



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 4099

DATE FILMED 3/19/96 CAMERA NO. 2

CAMERAMAN E.E.S.

26043724252

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

OCT 24 9 43 AM '94

LAW OFFICE
OZLOSKI & HINGA
111 NORTH CEDAR CREST BOULEVARD
ALLENTOWN, PENNSYLVANIA 18104
(610) 433-2363

TELEFAX: (610) 433-4765

RICHARD J. OZLOSKI
MARGARET GILLIGAN HINGA
ROBERT PANDALON
ANTHONY W. COSTAERO

October 19, 1994

MUR 4099

Lawrence N. Noble, Esquire
General Counsel
F.E.C.
999 E Street, N.W.
Washington, D.C. 20463

re: WABC/American Broadcast Corp./Capital Cities

Dear Mr. Noble:

Please be aware that WABC, a corporate owned radio station, has spent hundreds of thousands of dollars in the 1993-1994 election cycle expressly advocating the election of Chuck Haytaian and the defeat of Senator Frank R. Lautenberg in the 1994 United States Senate election in New Jersey in violation of 2 U.S.C. §441(b) and §441(d)

Almost every day, Monday through Friday, for four hours a day, 3:00 P.M. to 7:00 P.M. WABC put a paid employee, Bob Grant, on the air who uses the four hours block of time to expressly advocate the election of Chuck Haytaian and the defeat of Frank R. Lautenberg.

As you are aware, corporate media have been given a de facto exception from 2 U.S.C. §441(b), et seq. to permit an intermittent "editorial" advocating the election of a candidate. Traditionally, that exception has been narrowly construed.

WABC has made a decision at the highest levels of corporate policy to allow that "exception" to gobble up the prohibition. By committing four hours of air time during "prime time", 5 days a week, WABC has illegally contributed and subsidized a Federal election in violation of Federal law, expending hundreds of thousands of dollars expressly advocating the election of Chuck Haytaian and the defeat of Frank R. Lautenberg.

WABC is believed to be a wholly owned corporation asset of Capital Cities, Inc. which is owned by the American Broadcasting Corp. with offices at 2 Penn Plaza, 17th Floor, New York, NY 10121.

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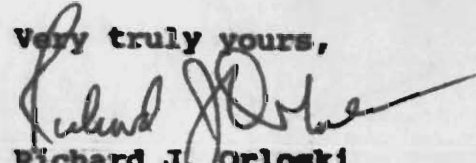
Lawrence N. Noble, Esquire

-2-

October 19, 1994

Please deem this a formal verified complaint to initiate action under 2 U.S.C. §441(b).

Very truly yours,


Richard J. Orloski

RJO:ldj

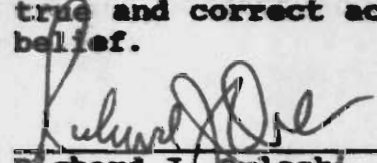
cc: Honorable Frank R. Lautenberg
Honorable Chuck Haytaian
Bob Grant, WABC

COMMONWEALTH OF PENNSYLVANIA)

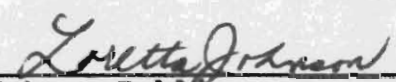
) SS:

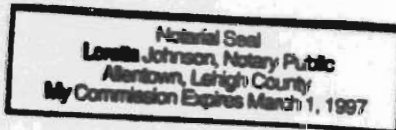
COUNTY OF LEHIGH)

I, Richard J. Orloski, being duly sworn according to law, depose and say that the facts herein are true and correct according to my best knowledge, information and belief.


Richard J. Orloski

SWORN TO and Subscribed
before me this 19th day
of October, 1994.


Notary Public



36043724254



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 26, 1994

Richard J. Orloski, Esq.
Orloski & Minge
111 North Cedar Crest Boulevard
Allentown, PA 18104

RE: MUR 4099

Dear Mr. Orloski:

This letter acknowledges receipt on October 24, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4099. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

26043724255



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 26, 1994

Ronald Gravino, Treasurer
Maytaian - U.S. Senate '94
P.O. Box 1994
Hackettstown, NJ 07840

RE: MUR 4099

Dear Mr. Gravino:

The Federal Election Commission received a complaint which indicates that Maytaian - U.S. Senate '94 ("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 4099. 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.

