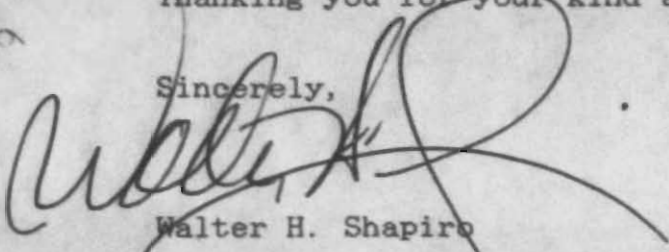
Thank you most sincerely for your very prompt and helpful letter of September 17, 1992 relative mine Dated August 8, 1992.

I have noted and acted upon your advisal that I failed to swear as to the truth of my complaint, to the best of my knowledge, and in turn have my complaint notarized. Accordingly, kindly find my properly executed complaint enclosed for your earliest possible action.

Please note, my original complaint dated August 8, 1992 was inadvertantly misdated. In this notarized re-submittal attached, I have corrected same to reflect the correct and actual original submittal date of September 8, 1992.

Thanking you for your kind attention, I remain

Sincerely,


Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

enc: re-submittal of now sworn-and-notarized, corrected complaint against Radio Station WBT.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 SEP 28 PM 4:01

93040945289

September 8, 1992

Mr. John Warren McGarry, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Chairman McGarry:

May I refer you to the attached two letters to Radio Station WBT wherein I have charged a federal election violation, registered a formal complaint and requested WBT solicit a ruling from the Federal Election Commission and the Federal Communications Commission.

As you will note, WBT and some additional 500 (as claimed) radio stations are broadcasting daily that which is tantamount to a three hour political advertisement for one of the national presidential candidacies during this election year. Hundreds of radio tapes will so attest, I charge.

And this, I formally complain to you, represents a massive, undeclared, political contribution by each of said radio stations.

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Sincerely,

Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

enc: letter to Radio Station WBT - July 10, 1992
letter to RADIO Station WBT - September 8, 1992

Subscribed and sworn to before me on this TH19 day of September, 1992.

County of Mecklenburg
State of North Carolina

Sylvia Shapiro
Notary

My Commission Expires March 2, 1997

93040945290

92 SEP 28 PM 4: 01

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

July 10, 1992

Mr. Richard Jackson, General Mgr.
Radio Station WBT
1 Julian Price Place
Charlotte, NC 28208

Dear Mr. Jackson:

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Insofar as this is an election year, and insofar as Limbaugh has openly and formally announced on the air that as a "political host" he supports the Bush-Quayle Republican candidates, the question clearly exists as to whether or not WBT is making a 'soft money' contribution or 'in kind' contribution to the Bush-Quayle Campaign and/or the Republican National Committee by effectively airing three hours daily (less paid advertising and local-national news time) of pro Bush-Quayle advertising promotion. All this aside from Limbaugh's anti Clinton-Perot derogation.

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Hence, should WBT not be logging the subject air time as commercial time - political or otherwise - I herein register a formal complaint.

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Mr. Richard Jackson
Radio Station WBT
July 10, 1992
Page two

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Please know, despite my deep admiration and respect for your esteemed radio station, my sense of fairness requires I pursue this matter; albeit with regret.

With my every good wish for your continuing success and that of WBT, and in appreciation of your earliest attention, I remain

Respectfully,

Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

cc: Federal Communications Commission

93040945292

September 8, 1992

Mr. Richard Jackson
Radio Station WBT
1 Julian Price Place
Charlotte, NC 28208

CERTIFIED MAIL

Re: WBT DAILY POLITICAL CONTRIBUTIONS

Dear Mr. Jackson:

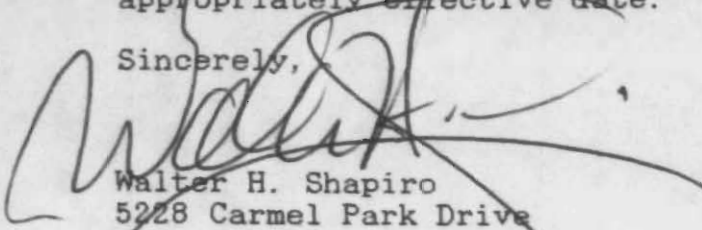
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Sincerely,


Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

cc: Federal Communications Commission
Federal Elections Commission

93040945293



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 30, 1992

Mr. Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

RE: MUR 3624

Dear Mr. Shapiro:

This letter acknowledges receipt on September 23, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by WBT Radio, Bush-Quayle '92 Primary Committee, Inc., Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as treasurer. 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 3624. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,


Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

93040945294



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 30, 1992

J. Stanley Huckaby, Treasurer
Bush-Quayle '92 Primary Committee, Inc.
Bush-Quayle '92 General Committee, Inc.
1030 15th Street, NW
Washington, DC 20005

RE: MUR 3624

Dear Mr. Huckaby:

The Federal Election Commission received a complaint which indicates that the Bush-Quayle '92 Primary Committee, Inc., and the Bush-Quayle '92 General Committee, Inc. ("Committees") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3624. 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 Committees and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

93040945295

J. Stanley Huckaby, Treasurer
Bush-Quayle '92 Primary Committee, Inc.
Bush-Quayle '92 General Committee, Inc.
Page 2

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

Sincerely,


Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040945296



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 30, 1992

Richard Jackson, General Manager
WBT Radio
1 Julian Place
Charlotte, NC 28208

RE: MUR 3624

Dear Mr. Jackson:

The Federal Election Commission received a complaint which indicates that WBT Radio 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 3624. 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 WBT Radio 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.

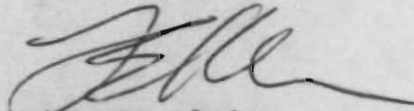
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

93040945297

Richard Jackson, General Manager
WBT Radio
Page 2

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

Sincerely,

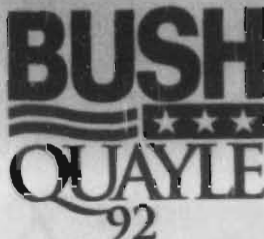


Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040945298



October 19, 1992

 RECEIVED
 FEDERAL ELECTION COMMISSION
 OFFICE OF GENERAL COUNSEL
 92 OCT 19 PM 2:45
BY HAND DELIVERY

Lawrence M. Noble, Esquire
 General Counsel
 Federal Election Commission
 999 E Street, N.W.
 Washington, D.C. 20463

Re: MUR 3624 -- J. Stanley Huckaby, Treasurer, Bush -
Quayle '92 Primary Committee, Inc., and Bush - Quayle
'92 General Committee, Inc.

Dear Mr. Noble:

This letter constitutes my Response and the Response of Bush - Quayle '92 Primary Committee, Inc. and Bush - Quayle '92 General Committee, Inc. (collectively "Bush - Quayle '92" or "Respondents"), to the Complaint filed with the Federal Election Commission ("FEC" or the "Commission") by Mr. Walter H. Shapiro ("Complainant") of Charlotte, North Carolina. Respondents received the Complaint on October 2, 1992.

Complainant makes the absurd allegation -- without citation to federal election law -- that over 500 radio stations carrying the nationally syndicated Rush Limbaugh show are somehow making a "massive, undeclared, political contribution" to Bush - Quayle '92 and/or the Republican National Committee. The purported factual basis for this specious charge is that Mr. Limbaugh has allegedly announced on the air his support for Bush - Quayle '92. Complainant, however, has overlooked or ignored the clear FEC regulations that exempt from the definitions of contribution and expenditure the costs of carrying any news story, commentary or editorial by a broadcast station. For this reason, we respectfully submit that the Commission should promptly dismiss this frivolous Complaint.

Statement of Facts

Complainant states that radio station WBT in Charlotte, North Carolina and over 500 other radio stations nationwide carry the Rush Limbaugh show. (Compl. at 1.) Mr. Limbaugh, the Complaint alleges, "has openly and formally announced on the air

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that as a 'political host' he supports the Bush-Quayle Republican candidates." (Attachment 1 to Compl.) According to Complainant, this is a "'soft money' contribution or 'in kind' contribution to the Bush-Quayle Campaign and/or the Republican National Committee." Id.

