



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3706

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FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
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Nov 16 11 14 AM '92

William D. White

petitioner,

-vs-

Lynn Yeakel,
WDUQ FM 90.5,
Kevin Gavin, News Director
respondents.

MUR 3706

COMPLAINT

The above named respondents produced and distributed a program on behalf of Senate Candidate Lynn Yeakel which is an in-kind and a prohibited contribution to the campaign of Lynn Yeakel.

2 U.S.C. 431(8) - \$100.7(a)(1) defines a contribution as "...anything of value made by any person for the purpose of influencing any election for federal office..."

2 U.S.C. 431(8) - \$100.7(a)(E)(iii)(A) defines anything of value as including "all in-kind contributions" and that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution." Examples cited in this regulation of goods and services include "facilities, equipment, supplies, personnel, advertising services, membership lists..."

At the request of the Yeakel campaign, WDUQ and Kevin Gavin produced an interview format program which was aired on the afternoon of October 30, 1992 during the time segment normally reserved for a news interview program of Mr. Gavin's.

Mr. Gavin is a salaried employee of WDUQ's and the News Director for WDUQ. Mr. Gavin has vehemently opposed the use offered to the petitioner of the broadcast facilities of WDUQ and has repeatedly refused to make any mention of the petitioner in the news programming under his control. Mr. Gavin, paid by WDUQ and at the request of the Yeakel campaign, interviewed Ms. Yeakel, thereby lending his credibility and the credibility of WDUQ, to the Yeakel campaign. WDUQ, immediately following the program, disclaimed any responsibility for the content of the program, attributing the program solely to the Yeakel campaign. The disclaimer is fraudulent and deceptive as WDUQ and Mr. Gavin are substantially responsible for the content of the program.

WDUQ also produced hours of programming featuring Senator Arlen

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Specter and Lynn Yeakel and their presentations to the Citizen's Jury Project of the League of Women voters. Although WDUQ characterizes those broadcasts as news events, they still represent substantial contributions to the campaigns of clearly identified candidates.

WDUQ was informed by the petitioner of the League of Women Voter's refusal to allow his participation in the Citizen's Jury Project. The Citizen's Jury Project was a purely partisan activity. As a news event, there was no attempt made to provide the "reasonably equal coverage to all opposing candidates in the circulation or listening area" required under § 100.7(b)(2)(ii) to exempt the event from contribution reporting requirements.

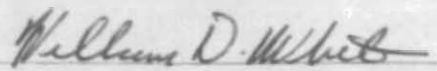
Further, Mr. Gavin's refusal on numerous occasions to make any mention of the petitioner's campaign throughout the current election season causes all news reports on the subject of the U.S. Senate race to be contributions to the campaigns of those candidates featured in the reports.

WDUQ is a public broadcaster, deriving its operating funds from various sources as contributions to the station. Many or most of these contributions are earmarked to support particular programs or activities of the station and as such may not be used to support a particular candidate's election activities.

Further, as an FCC licensee and business organization not registered with the Federal Election Commission as a political organization, WDUQ is prohibited from making political contributions to specific candidates.

WDUQ should provide a concise accounting of all funds involved in the production and broadcast of politically orientated programming, including any news programming.

I, William D. White, swear that the foregoing is correct and true to the best of my knowledge.


William D. White, petitioner
16 East Manilla Avenue
Pittsburgh, Pa. 15220
412-922-3834

A copy of this complaint has been served, via First Class
United States Mail, postage pre-paid, on November 11, 1992 to the
following;

Mr. Dave Becker, Program Manager
WDUQ FM 90.5
Des Places Communications Center
Pittsburgh, Pa. 15282

Ms. Yeakel's mailing address is unknown at this time and no copy
of this complaint has been sent to her.

Subscribed and sworn to before me

on this 12 day of November, 1992

Susan E. Stamm

Notarial Seal
Susan E. Stamm, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Sept. 19, 1994
Member, Pennsylvania Association of Notaries



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1992

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

RE: MUR 3706

Dear Mr. White:

This letter acknowledges receipt on November 16, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate, and Sidney Rosenblatt, as treasurer, Arlen Specter, Citizens for Arlen Specter, and Howard J. Creskoff, as treasurer, WDUQ and Kevin Gavin. 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 3706. 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,

A handwritten signature in dark ink, appearing to be "LEK", is written over a horizontal line.

Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

93040950138



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 20, 1992

Sidney Rosenblatt, Treasurer
Lynn Yeakel for U.S. Senate
304 C Lombard Street
Philadelphia, PA 19147

RE: MUR 3706

Dear Mr. Rosenblatt:

The Federal Election Commission received a complaint which indicates that Lynn Yeakel for U.S. Senate ("Committee") 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 3706. 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 Committee 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.

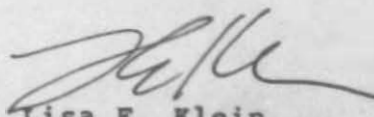
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

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Sidney Rosenblatt, Treasurer
Lynn Yeakel for U.S. Senate
Page 2

If you have any questions, please contact Craig D. Reffner, the attorney 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

93040950140



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1992

Lynn Hardy Yeakel
257 S. Ithan Avenue
Rosemont, PA 19010

RE: MUR 3706

Dear Ms. Yeakel:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3706. Please refer to this number in all future correspondence.

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

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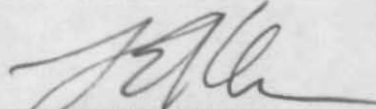
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Lynn Hardy Yeakel

Page 2

If you have any questions, please contact Craig D. Reffner, the attorney 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

93040950142



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 20, 1992

Howard J. Creskoff, Treasurer
Citizens for Arlen Specter
The Curtis Center
Suite 860S
6th & Walnut Streets
Philadelphia, PA 19106

RE: MUR 3706

Dear Mr. Creskoff:

The Federal Election Commission received a complaint which indicates that Citizens for Arlen Specter ("Committee") 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 3706. 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 Committee 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.

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Howard J. Creskoff, Treasurer
Citizens for Arlen Specter
Page 2

If you have any questions, please contact Craig D. Reffner, the attorney 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

cc: The Honorable Arlen Specter
United States Senate

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 20, 1992

The Honorable Arlen Specter
United States Senate
303 Hart Senate Office Bldg.
Washington, DC 20510

RE: MUR 3706

Dear Mr. Specter:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3706. Please refer to this number in all future correspondence.

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

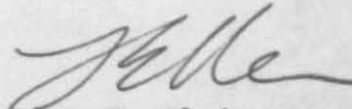
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

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The Honorable Arlen Specter
Page 2

If you have any questions, please contact Craig D. Reffner, the attorney 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

93040950146



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1992

WDUQ
Duquesne University
Pittsburgh, PA 15282

RE: MUR 3706

Dear Sir or Madam:

The Federal Election Commission received a complaint which indicates that WDUQ 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 3706. 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 WDUQ in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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WDUQ
Page 2

If you have any questions, please contact Craig D. Reffner, the attorney 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

93040950148



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1992

Kevin Gavin
c/o WDUQ
Duquesne University
Pittsburgh, PA 15282

RE: MUR 3706

Dear Mr. Gavin:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3706. Please refer to this number in all future correspondence.

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

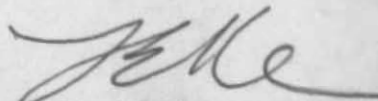
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

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Kevin Gavin
Page 2

If you have any questions, please contact Craig D. Reffner, the attorney 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

93040950150



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 23, 1992

Stephen J. Harmelin, Treasurer
Citizens for Arlen Specter
The Curtis Center
Suite 806
6th & Walnut Streets
Philadelphia, PA 19106

RE: MUR 3706

Dear Mr. Harmelin:

The Federal Election Commission received a complaint which indicates that Citizens for Arlen Specter ("Committee") 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 3706. Please refer to this number in all future correspondence.

The complaint was initially sent to Howard J. Creskoff, the Committee's assistant treasurer, due to an administrative oversight. Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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Stephen J. Harmelin, Treasurer
Citizens for Arlen Specter
Page 2

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

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

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BAKER & MCKENZIE
ATTORNEYS AT LAW

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TIJUANA
TORONTO
VALENCIA
WASHINGTON, D.C.

December 4, 1992

Craig D. Reffner, Esq.
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20464

Re: MUR 3706

Dear Mr. Reffner:

I am legal counsel to WDUQ Radio, licensed to Duquesne University in Pittsburgh, Pennsylvania. I am writing in response to the above-referenced letter of November 20, 1992 from Lisa E. Klein, Assistant General Counsel of the Federal Election Commission.

In her letter, Ms. Klein requested WDUQ's comments in connection with the above-referenced complaint by Mr. William D. White.

Enclosed is an affidavit from Ms. Judy D. Jankowski, General Manager of WDUQ-FM. Also enclosed is WDUQ's Statement of Designation of Counsel.

Please let me know if you have any question about these submissions or any other aspect of the pending complaint.

Sincerely,

Ernest T. Sanchez
Ernest T. Sanchez

ETS:ck

Enclosure

cc: Ms. Judy D. Jankowski, General Manager, WDUQ Radio

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

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AFFIDAVIT

My name is Judy Jankowski. I am the General Manager of WDUQ-FM, licensed to Duquesne University. I am providing information concerning Bill White's letter and complaint received by the Federal Election Commission on November 16, 1992.

In September 1992, WDUQ offered free and essentially unrestricted time to qualified candidates for the offices of U.S. House Districts 14 & 18 and the U.S. Senate for Pennsylvania. This offer was made in the spirit of Section 312 (a)(7) of the Federal Communications Act of 1934, which requires that Federal candidates be given "reasonable access" to broadcast stations during the sixty days before the general election. We felt an effort to permit political candidates to speak on our station without restriction was a risky but worthy undertaking.

One person requesting such free political time was Bill White, a self-described independent candidate for U.S. Senate. After a careful analysis of the legitimacy of his campaign (including reservations about the status of his required "public announcement" of candidacy and his required "substantial showing" of campaign legitimacy), it was decided to extend the offer to Mr. White. Our good-faith response to his request for airtime has been answered with the complaint filed by Mr. White with the Federal Election Commission in November.

What follows is a paragraph-by-paragraph response (where response is warranted) to Mr. White's FEC complaint.