Complainant does not, and cannot, allege that Bush - Quayle 92 owns or controls any of the radio stations that carry the Rush Limbaugh show. Complainant does not, and cannot, allege that Bush - Quayle 92 controls the format or content of that show. In short, Bush - Quayle 92 has no influence or control over anything that is said by Mr. Limbaugh on his show or over the stations that broadcast the show. Moreover, Complainant does not allege that any other political committee, party, or candidate owns or controls the radio stations broadcasting the Rush Limbaugh show.

Discussion

Although the definition of contribution under the Federal Election Campaign Act of 1971 is very broad, the "cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate. . . ." 11 C.F.R. § 100.7(b)(2) (emphasis added); see 2 U.S.C. § 431(9)(B)(i) ("'expenditure' does not include . . . any news story, commentary, or editorial distributed through the facilities of any broadcasting station, . . . unless such facilities are owned or controlled by any political party, political committee, or candidate"); 11 C.F.R. § 100.8(b)(2).

Bush - Quayle 92 does not own or control any of the radio stations broadcasting the Rush Limbaugh show. Furthermore, Bush - Quayle 92 does not direct or control the format or content of that program. Complainant does not allege that any other political committee, party, or candidate controls the stations or the show. Hence, the political commentary described in the Complaint falls under the clearly established news, commentary, and editorial exception to the definition of contribution. See Adv. Op. 1987-8, Fed. Election Camp. Fin. Guide (CCH) ¶ 5890, at 11,360 (1987) (no contribution to candidates from interviews published in magazine); Adv. Op. 1978-76, Fed. Election Camp. Fin. Guide (CCH) ¶ 5370, at 10,373 (1978) (television station could air film prepared by congressman depicting the facilities available to his constituents as a public service announcement under the "news story, commentary, or editorial" exception).

Lawrence M. Noble, Esq.
October 19, 1992
Page 3

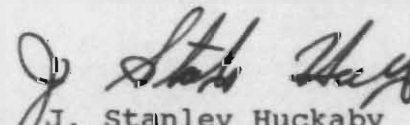
The radio stations mentioned in the Complaint merely broadcast a program in which the host engages in political commentary. Bush - Quayle 92 does not have any control over the stations or the program. Thus, these stations have not made a contribution to Bush - Quayle 92. If one were to conclude -- contrary to clearly established law and common sense -- that these radio stations have made a contribution to Bush - Quayle 92, then virtually every other broadcast station and newspaper in the country has made vast contributions to both the Bush - Quayle 92 and the Clinton/Gore general election campaigns.

To avoid this absurd result and to protect the constitutionally guaranteed right of free expression, the regulations of the FEC properly classify the cost of carrying political commentary on a broadcast station as an exception to the definition of contribution.

Conclusion

The Complaint does not state a violation of any statute or regulation under the jurisdiction of the FEC. Respondents respectfully request that the General Counsel recommend to the Commission that it find no reason to believe that a violation has occurred, and that this matter be promptly closed.

Respectfully submitted,


J. Stanley Huckaby
Treasurer

cc: Lisa E. Klein, Esq.
Assistant General Counsel
Federal Election Commission

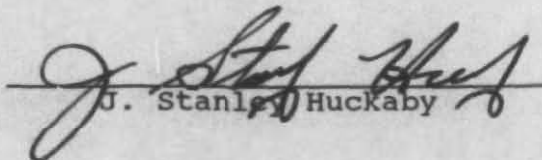
Frances B. Hagan, Esq.
Federal Election Commission

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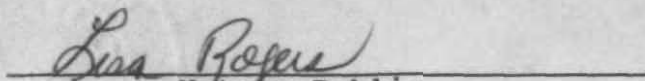
Lawrence M. Noble, Esq.
October 19, 1992
Page 4

Verification

The undersigned swears that the facts set forth in this response are true to the best of his knowledge, information, and belief.


J. Stanley Huckaby

Sworn and subscribed to before
me this 19th day of October, 1992.


Notary Public

My Commission Expires 9/30/93 in VA.

93040945302

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3624

NAME OF COUNSEL: Bobby R. Burchfield, General Counsel
John J. Sullivan, Deputy General Counsel

ADDRESS: Bush - Quayle '92 Primary Committee, Inc.
Bush - Quayle '92 General Committee, Inc.
1030 15th Street, N.W.
Washington, D.C. 20005

TELEPHONE : (202) 336 - 7110

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

10/19/92
Date

J. Stanley Huckaby
Signature

RESPONDENT'S NAME: J. Stanley Huckaby, Treasurer

ADDRESS: Bush - Quayle '92 Primary Committee, Inc.
Bush - Quayle '92 General Committee, Inc.
1030 15th Street, N.W.
Washington, D.C. 20005

TELEPHONE: HOME (703) 329 - 1615
BUSINESS (202) 336 - 7300

93040945303

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D. C. 20006
(202) 429-7000

October 20, 1992

WRITER'S DIRECT DIAL NUMBER

(202) 429-7301

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Frances B. Hagan

Re: MUR 3624

Dear Mr. Noble:

This Response, including the attached affidavit, is submitted on behalf of WBT (AM) Radio in reply to a complaint filed by Walter H. Shapiro and designated Matter Under Review ("MUR") 3624. An executed Statement of Designation of Counsel Form is attached. For the reasons set forth herein, the Federal Election Commission ("FEC" or "Commission") should find no reason to believe that Respondent violated any provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

THE COMPLAINT

The Complaint in this Matter alleges that simply by broadcasting the Rush Limbaugh Show, WBT, among other stations, is making a contribution to the Bush-Quayle campaign or the Republican National Committee. This complaint has no merit.

FACSIMILE
(202) 429-7049
TELEX 248349 WYRDLUR

RECEIVED
FEDERAL ELECTION COMMISSION
OCT 21 AM 11:44

93040945304

FACTS

WBT (AM) is a radio station licensed to Jefferson-Pilot Communications Company. See Affidavit of Richard Jackson Whitt Before the Federal Election Commission (hereinafter "Whitt Aff.") at ¶ 1. Jefferson-Pilot is not owned or controlled by any political party, political committee, or candidate. Id. at ¶ 5. The Rush Limbaugh Show is a regularly scheduled call-in "talk" show which has been broadcast by WBT since September, 1991. Id. at ¶¶ 2-3. In fact, the Rush Limbaugh Show is broadcast on more than 100 radio stations across the country. Id. at ¶ 4.

DISCUSSION

While the allegation in this matter is not specific, to the extent that political issues are discussed, the Rush Limbaugh Show falls squarely within the press exemption contained in the Federal Election Campaign Act of 1971, as amended ("Act"). While a corporation may not make any contribution or expenditure in connection with a federal election, under the Act, the term "expenditure" does not include:

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

2 U.S.C. § 431(9)(B)(i). See also 11 C.F.R. § 100.7(b)(2). In interpreting this provision, the Commission has determined that two requirements must be met. First, pursuant to Reader's Digest Association v. FEC, 509 F. Supp. 1210 (D.N.Y. 1981), the distribution must fall within the press entity's legitimate press function. Second, the facilities can not be owned or controlled by any political party, political committee, or candidate.

The Commission, for instance, recently determined that both of these requirements were met by the "Doonesbury" comic strip "authored by Garry B. Trudeau, distributed by Universal Press Syndicate, and published in the Raleigh News and Observer (and other newspapers)," and which published the "800" line number for the Jerry Brown Committee. First General Counsel's Report in MUR 3500 at pp. 2-3. Just as the distribution of the Doonesbury strip qualified for the press exemption, the distribution of the Rush Limbaugh Show qualifies for the press exemption.

As a regularly scheduled talk show which may or may not discuss politics on any given day, the Rush Limbaugh Show is commentary¹, and its distribution clearly falls within WBT's

¹ In discussing the issue of "commentary," the Commission previously has stated that:

Although the statute and regulations do not define "commentary," the Commission is of the view that commentary cannot be limited to the broadcaster. The exemption already includes the

93040945306

Lawrence M. Noble, Esq.
October 20, 1992
Page 4

legitimate press function. Moreover, Jefferson-Pilot, the licensee of WBT is not owned or controlled by any political party, political committee, or candidate. See Whitt Aff. at ¶ 5.

Accordingly, the Commission should find no reason to believe that WBT (AM) violated any provision of the Act.

Sincerely,

Carol A. Laham

Carol A. Laham

Counsel for WBT (AM)

term "editorial" which applies specifically to the broadcaster's point of view. In the opinion of the Commission, "commentary" was intended to allow the [sic] third persons access to the media to discuss issues. The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the "commentary" exemption nor do they set a time limit as to the length of the commentary.

Advisory Opinion 1982-44, Fed. Election Camp. Fin. Guide (CCH) ¶ 5691 (1982).

93040945307

BEFORE THE FEDERAL ELECTION COMMISSION

State of North Carolina)
County of Mecklenburg)

MUR 3624

AFFIDAVIT OF RICHARD JACKSON WHITT

Richard Jackson Whitt, first being duly sworn, deposes and says:

1. My name is Richard Jackson Whitt. I am the General Manager of Charlotte, North Carolina radio stations WBT AM and FM and am a vice president of Jefferson-Pilot Communications Company, the licensee of those stations. I have served in these positions since June, 1992.

2. WBT (AM) broadcasts a program called the "Rush Limbaugh Show" each weekday afternoon for three hours between 12 o'clock and 3 o'clock. Based on my personal knowledge, WBT (AM) has broadcast the Rush Limbaugh Show since June, 1992. On information and belief, WBT (AM) began broadcasting the Show in September, 1991 and has broadcast it each weekday since that time.

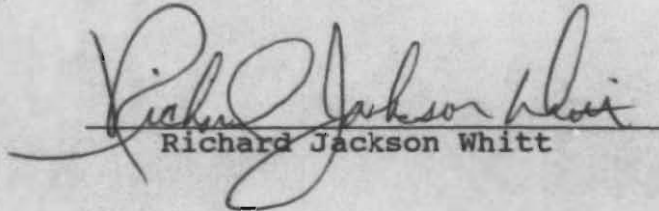
3. The Rush Limbaugh Show is a call-in "talk" show. The host (Limbaugh) typically states his opinion on some subject and then invites callers, who may express opposing or supporting views. Typically a caller engages in dialogue with Limbaugh. Politics may or may not be discussed on any given day as is the nature of any call-in talk show.

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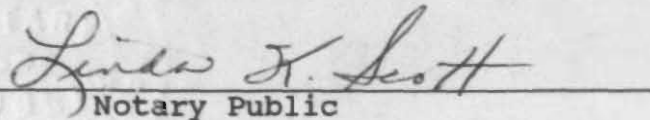
4. The Rush Limbaugh Show is very popular with the radio industry, and (on information and belief) is carried on well over 100 radio stations in the United States each day.

5. On information and belief, Jefferson-Pilot Communications Company is not owned or controlled by any political party, political committee, or candidate.

The above is true and correct to the best of my knowledge and belief.


Richard Jackson Whitt

Signed and sworn to before me
this 20 day of October, 1992.


Notary Public

My Commission Expires: May 16, 1997

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3624

NAME OF COUNSEL: Carol A. Laham, Esq.

ADDRESS: Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, D.C. 20006

TELEPHONE: (202) 429-7301

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

Oct. 20, 1992
Date

Jack Jackson
Signature

RESPONDENT'S NAME: Jefferson-Pilot Communications Company (WBT-AM)

ADDRESS: 1 Julian Price Place

Charlotte, North Carolina 28208

HOME PHONE: _____

BUSINESS PHONE: _____

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Nov 13 9 17 AM '92

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RECEIVED
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OFFICE OF THE CLERK

November 6, 1992

Ms. Lisa E. Klien, Asst. Genl. Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3624

Dear Ms. Klein:

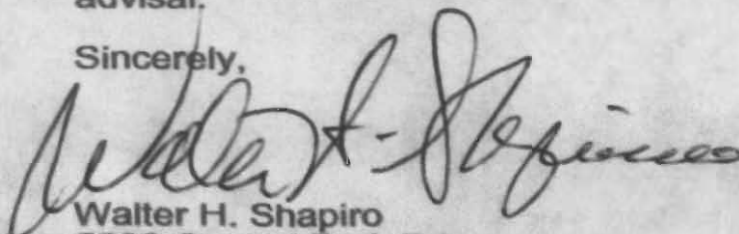
Thank you for your September 30, 1992 acknowledgement of my September 23, 1992 complaint relative WBT Radio, Bush-Quayle '92 General Committee, Inc., Bush-Quayle '92 Primary Committee, Inc. and J. Stanly Huckaby as treasurer.

You advised the respondents will be notified of my complaint within five days, and your attached complaint procedure indicated the respondents have 15 days thereafter to respond to the complaint.

Such time having now well transpired, may I ask you kindly advise whether I as complainant am entitled to receive a copy of each of the respondents responses.

If so, I respectfully request same and await your earliest convenient advisal.

Sincerely,



Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

93040945311



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 16, 1992

Mr. Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

RE: MUR 3624

Dear Mr. Shapiro:

This is in response to your letter dated November 6, 1992, in which you request information pertaining to the complaint you filed on September 23, 1992, with the Federal Election Commission.

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits any person from making public the fact of any notification or investigation by the Commission prior to closing the file in the matter unless the party being investigated has agreed in writing that the matter be made public. See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter dated September 30, 1992, we will notify you as soon as the Commission takes final action on your complaint.

Sincerely,

A handwritten signature in cursive script that reads "Frances B. Hagan".

Frances B. Hagan
Paralegal Specialist

93040945312

November 20, 1992

Mr. John Warren McGarry, Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3624

Att: Lisa E. Klein, Assistant General Counsel
Frances B. Hagan, Paralegal Specialist

Dear Persons:

I am in receipt of and thank you for yours of September 30, and November 16, 1992 respectively.

May this letter serve as an addendum to my complaint you have numbered MUR 3624.

Insofar as the alleged election violations I have charged by the respondents - WBT Radio, Bush-Quayle '92 Primary Committee, Inc., Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, Treasurer - were so flagrant and pervasive, I am deeply concerned your investigation of my complaint be thorough and comprehensive. The dollar potential of the violations and illegal contributions, I allege were made and received through the use of the three hour daily Rush Limbaugh syndicated radio program - across some 500 radio stations similar to the named respondent Radio Station WBT - doubtless will number in the tens of millions of dollars.

I further allege :

- (1) Rush Limbaugh openly and specifically endorsed the Bush-Quayle candidacy on-air, and promoted only the Bush-Quayle campaign agenda, during the presidential election campaign.
- (2) Roger Ailes, Limbaugh's radio program business partner, was a paid consultant in the Bush-Quayle campaign.
- (3) Rush Limbaugh was invited to a one-on-one session with President Bush at the White House early in the Bush-Quayle campaign.
- (4) Shortly thereafter President Bush and Vice President Quayle each appeared twice in-studio on the Rush Limbaugh radio program during the election campaign. The Clinton-Gore/Perot-Stockdale tickets did not so appear.

Accordingly, I formally request election year tapes of the subject Rush Limbaugh radio program, particularly since the Democratic convention through election day, be reviewed by the Commission to ascertain:

- (1) Whether the major portion or any portion of Limbaugh's campaign-era radio programs were tantamount to, and in fact constituted, running daily political commercials via the blatant and incessant affirmative promotion of the Bush-Quayle ticket and its campaign positions, and conversely, the blatant and incessant negative promotion of the Clinton-Gore/Perot-Stockdale tickets and their campaign positions. And if so,
- (2) Whether the legally qualified candidates, Clinton-Gore and Perot-Stockdale, recieved an equal amount of favorable political promotional air-time by Rush Limbaugh, i.e., that which I allege were political commercials, as did the Bush-Quayle candidates.

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Chairman John Warren McGarry
Federal Election Commission
November 20, 1992
Page two

(3) Whether the legally qualified candidates Clinton-Gore and Perot-Stockdale were in fact offered equal, live, in-studio personal appearance air-time to that of President Bush and Vice President Quayle.