Mr. White's assertions in Paragraph 1 are inaccurate; there was no distribution of (nor was there any attempt to distribute) WDUQ's unedited interview with U.S. Senate candidate Lynn Yeakel. As with all uses, this use was limited to WDUQ's airwaves, and it was only one of sixty uses of free and unrestricted airtime of WDUQ by nine Federal candidates. In filing his complaint Mr. White chose to omit the fact that he too was scheduled to be interviewed by Mr. Gavin in a political use of WDUQ, scheduled for Monday, November 2, 1992 (to be broadcast in a fashion IDENTICAL to the use of Ms. Yeakel), and that he himself requested a change in that schedule.



On Friday, October 30, he called WDUQ's Program Director, David Becker, to inform Mr. Becker that he did not wish to be interviewed by Mr. Gavin; his use ultimately took the form of a call-in program engineered by Mr. Becker, which aired as scheduled on November 2. The refusal of Mr. Gavin's time was entirely the decision and the responsibility of Mr. White, and thoroughly discredits his claim of an in-kind contribution to the Yeakel campaign.

Paragraphs 3 and 4 further attempt to establish the political use of Ms. Yeakel, broadcast on Friday, October 30, 1992, as an in-kind provision of goods and services to the Yeakel campaign--again, an inaccurate assessment in light of the events described above. A letter sent to all qualified candidates (including Mr. White) listed a series of five options describing possible formats for political uses on WDUQ. The broadcast in question featuring Ms. Yeakel followed the second of the five options, namely the broadcast of an unedited interview with a member of WDUQ's News Department as a political use. Mr. Gavin's voice and talent, as an element of the station's facilities, were made available to all candidates as requested for their uses on an equal basis. All candidates chose options suiting their needs (including four candidates besides Ms. Yeakel who requested unedited interviews with Mr. Gavin). Only Mr. White, as detailed in the preceding paragraph, specifically declined the opportunity to be interviewed by Mr. Gavin.

In paragraph 5, Mr. White cites Mr. Gavin's vehement opposition to the extension of an offer of free time to Mr. White as a Federal candidate, incorrectly implying a connection between this opposition and the political use by Ms. Yeakel. While Mr. Gavin's initial opinion (actively sought by Mr. Becker as a part of the process of evaluating candidacies) was that Mr. White was not a legally qualified candidate, Mr. Gavin was entirely cooperative in carrying out duties relating to all political uses of WDUQ by qualified candidates once Mr. White was determined to be qualified. Mr. White's use of the term "vehement" in describing Mr. Gavin's opposition is pejorative and a matter of opinion, and as Mr. Gavin was not the final arbiter in determining qualified candidates it is entirely irrelevant to the point at hand.

Additionally, Mr. White inaccurately paraphrases the political disclaimer broadcast by WDUQ before and following the political use by Ms. Yeakel. He erroneously claims we disavowed any responsibility for the program's content; it

was in fact stated that the views expressed were those of Ms. Yeakel and that they did not necessarily represent those of anyone on the staff or management of WDUQ--the same standard disclaimer read before and after all political uses of WDUQ's airwaves by Mr. White and all other Federal candidates.

Mr. White's assertion of Mr. Gavin's refusal to make mention of him in news programming will be addressed shortly.

Paragraphs 6 & 7 refer to broadcasts of the Western Pennsylvania Citizens Jury, a project of the Jefferson Center of Minneapolis sponsored by the Pennsylvania League of Women Voters. Mr. White inaccurately describes as "a purely partisan activity" this project of a well-known nonpartisan organization. Mr. White was not invited to participate in these hearings; as a means of making the project manageable in scope and size, the Citizens Jury set as a minimum standard for candidates a 10% standing in any of numerous political polls--a level of which Mr. White fell well short. WDUQ's coverage did not alter these proceedings in any way, shape or form, and WDUQ had no say in determining how these proceedings were devised or carried out.

Mr. White acknowledges our position on these broadcasts--that we consider these hearings to have been spot news in the form of debate coverage, aired with the good faith intention of informing the public (and hence by Federal law exempt from equal time requirements). It is worth adding that two other Pittsburgh broadcast facilities, WTAE-TV and WTAE-AM, broadcast highlights of these hearings as spot news as well.

Paragraph 8 inaccurately cites what Mr. White describes as Mr. Gavin's "refusal" to make mention of the White campaign. Beyond a self-described public declaration of his write-in candidacy, the self-professed establishment of a campaign office at his home, and his forty-nine political broadcasts on WDUQ, Mr. White exhibited no traditional elements of newsworthiness in his campaign, such as scheduled campaign stops and tours, speeches, or press releases. Rather than reflecting Mr. Gavin's "refusal" of news coverage, Mr. White's lack of campaign coverage on WDUQ (and every other media outlet in Pennsylvania, for that matter) reflects his lack of effort, skill, and experience in this aspect of campaigning.

Mr. White, in this complaint, appears to demand personal coverage of an all-but-nonexistent campaign. Were such coverage to be enacted, it could easily be construed as favoritism. Mr. White's misunderstanding of the role news broadcasts play in keeping the public informed appears to lead him to assert that news coverage should somehow be subject to Federal law governing political broadcasts--an ill-reasoned and potentially dangerous notion.

During this offer of free access to Federal candidates, WDUQ broadcast sixty political uses totalling ten hours and thirty-nine minutes of air time during the 1992 campaign. Forty-nine of those uses and three hours and thirty-one minutes of this time were taken by Bill White--time offered on the same terms to all other Federal candidates, including Mr. White's opponents. Mr. White clearly had the lion's share of political uses and air time during WDUQ's political broadcast offer. The lion's share of distortions and inaccuracies and the wasting of valuable time, energy, and taxpayer dollars are his also. In filing this complaint against WDUQ, Mr. White bites the one hand that fed him fairly, equally, and in good faith.

Signed

Judy D. Jankowski

Judy D. Jankowski
General Manager, WDUQ-FM

Date December 1, , 19 92

Subscribed and sworn to before me on this 1st day of

December , 1992

Sharon A. Crawford
Notary Public

Notarial Seal
Sharon A. Crawford, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 14, 1995
Member, Pennsylvania Association of Notaries

(SEAL)

93040950157

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3706

NAME OF COUNSEL: Ernest T. Sanchez

ADDRESS: Baker & McKenzie, Attorneys At Law

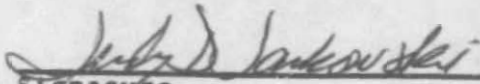
815 Connecticut Avenue, N.W.

Washington, D.C. 20006-4078

TELEPHONE: (202) 452-7000

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

November 30, 1992
Date


Signature

RESPONDENT'S NAME: Judy D. Jankowski, General Manager

ADDRESS: WDUQ Radio

Duquesne University

Pittsburgh, PA. 15282

TELEPHONE: HOME (412) 963-8498

BUSINESS (412) 434-6030

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COUNSELORS AT LAW
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BRUSSELS
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GREGORY M. HARVEY
DIAL DIRECT (215) 963-5427

December 4, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3706

Greetings:

This letter responds to the Complaint of William D. White, pursuant to Ms. Klein's letter dated November 20, 1992 addressed to our client Lynn Hardy Yeakel.

The Complaint purports to attribute a prohibited in-kind contribution to the campaign of Lynn Yeakel from a radio station described in the Complaint as WDUQ-FM 90.5 and Kevin Gavin, described in the Complaint as News Director of WDUQ.

The Complaint should be dismissed without further inquiry because the facts alleged in the Complaint constitute a description of conventional public affairs programming by a radio station.

To the extent that additional facts may be relevant concerning that public affairs programming, respondent Lynn Yeakel incorporates by reference the Affidavit of Judy Jankowski, General Manager of WDUQ-FM, a copy of which is attached hereto.

The complainant has either failed to understand or intentionally misquoted sub-section 100.7(b)(2)(ii) of the Commission's Regulations. The portion of the Regulation quoted by the complainant would be applicable only if the radio station were "owned or controlled by any political party, political committee or candidate." On information and belief, WDUQ-FM is licensed to Duquesne University, a degree-granting institution of higher education.

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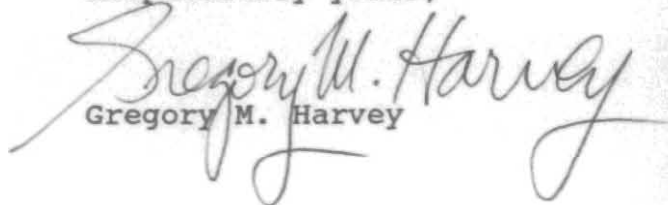
Federal Election Commission
December 4, 1992
Page 2

Moreover, the implication of the Complaint that William D. White ("White"), the complainant, was a bona fide candidate for election to the office of United States Senator is misleading. Although White, on information and belief, commenced litigation in a Federal District Court seeking an Order to compel the office of the Secretary of the Commonwealth of Pennsylvania and each County Board of Elections to circulate nomination papers for him, the relief sought was denied by the Court. Thereafter, White failed to present to the Secretary of the Commonwealth any nomination papers to cause his name to be printed on the ballot as a candidate and failed to conduct any substantial campaign as a write-in candidate. Having failed to take reasonable steps to establish himself as a bona fide candidate for the office, White should not be given any relief based on his complaining that the respondent radio station and the League of Women Voters treated him differently than they treated those candidates who had demonstrated substantial support by performing the procedures needed to place their names on the general election ballot.

This response is supported by the verification of the undersigned, who made the inquiries deemed necessary to him to establish the background concerning complainant White's failure to establish himself as a bona fide candidate.

On behalf of Lynn Yeakel, we respectfully request that the Complaint be dismissed.

Respectfully yours,


Gregory M. Harvey

GMH:pg
enclosure

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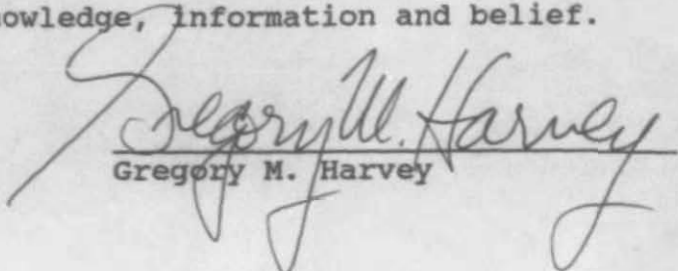
VERIFICATION TO RESPONSE