I respectfully acknowledge and appreciate your advice, as contained in your kind November 16th response to my query of November 6th, that you cannot inform me of the progress of your consideration of my complaint until the Commission takes final action.

I only ask you take into your investigation and action consideration my comments and formal request contained herein, which I now join with my original complaint.

Sincerely,

Walter H. Shapiro

Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

Subscribed and sworn to before me on this th 20 day of November, 1992.

County of Mecklenberg
State of North Carolina

Notary

Sylvia Shapiro

My Commission Expires March 2, 1997



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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 1, 1992

Mr. Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

RE: MUR 3624

Dear Mr. Shapiro:

This letter acknowledges receipt on November 30, 1992, of the amendment to the complaint you filed on September 23, 1992, against WBT Radio, Bush-Quayle '92 Primary Committee, Inc., Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer. The respondents will be sent copies of the amendment. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

A handwritten signature in cursive script, reading "Frances B. Hagan", is positioned above the typed name.

Frances B. Hagan
Paralegal Specialist

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 1, 1992

Bobby R. Burchfield, Esquire
General Counsel

Bush - Quayle '92 Primary Committee, Inc.

Bush - Quayle '92 General Committee, Inc.

1030 15th Street, N.W.

Washington, D.C. 20005

RE: MUR 3624

Bush - Quayle '92 Primary
Committee, Inc.

Bush - Quayle '92 General
Committee, Inc.

J. Stanley Huckaby, as
treasurer

Dear Mr. Burchfield:

On September 30, 1992, your clients were notified that the Federal Election Commission received a complaint from Walter H. Shapiro alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On November 30, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days to respond to the allegations.

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

Sincerely,

A handwritten signature in cursive script, reading "Frances B. Hagan", is written above the typed name.

Frances B. Hagan
Paralegal Specialist

Enclosure

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 1, 1992

Carol A. Laham, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3624
WBT - AM Radio

Dear Ms. Laham:

On September 30, 1992, your client was notified that the Federal Election Commission received a complaint from Walter H. Shapiro alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your client was given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On November 30, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days to respond to the allegations.

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

Sincerely,

A handwritten signature in cursive script that reads "Frances B. Hagan".

Frances B. Hagan
Paralegal Specialist

Enclosure

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OGC 7953

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D. C. 20006
(202) 429-7000

December 18, 1992

WRITER'S DIRECT DIAL NUMBER

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

(202) 429-7301

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Frances B. Hagan

Re: MUR 3624

Dear Mr. Noble:

This letter responds to the amendment to the complaint filed in Matter Under Review 3624 by Walter H. Shapiro and supplements the October 20, 1992 Response to the initial complaint filed by WBT (AM) Radio. Complainant's amendment underscores that his real problem is with the Rush Limbaugh Show, and names WBT (AM) Radio only as one of hundreds of radio stations which carries the program. As was the case with the original complaint, this amendment has no merit.

The allegations made in this amended complaint address Rush Limbaugh's personal business and the content of his show. WBT has no control over either one of these factors. WBT does not carry the Rush Limbaugh Show because it agrees or disagrees with Mr. Limbaugh's views, but rather because it is an extremely popular program. WBT is not in the position of muzzling Mr. Limbaugh or

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censoring his views. What he says on his program and his personal business dealings are just that, his views and his business dealings. Thus, regardless of the veracity of these new "allegations," it is indisputable that broadcasting the program qualifies for the press exemption of the Federal Election Campaign Act of 1971, as amended, as explained in WBT's October 20, 1992 Response.¹

Finally, WBT is concerned with complainant's request that the Commission review tapes of each of Mr. Limbaugh's show, particularly since the Democratic convention. In effect, complainant is asking the Commission to trod upon the First Amendment and act as a censor of speech. The Commission simply must reject any such request.

Accordingly, the Commission should find no reason to believe that WBT (AM) violated any provision of the Act.

Sincerely,

Carol A. Laham

Carol A. Laham

Counsel for WBT (AM)

¹ Carrying the Rush Limbaugh Program is no different than the Washington Post and any number of other newspapers carrying a regular column by Michael Kingsley who endorsed Bill Clinton.

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F.E.C.
SECRETARIAT

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

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR #s 3483, 3605, 3615, 3624,
3660, 3706, 3709, 3710
STAFF MEMBER: Lawrence L. Calvert, Jr.

COMPLAINANTS:

MUR 3483: Gerald B. Wetlaufer
MUR 3605: Rodney G. Gregory, as General Counsel to
Friends of Corinne Brown
MUR 3615: Don Brewer Jr., as Chairman of the Duval
County Republican Executive Committee
MUR 3624: Walter H. Shapiro
MUR 3660: Dr. Philip W. Ogilvie
MURs 3706, 3709, and 3710: William D. White

RESPONDENTS:

MUR 3483: George Bush
Bush-Quayle '92 Primary Committee
and J. Stanley Huckaby, as treasurer
KXIC Radio
U. S. Small Business Administration

MUR 3605: Andrew E. Johnson
Committee to Elect Andy Johnson
and Andrew E. Johnson, as treasurer
WVOJ Radio

MUR 3615: Clinton/Gore '92 Committee and
Robert A. Farmer, as treasurer
WJXT-TV

MUR 3624: Bush-Quayle '92 Primary Committee
and J. Stanley Huckaby, as treasurer
Bush-Quayle '92 General Committee
and J. Stanley Huckaby, as treasurer
WBT Radio

MUR 3660: Flower & Garden Magazine

MUR 3706: Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
Arlen Specter
Citizens for Arlen Specter and
Stephen J. Harmelin, as treasurer
WDUQ Radio
Kevin Gavin

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MUR 3709: Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
WPXI-TV
Lawrence Convention Center
Monro Muffler/Brake
Welch Foods, Inc.
Richardson-Vicks, Inc.
MAACO
Quality Furniture Co.
Edgar Snyder and Associates
Red Lobster Restaurants
International Paper Co.
Turnpike Toyota
West Penn Power Co.
Cinema World, Inc.
Medic Alert
General Mills, Inc.
Willi's Ski Shop
Willoughby Communications

MUR 3710: Arlen Specter
Citizens for Arlen Specter
and Stephen J. Harmelin, as treasurer
WPXI-TV

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(B)(i)
2 U.S.C. § 431(11)
2 U.S.C. § 441a(a)(1)
2 U.S.C. § 441b
2 U.S.C. § 441b(a)
2 U.S.C. § 441d
2 U.S.C. § 441d(a)(1)
26 U.S.C. § 9003(d)
11 C.F.R. § 100.7(a)(1)(iii)(A)
11 C.F.R. § 100.7(b)(2)
11 C.F.R. § 100.8(b)(2)
11 C.F.R. § 114.4(e)
11 C.F.R. § 114.9(d)
47 C.F.R. § 73.1940(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

These matters arise from various complaints filed in 1992 concerning several 1992 elections. Each complaint alleges that a news story or broadcast constituted a prohibited in-kind

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contribution from a media corporation to candidates or committees in violation of 2 U.S.C. § 441b. Accordingly, the complaints are treated in one report. Details about the generation of each particular matter and the material facts of each case will be provided in the next section.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no corporation, except through a separate segregated fund, may make a contribution or expenditure in connection with any Federal election. 2 U.S.C. § 441b. However, the Act and the Commission's regulations exclude, under certain conditions, costs associated with the production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure". 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

In Readers' Digest Ass'n. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981), the court, interpreting the Act, stated that the media exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate. The Commission has interpreted the media exemption broadly, consistent with Congress' admonition that the Act was not intended "to limit or burden in any way the first amendment freedom of the press." H. R. Rep. No. 943, 93d Cong., 1st Sess., at 4 (1974). For instance, although Section 431(9)(B)(i) speaks only of "news

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stor[ies], commentar[ies], or editorial[s]", the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R.

§§ 100.7(b)(2) and 100.8(b)(2). See also, e.g., Advisory Opinion 1982-44 (cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption).

Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption. To determine whether a medium of communication fits one of these descriptions, the Commission has applied the definitions of "broadcaster," "newspaper", and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). See, e.g. MURs 2277 and 2567. Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification were explicitly drafted with the media exemption in mind. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979).