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF PHILADELPHIA

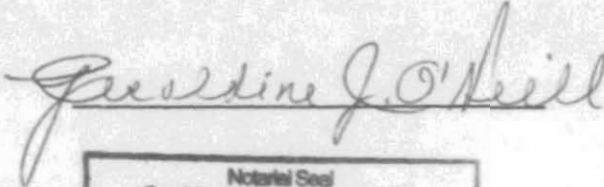
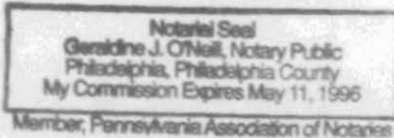
ss.:
:

Gregory M. Harvey, being first duly sworn according to law, deposes and says that he is the attorney for Lynn Hardy Yeakel, the respondent named in the foregoing Letter Response in MUR 3706 ("the Letter Response"), that he has made inquiry concerning the facts set forth in the Letter Response and that the facts set forth in the foregoing Letter Response are true and correct to the best of his knowledge, information and belief.


Gregory M. Harvey

Dated: December 4, 1992

Sworn and subscribed to
before me this 4th day
of December, 1992:

93040950161

AFFIDAVIT

My name is Judy Jankowski. I am the General Manager of WDUQ-FM, licensed to Duquesne University. I am providing information concerning Bill White's letter and complaint received by the Federal Election Commission on November 16, 1992.

In September 1992, WDUQ offered free and essentially unrestricted time to qualified candidates for the offices of U.S. House Districts 14 & 18 and the U.S. Senate for Pennsylvania. This offer was made in the spirit of Section 312 (a)(7) of the Federal Communications Act of 1934, which requires that Federal candidates be given "reasonable access" to broadcast stations during the sixty days before the general election. We felt an effort to permit political candidates to speak on our station without restriction was a risky but worthy undertaking.

One person requesting such free political time was Bill White, a self-described independent candidate for U.S. Senate. After a careful analysis of the legitimacy of his campaign (including reservations about the status of his required "public announcement" of candidacy and his required "substantial showing" of campaign legitimacy), it was decided to extend the offer to Mr. White. Our good-faith response to his request for airtime has been answered with the complaint filed by Mr. White with the Federal Election Commission in November.

What follows is a paragraph-by-paragraph response (where response is warranted) to Mr. White's FEC complaint.

Mr. White's assertions in Paragraph 1 are inaccurate; there was no distribution of (nor was there any attempt to distribute) WDUQ's unedited interview with U.S. Senate candidate Lynn Yeakel. As with all uses, this use was limited to WDUQ's airwaves, and it was only one of sixty uses of free and unrestricted airtime of WDUQ by nine Federal candidates. In filing his complaint Mr. White chose to omit the fact that he too was scheduled to be interviewed by Mr. Gavin in a political use of WDUQ, scheduled for Monday, November 2, 1992 (to be broadcast in a fashion IDENTICAL to the use of Ms. Yeakel), and that he himself requested a change in that schedule.



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On Friday, October 30, he called WDUQ's Program Director, David Becker, to inform Mr. Becker that he did not wish to be interviewed by Mr. Gavin; his use ultimately took the form of a call-in program engineered by Mr. Becker, which aired as scheduled on November 2. The refusal of Mr. Gavin's time was entirely the decision and the responsibility of Mr. White, and thoroughly discredits his claim of an in-kind contribution to the Yeakel campaign.

Paragraphs 3 and 4 further attempt to establish the political use of Ms. Yeakel, broadcast on Friday, October 30, 1992, as an in-kind provision of goods and services to the Yeakel campaign--again, an inaccurate assessment in light of the events described above. A letter sent to all qualified candidates (including Mr. White) listed a series of five options describing possible formats for political uses on WDUQ. The broadcast in question featuring Ms. Yeakel followed the second of the five options, namely the broadcast of an unedited interview with a member of WDUQ's News Department as a political use. Mr. Gavin's voice and talent, as an element of the station's facilities, were made available to all candidates as requested for their uses on an equal basis. All candidates chose options suiting their needs (including four candidates besides Ms. Yeakel who requested unedited interviews with Mr. Gavin). Only Mr. White, as detailed in the preceding paragraph, specifically declined the opportunity to be interviewed by Mr. Gavin.

In paragraph 5, Mr. White cites Mr. Gavin's vehement opposition to the extension of an offer of free time to Mr. White as a Federal candidate, incorrectly implying a connection between this opposition and the political use by Ms. Yeakel. While Mr. Gavin's initial opinion (actively sought by Mr. Becker as a part of the process of evaluating candidacies) was that Mr. White was not a legally qualified candidate, Mr. Gavin was entirely cooperative in carrying out duties relating to all political uses of WDUQ by qualified candidates once Mr. White was determined to be qualified. Mr. White's use of the term "vehement" in describing Mr. Gavin's opposition is pejorative and a matter of opinion, and as Mr. Gavin was not the final arbiter in determining qualified candidates it is entirely irrelevant to the point at hand.

Additionally, Mr. White inaccurately paraphrases the political disclaimer broadcast by WDUQ before and following the political use by Ms. Yeakel. He erroneously claims we disavowed any responsibility for the program's content; it

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was in fact stated that the views expressed were those of Ms. Yeakel and that they did not necessarily represent those of anyone on the staff or management of WDUQ--the same standard disclaimer read before and after all political uses of WDUQ's airwaves by Mr. White and all other Federal candidates.

Mr. White's assertion of Mr. Gavin's refusal to make mention of him in news programming will be addressed shortly.

Paragraphs 6 & 7 refer to broadcasts of the Western Pennsylvania Citizens Jury, a project of the Jefferson Center of Minneapolis sponsored by the Pennsylvania League of Women Voters. Mr. White inaccurately describes as "a purely partisan activity" this project of a well-known nonpartisan organization. Mr. White was not invited to participate in these hearings; as a means of making the project manageable in scope and size, the Citizens Jury set as a minimum standard for candidates a 10% standing in any of numerous political polls--a level of which Mr. White fell well short. WDUQ's coverage did not alter these proceedings in any way, shape or form, and WDUQ had no say in determining how these proceedings were devised or carried out.

Mr. White acknowledges our position on these broadcasts--that we consider these hearings to have been spot news in the form of debate coverage, aired with the good faith intention of informing the public (and hence by Federal law exempt from equal time requirements). It is worth adding that two other Pittsburgh broadcast facilities, WTAE-TV and WTAE-AM, broadcast highlights of these hearings as spot news as well.

Paragraph 8 inaccurately cites what Mr. White describes as Mr. Gavin's "refusal" to make mention of the White campaign. Beyond a self-described public declaration of his write-in candidacy, the self-professed establishment of a campaign office at his home, and his forty-nine political broadcasts on WDUQ, Mr. White exhibited no traditional elements of newsworthiness in his campaign, such as scheduled campaign stops and tours, speeches, or press releases. Rather than reflecting Mr. Gavin's "refusal" of news coverage, Mr. White's lack of campaign coverage on WDUQ (and every other media outlet in Pennsylvania, for that matter) reflects his lack of effort, skill, and experience in this aspect of campaigning.

Mr. White, in this complaint, appears to demand personal coverage of an all-but-nonexistent campaign. Were such coverage to be enacted, it could easily be construed as favoritism. Mr. White's misunderstanding of the role news broadcasts play in keeping the public informed appears to lead him to assert that news coverage should somehow be subject to Federal law governing political broadcasts--an ill-reasoned and potentially dangerous notion.

During this offer of free access to Federal candidates, WDUQ broadcast sixty political uses totalling ten hours and thirty-nine minutes of air time during the 1992 campaign. Forty-nine of those uses and three hours and thirty-one minutes of this time were taken by Bill White--time offered on the same terms to all other Federal candidates, including Mr. White's opponents. Mr. White clearly had the lion's share of political uses and air time during WDUQ's political broadcast offer. The lion's share of distortions and inaccuracies and the wasting of valuable time, energy, and taxpayer dollars are his also. In filing this complaint against WDUQ, Mr. White bites the one hand that fed him fairly, equally, and in good faith.

Signed

Judy D. Jankowski
Judy D. Jankowski
General Manager, WDUQ-FM

Date December 1., 19 92

Subscribed and sworn to before me on this 1st day of

December, 1992

(SEAL)

Sharon A. Crawford
Notary Public
Notarial Seal
Sharon A. Crawford, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 14, 1995
Member, Pennsylvania Association of Notaries

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW
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GREGORY M. HARVEY
DIAL DIRECT (215) 963-5427

December 15, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

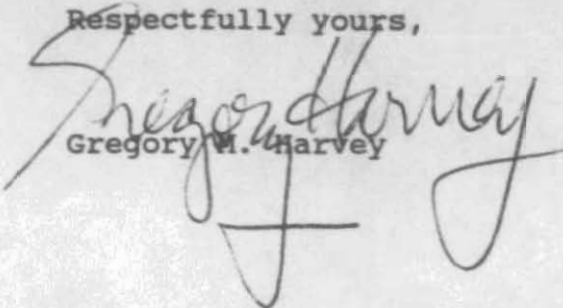
Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3706

Greetings:

Enclosed please find a fully-executed Statement of
Designation of Counsel regarding the above-captioned matters.

Respectfully yours,


Gregory M. Harvey

GMH:pg
enclosure

93040950166

93040950166

STATEMENT OF DESIGNATION OF COUNSEL

3706

MUR _____

NAME OF COUNSEL: GREGORY M. HARVEY

ADDRESS: 2000 ONE LOGAN SQUARE

PHILADELPHIA, PA 19103-6993

TELEPHONE: (215) 963-5427

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

12/1/92
Date

Lynn Hardy Yeakel
Signature

RESPONDENT'S NAME: LYNN HARDY YEAKEL

ADDRESS: 1735 MARKET STREET, 35TH FLOOR

PHILADELPHIA, PA 19103

TELEPHONE: HOME (215) 525-3143

BUSINESS (215) 994-1330

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(609) 798-330050 TRENTON ROAD
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(215) 949-1488