According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission [("FCC")], as well as networks." 44 Fed. Reg. at 76,735. Magazines and "other periodical publications" are "publication[s] in bound pamphlet form appearing at regular intervals (usually either weekly,

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bi-weekly, monthly or quarterly) and containing articles of news, information, opinion and entertainment, whether of general or specialized interest. Only magazines and periodicals which ordinarily derive their revenues from subscriptions and advertising" are to be exempt. 44 Fed. Reg. at 76,735.

In addition to the "legitimate press function" test, the Commission must also determine whether the press entity is owned or controlled by any political party, political committee or candidate. This test is a straightforward inquiry into whether the complaint, response or other data available to the Commission suggest that a media entity is so owned or controlled. See, e.g., MUR 3645. If it is, it qualifies for the exemption only in certain narrowly defined situations described in the regulations. See 11 C.F.R. §§ 100.7(b)(2)(i) and (ii) and 100.8(b)(2)(i) and (ii).¹

Paid advertising expressly advocating a candidate's election or defeat would not qualify for the media exemption and would be subject to the requirements of 2 U.S.C. § 441d. That section provides disclaimer requirements "whenever any person makes an

1. Under the cited provisions, if a media entity is owned or controlled by a party, committee or candidate the media exemption extends only to the costs of news stories "(i) which represent . . . bona fide news account[s] communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which [are] part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area" These provisions are not applicable to any of the MURs discussed in this report. However, it is important to note that, contrary to the assertion of complainant William D. White in MURs 3706, 3709 and 3710, the "reasonably equal coverage" requirement is triggered only by a finding that a media entity is owned or controlled by a party, committee or candidate.

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expenditure" for "general public political advertising" containing express advocacy. Obviously, Congress did not intend through the media exemption to exempt paid advertising containing express advocacy from the definition of "expenditure"; otherwise, Section 441d would be a nullity. By contrast, paid non-political advertising sponsorship of a broadcast or publication protected by the exemption is permitted, provided that the sponsor exercises no control over the exempt content. See Advisory Opinion 1987-8 (corporate sponsorship of magazine and television interview series with presidential candidates was not prohibited).

B. The Cases

1. MUR 3483

This matter was generated by a complaint received from Gerald B. Wetlaufer of Iowa City, Iowa against KXIC Radio of Iowa City; then-President George Bush; the Bush-Queyle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer; and the U. S. Small Business Administration (SBA). The complaint alleges that taped radio public service announcements produced by SBA and broadcast by KXIC contained the statement "President Bush knows our challenges", leading into a voice-over message from the President promoting SBA export assistance programs. The complaint appears to allege that because President Bush was a candidate for re-election at the time the public service announcement was broadcast, the announcement expressly advocated his candidacy and was a thing of value to his campaign. Consequently, the complaint theorizes that the production and airing of the public service announcement constituted a prohibited in-kind contribution from

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the SBA and KXIC to the Bush campaign. Attachment A-1.

As a threshold matter, this Office is of the opinion that the Commission lacks jurisdiction over the SBA in this case. Although 2 U.S.C. § 441a(a)(1) provides that "no person" shall make contributions in excess of certain limits, 2 U.S.C. § 431(11) provides that "the term 'Person' . . . does not include the Federal Government or any authority of the Federal Government." The SBA is, of course, a federal agency. Moreover, for reasons that will be shown, even if the SBA were subject to the Commission's jurisdiction this Office would still recommend that the Commission find no reason to believe the SBA violated any provision of the Act.

KXIC asserts it broadcast the announcement "to meet its responsibilities as a licensee of the Federal Communications Commission to present programming that addresses issues of concern to the community," and argues that the broadcast of public service announcements like the one at issue here is per se within the legitimate press function of a radio station. Attachment A-3 at 2.

In Advisory Opinion 1978-76, the requester, a member of Congress, had produced a film on the services his office made available to constituents. A television station in the member's home district proposed to broadcast the film free of charge as a public service announcement. The Commission determined that the media exemption was "available when, in the exercise of its responsibility [as an FCC licensee] to serve the public interest, convenience and necessity, the station carries a . . . public

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service announcement to inform constituents of facilities and services provided" by the member's office.

The SBA announcement appears to meet the test articulated in AO 1978-76. KXIC asserts it broadcast the announcement in furtherance of its obligation as an FCC licensee, and, by providing a toll-free telephone number listeners could call to order SBA publications, the announcement informed listeners of services provided by the Federal government.² Attachment A-3 at 5. Additionally, KXIC's general manager, Steven Winkey, declared that KXIC's parent, Iowa City Broadcasting Co., is neither owned nor controlled by a party, committee or candidate. Id. at 4. Because the announcement appears to be within the press exemption, it does not appear to contribute a contribution to the Bush-Quayle '92 Primary Committee.

Therefore, this Office recommends that the Commission find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee and J. Stanley Huckaby, as treasurer, violated any provision of the Act with respect to MUR 3483 and close the file.

2. MUR 3605

This matter was generated by a complaint received from

2. Cf. former 47 C.F.R. § 73.1810(d)(4), the FCC's former definition of a "public service announcement", which provided that announcements for which the broadcaster made no charge and which promoted the activities and services of Federal agencies, among other entities, qualified as public service announcements. Although the FCC has removed the regulation from the Code of Federal Regulations, see 49 Fed. Reg. 33,658 (August 24, 1984), it has continued to refer to the definition. See In the Matter of Policies and Rules Concerning Children's Television Programming, 5 FCC Rcd. 7199, 7204-05 n. 10 (1990).

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Rodney G. Gregory, as general counsel to Friends of Corinne Brown, against Andrew E. Johnson, the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, and WVOJ Radio of Jacksonville, Florida.³ The complaint alleged that Johnson continued to host a call-in radio program on WVOJ after becoming a candidate for Congress, and that this arrangement may have constituted a prohibited in-kind contribution from WVOJ to the Johnson campaign. Attachment B-1. WVOJ's response indicates that both before and after becoming a candidate for Congress, Johnson paid WVOJ for two hours of live broadcast time every weekday afternoon and a two hour replay at night. See Attachment B-2 at 1. The station asserts that after Johnson became a Congressional candidate, the time was paid for by his campaign committee. Id. at 3. The committee's disclosure reports appear to corroborate the assertion.

As discussed supra at 5-6, paid political advertising falls outside the scope of the news media exemption. Furthermore, because it appears that WVOJ charged Johnson the usual and normal charge for air time consistent with 11 C.F.R.

§ 100.7(a)(1)(iii)(A), this Office recommends the Commission find no reason to believe that WVOJ violated 2 U.S.C. § 441b, and close

3. Friends of Corinne Brown was the principal campaign committee of Corinne Brown, who, like Johnson, was a candidate for the Democratic nomination for U. S. Representative from the Third Congressional District of Florida. In the September 1, 1992 Florida Democratic primary, Brown and Johnson received 43 percent and 31 percent of the vote, respectively, qualifying them for the October 1, 1992, run-off election. In the run-off, Brown was nominated, receiving 64 percent of the vote to Johnson's 36 percent. Brown was elected to the U. S. House of Representatives in the November 3, 1992 general election.

the file with respect to WVOJ.⁴

However, WVOJ's response raises the question of whether Johnson's call-in show carried a legally sufficient disclaimer. The response indicates that after Johnson became a candidate, the show was identified as a "Paid Political Broadcast." Attachment B-2 at 2. 2 U.S.C. § 441d(a)(1) provides that political advertising, "if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee." A disclaimer identifying Johnson's show as a "Paid Political Broadcast" without identifying who paid for it would not meet Section 441d(a)(1)'s requirements. Accordingly, this Office recommends that the Commission find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1).