DIRECT DIAL: 665

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JAMES M. PENNY, JR.
H. CRAIG LEWIS
THORLEY C. MILLS, JR.**
WARREN W. AYRES
CHARLES M. GOLDEN
THOMAS A. LEONARD
LOUIS B. KUPPERMAN
JOSEPH R. DOUGHER
PAUL S. DIAMOND
ANN G. VERBER***
JEFFREY S. BATOFF*
SCOTT E. DENMAN
VICTOR ALAN YOUNG
CATHLEEN C. MYERS
CHARLES S. K. SCUDDER
MICHAEL C. RICHMAN
RUTH RUDBARG WESSEL
DANIEL P. FINEGAN*
RICHARD P. LINBURG
WILLIAM J. LEONARD
J. ROBERT STOLTZFUS
J. ERIC RATHBURN
BETH GOLDEN FRIEDER
JAMES R. THOMPSON*
JONATHAN H. NEWMAN***
ELIZABETH A. LLOYD
ROGER P. CAMERON*
JOHN V. O'HARA*
D. MADELAINE MILLER*
JOHN D. BENSON*
KIRSTEN WELTGE*
KATHERINE V. WANT*

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ALLEN WEINBERG
LARRY BESNOFF
MICHAEL P. WEINSTEIN + +
JOHN E. RYAN
MARJORIE H. GORDON
RONNIE L. BLOOM
JACQUELINE T. SHULMAN*
EDMOND M. GEORGE*
ELIZABETH D. SHEVLIN*
NICHOLAS PODUSLENKO*
THOMAS F. WILD*
STEVEN A. HABER +
DENISE H. CANUSO*
JOEL R. SPIVACK***
SUSAN M. SYGENDA*
CATHERINE C. PYUNE*
JULIE A. WILLIAMSON*

* ALSO MEMBER OF NEW JERSEY BAR
** ALSO MEMBER OF OHIO BAR
*** ALSO MEMBER OF D.C. BAR
+ ALSO MEMBER OF N.J. BAR AND D.C. BAR
++ ALSO MEMBER OF N.J. & FLORIDA BAR
+++ ALSO MEMBER D.C. AND MASSACHUSETTS BAR

VIA FEDERAL EXPRESS

Craig D. Reffner, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matters Under Review 3706

Dear Mr. Reffner:

As we have discussed, on behalf of Citizens for Arlen Specter ("CAS"), I am submitting this letter response to the "complaints" filed in the above-captioned Matters Under Review. I have also included designation of counsel forms for each matter.

CAS believes that these complaints are frivolous and, indeed, abusive. In all three matters, William White -- apparently an unsuccessful senatorial candidate -- raises the same legal "issue": whether the coverage and participation of the media, the press, and citizens groups respecting Pennsylvania's 1992 Senatorial Election somehow constituted prohibited "in-kind" contributions under the

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TO: Craig D. Reffner, Esquire
December 1, 1992
Page 2

Federal Election Code. The Federal Election Commission ("the Commission") must reject this plainly frivolous contention, as it would grossly impair constitutionally protected activity. To the extent that CAS is obligated to respond further to each MUR, it incorporates its response in MUR 3710, a copy of which I have included for your convenience. In sum, the Commission should dismiss each matter as to CAS for the following reasons:

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MUR 3706. White directs this complaint against Lynn Yeakel, radio station WDUQ, and News Director Kevin Gavin, not CAS. Nonetheless, White gratuitously complains that WDUQ's coverage of Senator Specter's presentations to the League of Women Voters' Citizens Jury constituted a "prohibited" contribution. This is, of course, nonsense. The Commission's regulations explicitly provide that the costs incurred in such news coverage are neither "contributions" nor "expenditures" within the meaning of the Federal Election Campaign Act. 11 CFR §§100.7(b)(2), 100.8(b)(2). See U.S.C. §431(9)(B).

In sum, CAS reiterates that these "complaints," insofar as they are directed against CAS, are frivolous and abusive. It is manifest that the actions complained of are constitutionally protected discussion and debate respecting the Senatorial Election. See generally Bemis Pentecostal Church v. State of Tennessee, 731 S.W.2d 897, 905 (Tenn. 1987). Accordingly, the Commission should dismiss all the complaints as to CAS.

Respectfully,

Paul S. Diamond

Paul S. Diamond

PSD:mem

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3706

NAME OF COUNSEL: Paul S. Diamond, Esquire

ADDRESS: Obermayer, Rebmann, Maxwell & Hippel

14th Floor, Packard Building

Philadelphia, PA 19102-2688

TELEPHONE: (215) 665-3000

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

12/11/92
Date

Patrick Meehan
Signature

RESPONDENT'S NAME: Citizens for Arlen Specter

BY: Patrick L. Meehan, Esquire
Campaign Manager

ADDRESS: _____

8th Floor, Curtis Center

Philadelphia, PA 19107

TELEPHONE: HOME(---) -----

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 STEVEN A. HABER+
 DENISE H. CANUSO*
 JOEL R. SPWACK***
 SUSAN M. BYSENDA*
 CATHERINE C. PYLURE*
 JULIE A. WILLIAMSON*

December 11, 1992

* ALSO MEMBER OF NEW JERSEY BAR
 ** ALSO MEMBER OF OHIO BAR
 *** ALSO MEMBER OF D.C. BAR
 + ALSO MEMBER OF N.J. BAR AND D.C. BAR
 ++ ALSO MEMBER OF N.J. & FLORIDA BAR
 +++ ALSO MEMBER D.C. AND MASSACHUSETTS BAR

VIA FEDERAL EXPRESS

Lisa E. Klein, Esquire
 Assistant General Counsel
 Federal Election Commission
 999 E Street, N.W.
 Washington, D.C. 20463

Re: MUR 3710

Dear Ms. Klein:

On behalf of the Citizens For Arlen Specter ("CAS"), I am writing in response to your November 14, 1992 letter.

William White -- apparently an unsuccessful senatorial candidate -- "complains" that CAS received an "in-kind contribution" purportedly "prohibited" by law when WPXI-TV "produced a live, hour-long telephone interview program" featuring Senator Specter. See 2 U.S.C. §431(8). The Federal Election Commission's ("the Commission's") regulations explicitly provide that the costs incurred by the kind of news program at issue here

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TO: Lisa E. Klein, Esquire
December 11, 1992
Page 2

are neither "contributions" nor "expenditures" within the meaning of the Federal Election Campaign Act. 11 C.F.R. §§100.7(b)(2), 100.8(b)(2). See 2 U.S.C. §431(9)(B). Indeed, any contrary suggestion would imperil legitimate news coverage and public debate respecting federal elections and thus certainly violate the Constitution. See generally Bemis Pentecostal Church v. State of Tennessee, 731 S.W.2d 897, 905 (Tenn. 1987).

Accordingly, because it is manifest that CAS has complied with the law, the Commission should immediately dismiss the White complaint.

Respectfully,

Paul S. Diamond

Paul S. Diamond

PSD:mem

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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-Quayle '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.

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.

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.

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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

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.

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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:

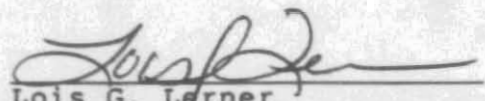
1. Find no reason to believe that Arlen Specter, Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, or WPXI-TV violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

5/17/93

BY:


Lois G. Lerner
Associate General Counsel

93040950196

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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.

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 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 as
recommended in the General Counsel's
report dated May 17, 1993.

(continued)

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3. Close the file.

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

Attest:

5-25-93
Date

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

93040950198



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

RE: MUR 3706

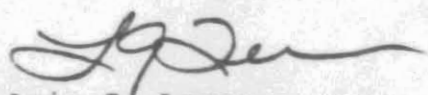
Dear Mr. White:

On May 25, 1993, the Federal Election Commission reviewed the allegations of your complaint dated November 12, 1992, and found that on the basis of the information provided in your complaint that there is 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 with respect to MUR 3706. Accordingly, on May 25, 1993, the Commission closed the file in this matter.

The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

93040950199



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

Sidney D. Rosenblatt, Treasurer
Lynn Yeakel for U. S. Senate Committee
3120 North 17th Street
Philadelphia, PA 19132

RE: MUR 3706
Lynn Yeakel for U. S. Senate
Committee and
Sidney D. Rosenblatt, as
treasurer

Dear Mr. Rosenblatt:

On November 20, 1992, the Federal Election Commission notified you 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, that there is no reason to believe the Lynn Yeakel for U. S. Senate Committee and you, as treasurer, violated any provision of the Act with respect to MUR 3706. 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

A handwritten signature in dark ink, appearing to be "Lois G. Lerner", is written over a horizontal line.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

93040950200



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 8, 1993

Gregory M. Harvey, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

RE: MUR 3706
Lynn Yeakel

Dear Mr. Harvey:

On November 20, 1992, the Federal Election Commission notified your client, Lynn Yeakel, 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 Lynn Yeakel violated any provision of the Act with respect to MUR 3706. 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

A handwritten signature in dark ink, appearing to read "Lois G. Lerner", is written over the typed name.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

93040950201



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

Paul S. Diamond, Esquire
Obermayer, Rebmann, Maxwell & Hippel
14th Floor, Packard Building
Philadelphia, PA 19102-2688

RE: MUR 3706
Citizens for Arlen Specter and
Stephen J. Harmelin, as
treasurer

Dear Mr. Diamond:

On November 20, 1992, the Federal Election Commission notified your clients, Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, 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 clients, that there is no reason to believe that Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, violated any provision of the Act with respect to MUR 3706. 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

93040950202



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 8, 1993

The Honorable Arlen Specter
United States Senate
530 Hart Office Building
Washington, DC 20510

RE: MUR 3706
The Honorable Arlen Specter

Dear Senator Specter:

On November 20, 1992, the Federal Election Commission notified you 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, that there is no reason to believe you violated any provision of the Act with respect to MUR 3706. 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

93040950203



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

Ernest T. Sanchez, Esquire
Baker & McKenzie, Attorneys At Law
815 Connecticut Avenue, N.W.
Washington, DC 20006-4078

RE: MUR 3706
WDUQ Radio

Dear Mr. Sanchez:

On November 20, 1992, the Federal Election Commission notified your client, WDUQ Radio, 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 WDUQ Radio violated any provision of the Act with respect to MUR 3706. 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

A handwritten signature in dark ink, appearing to read "L. G. Lerner", is written over the typed name of the Associate General Counsel.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

93040950204



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 8, 1993

Kevin Gavin
c/o WDUQ
Duquesne University
Pittsburgh, PA 15282

RE: MUR 3706
Kevin Gavin

Dear Mr. Gavin:

On November 20, 1992, the Federal Election Commission notified you 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, that there is no reason to believe you violated any provision of the Act with respect to MUR 3706. 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

93040950205



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3706

DATE FILMED 6/23/93 CAMERA NO. 4

CAMERAMAN 6/17/93

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