4. 11 C.F.R. § 100.7(a)(1)(iii)(A) provides that the provision of services to a political committee at less than the usual and normal charge for such services will constitute an in-kind contribution to the committee. Both the contract between WVOJ and Johnson and the FCC's regulations governing the sale of broadcast time to candidates provide that if air time is used by candidates personally within 45 days of a primary or run-off election, the station may charge the "lowest unit charge of the station for the same class and amount of time for the same period;" prior to 45 days before an election, the station may charge not more than "the charges made for comparable use of such station time by other users." Attachment B-2 at 3; 47 C.F.R. § 73.1940(b) (reprinted at 11 C.F.R. Supp. A., p. 265 (1992 ed.)). Moreover, the rates on the contract appear generally consistent with the advertising rates quoted for WVOJ in the Gale Directory of Publications and Broadcast Media 1993, taking into consideration the time of broadcast and the station's wattage. Therefore, it appears that WVOJ charged Johnson the "usual and normal" charge for air time.

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3. MUR 3615

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This matter was generated by a complaint received from Don Brewer, Jr., chairman of the Duval County (Florida) Republican Executive Committee, against WJXT-TV in Jacksonville, Florida and the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer. The complaint alleges that WJXT broadcast a live call-in interview program featuring Democratic presidential nominee Bill Clinton on September 9, 1992.⁵ According to the complaint, WJXT invited the public and placed television sets on its premises outside its studio building so that members of the public could watch the program. It then allegedly allowed the Clinton campaign to erect a tent over the television sets and exclude persons who were not Clinton supporters from the tent. The Clinton committee purportedly "enclosed the area with police tape and police officers to prevent non-Clinton supporters from viewing the program. Approximately two hundred and fifty Clinton supporters were allowed into [the] viewing area while approximately seventy non-Clinton supporters were held away from the event by police lines." Attachment C-1. Moreover, the complaint alleges that "WJXT . . . allowed Clinton financial supporters into the station to meet privately with Governor Clinton." Id. The cumulative effect of these events, the complaint alleges, was a prohibited corporate in-kind contribution from WJXT to the Clinton campaign.

Both responses dispute the complaint's version of the facts.

5. The broadcast was apparently carried statewide over the "Florida News Network," which consists of WJXT and several other television stations.

While Clinton apparently did appear on WJXT's September 9 broadcast, both responses indicate that the television sets were brought onto WJXT's property by the Clinton campaign, not WJXT. Attachment C-2 at 3; Attachment C-3 at 3. However, WJXT management apparently did not object to the sets' presence; management had already decided to permit the general public to gather on its property while Clinton was inside the studio building, attachment C-2 at 2, and it appears that this decision may have come in response to a request from the Clinton committee. Attachment C-3 at 5. Station management explicitly gave the Clinton campaign permission to put up the tent, but not until the tent was partially erected. Attachment C-2 at 3. Neither response directly disputes the complaint's contention that persons opposed to Clinton's candidacy were excluded from the tent. However, WJXT asserts that crowd control at the site was handled by local police (including some off-duty officers with whom it contracted to direct traffic in its parking lot) and the U. S. Secret Service, and that any actions by those agencies or by Clinton supporters to exclude Clinton opponents from the premises were taken without station management's knowledge or approval. Id. at 2. Finally, WJXT denies that it hosted a "private meeting" between Clinton and "financial supporters"; instead, it asserts it hosted a small reception after the program for Clinton and local

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dignitaries. Id. at 3-4.⁶

The broadcast itself appears to fall within the "media exemption." A call-in interview with a major party nominee for President is a legitimate news story, and it makes no difference that the station is producing, as well as covering, the news story. Cf. MUR 2567 (debates produced by broadcasters are news stories within meaning of exemption). WJXT is an FCC licensee, and there is no indication that it is owned or controlled by a party, candidate, or committee. Moreover, there appears to be no factual basis for any implication in the complaint that the event after the broadcast was a Clinton fundraiser.

This Office does not concur with WJXT or the Clinton-Gore Committee's contention that any costs incurred by WJXT with regard to the tent, including the opportunity costs of allowing the Clinton Committee to use WJXT property to install TV sets and a tent were "costs incurred in covering or carrying" Clinton's appearance on the broadcast and therefore exempt pursuant to 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Contrary to WJXT's assertions, the station's ability to carry the broadcast was in no way altered by its decision to allow demonstrators on station property. In fact, granting permission to the Clinton Committee to set up TV sets and to erect a tent to shelter the TVs and Clinton supporters is entirely unrelated to the station's

6. WJXT does acknowledge that some Clinton supporters entered the station building and "were restricted to a roped off area" in the lobby, although the station claims WJXT personnel did not let them into the building. The station also acknowledges that Mr. Clinton shook hands with these supporters as he walked through the lobby on his way out. See C-2 at 12-13.

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broadcast function and should not be viewed as a "cost incurred in covering or carrying a new story."

Under the Act, corporations are prohibited from making any contribution or expenditure in connection with the election of a Federal candidate, and candidates and political committees are prohibited from knowingly accepting any such contributions or expenditures. 2 U.S.C. § 441b(a). For purposes of Section 441b, "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan advance, deposit or gift or money, or any services, or anything of value to any candidate, campaign committee, or political committee or organization in connection with a federal election." 2 U.S.C. § 441b(b)(2). In this case, the use of WJXT's property by the Clinton campaign clearly constitutes an in-kind contribution prohibited under Section 441b.⁷

WJXT advances two arguments for concluding that, even without the protection of the news media exemption, it made no contribution or expenditure in this case. First, the station argues that none of its actions were taken for the purpose of influencing a federal election as would be required by 2 U.S.C. § 431(8) under Orloski v. FEC, 795 F.2d 156 (D.C. Cir. 1986). That case involved an address at a picnic by an incumbent officeholder in his capacity as a Member of Congress; here Clinton

7. While the Corporations Division of the Office of the Secretary of State of Florida lists no corporation under the name "WJXT," the Gales Directory of Publications and Broadcast Media 1992 lists WJXT as owned by Post-Newsweek Stations, Inc. of Washington, D.C.

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spoke to Florida voters not in his capacity as Governor of Arkansas but in his capacity as a Presidential candidate.⁸ The station also argues that its actions do not constitute expenditures on the grounds that they lack "express advocacy." WJXT attempts to rely on the Supreme Court's holding "that an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of Section 441b. FEC v. Massachusetts Citizens for Life, 479 U.S. 246, 249 (1986). Respondent's argument carries no weight here since this case does not involve independent expenditures but rather in-kind contributions for which the "express advocacy" limitation does not apply.

Accordingly, it appears that WJXT made, and the Clinton campaign knowingly received, a prohibited contribution. Therefore, this Office recommends that the Commission find reason to believe that WJXT-TV violated 2 U.S.C. § 441b(a) and that the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer, knowingly violated 2 U.S.C. § 441b(a) and violated 26 U.S.C. § 9003.

4. MUR 3624

This matter was generated by a complaint received from Walter H. Shapiro of Charlotte, North Carolina, against WBT Radio of Charlotte, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, and J. Stanley Huckaby, as treasurer of both committees. The complaint alleges that by

8. WJXT actually invited both major party candidates to appear for Town Meeting programs. The Bush campaign initially declined the offer and then subsequently agreed to participate in a program broadcast on October 23, 1992. See Attachment C-2 at 2.

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broadcasting the nationally syndicated Rush Limbaugh radio program, WBT effectively broadcast three hours a day of unpaid advertising for the Bush-Quayle campaign and thereby made a prohibited in-kind contribution. Attachment D-1. On November 30, 1992, Shapiro amended his complaint, alleging that Limbaugh was in a business relationship with Roger Ailes, a consultant to former President Bush's 1988 campaign, and that Bush and then-Vice President Quayle appeared on the Limbaugh program while other candidates for President and Vice President did not. Attachment D-2.

WBT is licensed by the FCC, and is owned not by any party, candidate or committee but by Jefferson-Pilot Communications Co., a North Carolina media corporation. In a sworn affidavit in response to the complaint, Richard Jackson Whitt, WBT's general manager, stated that the Limbaugh program is a nationally syndicated "call-in" talk show broadcast for three hours every weekday. On the typical show, Limbaugh "states his opinion on some subject and then invites callers, who may express opposing or supporting views. . . . Politics may or may not be discussed on any given day." Attachment D-4 at 5-6. Limbaugh's program therefore appears to be commentary by a third party not employed by WBT; such third-party commentary is squarely within the "legitimate press function" of a broadcaster. Advisory Opinion 1982-44. WBT's broadcast of the Rush Limbaugh program thus appears to be protected by the media exemption, and there appears to have been no prohibited in-kind corporate contribution for

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either Bush-Quayle committee to accept.⁹ Accordingly, this Office recommends that the Commission find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, and J. Stanley Huckaby, as treasurer of both committees violated any provision of the Act with respect to MUR 3624, and close the file.

5. MUR 3660

This matter was generated by a complaint received from Dr. Philip W. Ogilvie of Washington, D. C. against Flower & Garden magazine. The complaint alleges that Flower & Garden's use of Barbara Bush's picture on the cover of its November 1992 issue was an illegal in-kind contribution to the presidential campaign of Mrs. Bush's husband. Attachment E-1.

As the response of KC Publishing, Inc., the parent of Flower & Garden, points out, Barbara Bush was a public figure whose interest in gardening was newsworthy for a general-interest publication devoted to that topic; the cover picture accompanied an interview with Mrs. Bush printed inside the magazine. Attachment E-2. Moreover, Flower & Garden would appear to be a "bona fide" magazine. From a xerographic copy of the magazine's cover, it would appear that Flower & Garden is in bound pamphlet form. It is published every other month, and apparently has a

9. Shapiro's amendment to the complaint, which must be read broadly even to find an allegation of conduct that would violate the Act, may be an attempt to allege that through a web of unsubstantiated relationships between the committees, Ailes, and Limbaugh, the costs associated with the program constituted in-kind contributions. No factual support is offered for such an allegation.

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regular subscription price of \$12.95 per year, a subscription and newsstand circulation of more than 570,000, and regular advertising rates. 1 Gale Directory of Publications & Broadcast Media 1993 1165. Further, it appears to contain articles of interest to the general gardening public. Therefore, Flower & Garden's interview with Barbara Bush appears to have been within its legitimate press function.

KC Publishing's response does not explicitly address the issue of ownership or control, but no available data suggest that KC Publishing is a party, committee or candidate. FEC indices reveal no campaign activity by KC Publishing or publisher John C. Prebich in the 1992 election cycle. Accordingly this Office recommends that the Commission find no reason to believe that KC Publishing, Inc., violated 2 U.S.C. § 441b, and close the file on MUR 3660.

6. MURS 3706, 3709, and 3710

These matters were all generated by complaints filed by William D. White of Pittsburgh, Pennsylvania.¹⁰ In MUR 3706, White filed a complaint against Lynn Yeakel; the Lynn Yeakel for U.S. Senate Committee and Sidney Rosenblatt, as treasurer; Senator Arlen Specter; Citizens for Arlen Specter and Stephen J. Harmelin,

10. White claims to have been an independent candidate for United States Senator from Pennsylvania in the November 3, 1992 general election. See, e.g., Attachment F-1 at 2. However, White failed to file a Statement of Candidacy with the Commission for the 1992 election, and counsel for one of the respondents in these matters stated upon information and belief that White failed to qualify for the Pennsylvania ballot. Attachment F-2 at 2.

as treasurer;¹¹ WDUQ Radio of Pittsburgh; and Kevin Gavin, WDUQ's news director. The complaint alleges that WDUQ provided free air time to the Yeakel campaign, and that this constituted an illegal in-kind contribution. It also implies that Gavin, who is WDUQ's news director, personally contributed services to the Yeakel campaign by interviewing Yeakel during the broadcast produced with WDUQ's grant of free air time. Additionally, White alleges that WDUQ's coverage of Yeakel and Specter's participation in the League of Women Voters' "Citizens' Jury" program constituted an illegal in-kind contribution from WDUQ to both campaigns.

Attachment F-1.

WDUQ's general manager, Judy Jankowski, averred in a sworn affidavit that the station made "free and essentially unrestricted time" available to all candidates for the U. S. Senate from Pennsylvania, including White. Attachment F-4 at 2. WDUQ's donation of air time was similar to that approved by the Commission in Advisory Opinion 1982-44, and to the donation of free newspaper space held to be within the media exemption in MUR 486 (cited in AO 1982-44). WDUQ's coverage of the League of Women Voters' "Citizens' Jury" appears to have been spot news coverage. Moreover, WDUQ is an FCC licensee; therefore, the broadcasts at issue appear to have been within WDUQ's legitimate press function. Additionally, WDUQ appears to be owned not by a party, committee or candidate, but by Duquesne University.

11. Senator Specter was the Republican nominee for U. S. Senator from Pennsylvania in the 1992 general election, and Yeakel was the Democratic nominee. Senator Specter was re-elected, receiving 51 percent of the vote to Yeakel's 49 percent.

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Attachment F-4 at 1. Accordingly, this Office recommends that the Commission find no reason to believe that WDUQ Radio or Kevin Gavin violated any provision of the Act with respect to MUR 3706. Because there appears to have been no prohibited contribution to accept, this Office further recommends that the Commission find no reason to believe that Lynn Yeakel, the Yeakel for Senate Committee or Sidney Rosenblatt, as treasurer, Senator Arlen Specter, or Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer violated any provision of the Act with respect to MUR 3706 and close the file.

In MUR 3709, White filed a complaint against Yeakel, the Yeakel committee, and WPXI-TV of Pittsburgh. The complaint alleged that WPXI's hour-long broadcast of a "call-in" interview featuring Yeakel constituted an illegal in-kind contribution from WPXI to the Yeakel campaign. Attachment G-1. On December 2, 1992, White amended his complaint to name each of the program's advertisers as respondents, and, on January 8, 1993, White again amended his complaint to name as a respondent Willoughby Communications, an advertising agency that acted as purchasing agent for one of the advertisers.¹² The amendments alleged that

12. The advertiser respondents in MUR 3709 are:

Lawrence Convention Center
Monro Muffler/Brake
Welch Foods, Inc.
Richardson-Vicks, Inc.
MAACO
Quality Furniture Co.
Edgar Snyder and Associates
Red Lobster Restaurants
International Paper Co.
Turnpike Toyota

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the advertisers' sponsorship of the program constituted illegal in-kind contributions to the Yeakel campaign. Attachments G-2 and G-3.

WPXI responds that the program about which White complains was a "regularly scheduled news program." Attachment G-4 at 1. Confirming this assertion, all of the advertiser respondents contend that they bought time on WPXI news programming generally, and had no knowledge (much less intent) that they were buying time on a broadcast featuring Yeakel. For instance, respondent Monro Muffler/Brake asserted that "one spot was ordered to run every other week from July 11 through October 3, 1992 in the WPXI Saturday morning 'news block' between 8 a.m. and 12 p.m." Attachment G-6. The specific placement of advertisements within that time period was apparently left up to WPXI.

Regularly scheduled news programs are protected by the media exemption. Moreover, WPXI is an FCC licensee and does not appear to be owned or controlled by a party, committee or candidate. Accordingly, it appears to be within the media exemption, and this Office recommends that the Commission find no reason to believe that WPXI-TV violated any provision of the Act with respect to MUR 3709.

As discussed supra at 6, non-political advertising on or sponsorship of material which qualifies for the media exemption is

(Footnote 12 continued from previous page)

West Penn Power Co.
Cinema World, Inc.
Medic Alert
General Mills, Inc.
Willi's Ski Shop

not prohibited by 2 U.S.C. § 441b, provided that the advertiser exercises no editorial control over the content of the exempt material. Because none of the advertiser respondents appeared to exercise editorial control over the content of WPXI's interview with Yeakel, this Office recommends that the Commission find no reason to believe that any of the advertiser respondents or Willoughby Communications violated any provision of the Act. Finally, because there appears to have been no prohibited in-kind contribution, this Office recommends that the Commission find no reason to believe that Lynn Yeakel or the Lynn Yeakel for Senate Committee, or Sidney Rosenblatt, as treasurer, violated any provision of the Act with respect to MUR 3709 and close the file.

In MUR 3710, White filed a complaint against Senator Specter, the Specter committee, and WPXI. The allegations were substantially the same as those involving Yeakel, the Yeakel committee, and WPXI in MUR 3709. Attachment H-1. However, unlike in MUR 3709, White did not name individual advertisers on the program as respondents. The allegations and responses in MUR 3710 are sufficiently similar to those in MUR 3709 for the same analysis to apply. Accordingly, this Office recommends that the Commission find no reason to believe that any respondents violated any provision of the Act with respect to MUR 3710 and close the file.

III. RECOMMENDATIONS

A. With respect to MUR 3483:

1. Find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee or J. Stanley Huckaby, as treasurer, violated any provision of the Act.

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2. Approve the appropriate letters.

3. Close the file.

B. With respect to MUR 3605:

1. Find no reason to believe that WVOJ Radio violated 2 U.S.C. § 441b, and close the file with respect to WVOJ radio.

2. Find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1).

3. Approve the attached Factual and Legal Analysis.

4. Approve the appropriate letters.

C. With respect to MUR 3615:

1. Find reason to believe that WJXT-TV violated 2 U.S.C. § 441b(a).

2. Find reason to believe that the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer, knowingly violated 2 U.S.C. § 441b(a) and violated 26 U.S.C. § 9003.

3. Approve the attached Factual and Legal Analyses.

4. Approve the appropriate letters.

D. With respect to MUR 3624:

1. Find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, or J. Stanley Huckaby as treasurer of both committees, violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

E. With respect to MUR 3660:

1. Find no reason to believe that KC Publishing, Inc., violated 2 U.S.C. § 441b.

2. Approve the appropriate letters.

3. Close the file.

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F. With respect to MUR 3706:

1. Find no reason to believe that WDUQ Radio, Kevin Gavin, Lynn Yeakel, the Lynn Yeakel for U. S. Senate Committee or Sidney Rosenblatt, as treasurer, Arlen Specter, or Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

G. With respect to MUR 3709:

1. Find no reason to believe that Lynn Yeakel, the Lynn Yeakel for U. S. Senate Committee or Sidney Rosenblatt, as treasurer, WPXI-TV, Lawrence Convention Center, Monro Muffler/Brake, Welch Foods, Inc., Richardson-Vicks, Inc., MAACO, Quality Furniture Co., Edgar Snyder and Associates, Red Lobster Restaurants, International Paper Co., Turnpike Toyota, West Penn Power Co., Cinema World, Inc., Medic Alert, General Mills, Inc., Willi's Ski Shop, or Willoughby Communications violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

H. With respect to MUR 3710:

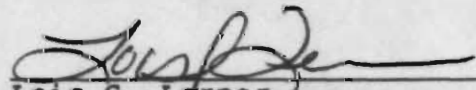
1. Find no reason to believe that Arlen Specter, Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, or WPXI-TV violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

5/17/93

BY:


Lois G. Lerner
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3624
Bush-Quayle '92 Primary Committee)
and J. Stanley Huckaby, as)
treasurer;)
Bush-Quayle '92 General Committee)
and J. Stanley Huckaby, as)
treasurer;)
WBT Radio)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 25, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3624:

1. Find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, or J. Stanley Huckaby, as treasurer of both committees, violated any provision of the Act.
2. Approve the appropriate letters as recommended in the General Counsel's report dated May 17, 1993.
3. Close the file.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner McDonald was not present.

Attest:

5-27-93
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Walter Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

RE: MUR 3624

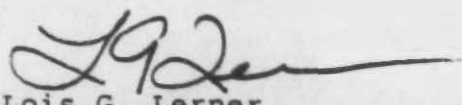
Dear Mr. Shapiro:

On May 25, 1993, the Federal Election Commission reviewed the allegations of your complaint dated September 8, 1992, as amended on November 20, 1992, and found that on the basis of the information provided in your complaint that there is no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc., or J. Stanley Huckaby as treasurer of both committees, violated any provision of the Federal Election Campaign Act of 1971, as amended ("the Act") with respect to MUR 3624. Accordingly, on May 25, 1993, the Commission closed the file in this matter.

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

93040945345



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

Bobby R. Burchfield, Esquire
General Counsel
Bush-Quayle '92 Primary Committee, Inc.
Bush-Quayle '92 General Committee, Inc.
228 South Washington Street, Suite 300
Alexandria, Virginia 22314

RE: MUR 3624
Bush-Quayle '92 Primary Committee, Inc.
Bush-Quayle '92 General Committee, Inc.
and J. Stanley Huckaby, as treasurer
of both committees

Dear Mr. Burchfield:

On September 30, 1992, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On May 25, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that the Bush-Quayle '92 Primary Committee, Inc. or the Bush-Quayle '92 General Committee, Inc. or J. Stanley Huckaby, as treasurer of both committees, violated any provision of the Act with respect to MUR 3624. 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

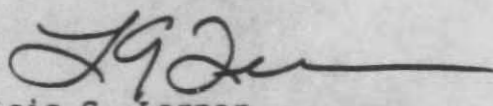
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Bobby R. Burchfield, Esquire
Page 2

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
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

Carol A. Laham, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

RE: MUR 3624
WBT Radio

Dear Ms. Laham:

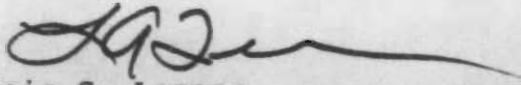
On September 30, 1992, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On May 25, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you on behalf of your client, that there is no reason to believe WBT Radio violated any provision of the Act with respect to MUR 3624. 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
General Counsel's Report

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THIS IS THE END OF MUR # 3624

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3624

DATE FILMED 6/23/93 CAMERA NO. 4

CAMERAMAN E.E.S.

93040945350



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

☒ Microfilm
☐ Public Rcds
☐ Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3624.

6/25/93

7
3
0
4
0
0
2
5
0
0
4
4
7



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 21, 1993

Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

RE: MUR 3624

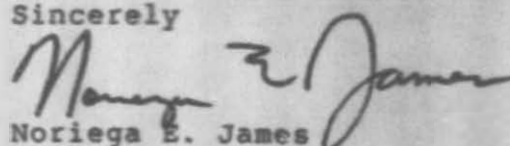
Dear Mr. Shapiro:

This is in response to your letter dated June 11, 1993, which we received on June 18, 1993, requesting certain information. Per your request, please find enclosed a copy of the Federal Election Campaign Act, the Commission's Regulations and the responses submitted on behalf of Bush-Quayle '92 Primary Committee, Bush-Quayle '92 General Committee and J. Stanley Huckaby, as treasurer of both committees, and WBT Radio.

I am also enclosing a copy of a recent decision issued by the Court of Appeals for the District of Columbia Circuit in which the Court held that the review period under 2 U.S.C. § 437g(a)(8)(B) runs from the date of dismissal. With regard to this and other legal issues, you may wish to seek the advice of counsel.

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

Sincerely


Noriega E. James
Paralegal

Enclosures

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RECEIVED
FEDERAL ELECTION COMMISSION

June 11, 1993

93 JUN 18 PM 12:40

Lois G. Lerner, Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: MUR 3624

CLOSED

Dear Ms. Lerner:

I wish to thank the Federal Election Commission and yourself most sincerely for the consideration given my complaint through the Commission's review on May 25, 1993.

For the record, please be advised I did not receive your June 8, 1993 certified letter-notice of such action until this date, as your return receipt will so indicate. I so advise this date of my first receiving notice of the Commission's action should time be a factor in my pursuance of judicial review.

I give notice herein, and of this date, of my intent to seek judicial review.

And in this regard, I am most appreciative of your advising this opportunity is open to me under the Federal Election Campaign Act of 1971, as amended. In so doing, you refer me to " 2 U.S.C. S 437g (a) (8) ".

May I ask your further kindness in forwarding a copy of the above 2 U.S.C. S 437g (a) (8) at your earliest convenience in order I may determine forthwith when, where and how I am to proceed. Also, please advise if a rebuttal to the respondent's statement is in order for reconsideration by the Commission in lieu of or prior to judicial review. Am I entitled to a copy of the full text of the respondent's response? If so, I formally request same.

In continuing appreciation, I remain

Sincerely,

Walter H. Shapiro
5228 Carmel Park Drive
Charlotte, NC 28226

Subscribed and sworn to before me on this // day of June, 1993

County of Mecklenberg
State of North Carolina

Sylvia Shapiro
Notary

My Commission Expires March 2, 1997

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