26043724256

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

cc: Garabed "Chuck" Haytaian

26043724257



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 26, 1994

Don P. Bouloukos, President
WABC-AM RADIO, Inc.
77 W. 66th St.
New York, NY 10023

RE: MUR 4099

Dear Mr. Bouloukos:

The Federal Election Commission received a complaint which indicates that WABC-AM RADIO, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4099. 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 WABC-AM RADIO, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 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.

26043724258

If you have any questions, please contact Joan McEnery at (202) 219-1400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

26043724259



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 26, 1994

Bob Grant
The Bob Grant Show
WABC-AM RADIO
Capital Cities/ABC Inc.
Two Penn Plaza
New York, NY 10121

RE: MUR 4099

Dear Mr. Grant:

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 4099. 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.

26043724260

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

26043724261

ROBERT ALAN DAHL, Esq.

1156 FIFTEENTH STREET, N.W., SUITE 550
WASHINGTON, D.C. 20005
TEL 202/466-8081
FAX 202/828-5625

November 9, 1994

Ms. Joan McEnery
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4099

Dear Ms. McEnery:

This letter is the response of Haytaian - U.S. Senate '94 ("the Committee") and Ronald Gravino, as treasurer, to the complaint filed by Richard J. Orloski in MUR 4099. The Committee requests the Federal Election Commission ("the FEC") dismiss this complaint for failing to specifically allege the Committee violated any provision of the Federal Election Campaign Act of 1971, as amended ("the FECA" or "the Act"), 2 U.S.C. § 431 et seq., or, alternatively, that the Commission find no reason to believe the Committee has violated the Act based on the legal and factual considerations discussed herein.

First, while the Committee understands the FEC's interest in notifying all potential respondents in an enforcement matter, and appreciates being alerted to these allegations, the Committee would dispute that it has truly been named a respondent under the complaint as written, or that the complaint is itself facially adequate. For a complaint to conform with the requirements of the Commission's regulations, it should "... clearly identify as a respondent each person or entity who is alleged to have committed a violation" and "... contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 CFR § 111.5(d)(1)&(3). Moreover, a complaint "... should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant." 11 CFR § 111.5(d)(4).

The complaint does not meet these requirements. In particular, the complaint fails to specifically name the Committee as a respondent or allege any violations of the Act by the Committee (nor, of course, provide any substantiation for such allegations). The complaint does not assert any involvement of the Committee whatsoever in the activity described -- except, arguably, as a passive beneficiary. Thus, the complaint itself provides no grounds for inferring any violations of the FECA by the Committee.

Second, the Commission is certainly aware of the significant Constitutional protection afforded news coverage and commentary regarding elections. The FEC's regulations recognize the wide latitude permitted the press in reporting and editorializing about political candidates,

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FEDERAL ELECTION COMMISSION - MUR 4099

Page 2

and provide a specific "press exemption" for news stories, editorials and commentaries from consideration as "contributions" or "expenditures." 11 CFR §§ 100.7(b)(2) and 100.8(b)(2). The complainant is wrong in suggesting the press exemption has traditionally been narrowly construed. It is difficult to imagine an area of protected First Amendment speech less amenable to intrusive regulation or restriction. The Committee has no reason to doubt the persons and entities associated with the radio program at issue in this matter would qualify for the protection of the FEC's exemption for legitimate press activity.

Third, to the extent any allegation against the Committee could be imputed from the complaint in MUR 4099, it would necessarily require a conclusion the Committee has somehow caused or specifically encouraged Mr. Grant to go beyond the bounds of protected editorial commentary, by which the Committee could be said to have 'received' an impermissible corporate contribution. The Committee absolutely denies having caused or encouraged any such result, however. While the Committee certainly does not discourage favorable press attention, it has not sought special treatment from this radio commentator or any other media personality, and is unaware of any particular influence it may have upon Mr. Grant's conduct or viewpoints. As demonstrated by the enclosed affidavit of Larry Purpuro, consultant to the Committee, contacts between the Committee or Mr. Haytaian and Mr. Grant have been purely within the type of conventional interaction between political campaigns and the media. Specifically, Mr. Purpuro notes the Committee's advertising strategy was determined by media consultants and did not single out Mr. Grant's radio program or his station for disproportionate expenditures.

Bob Grant's opinions are controversial in New Jersey. His commentaries have become a political issue, and perhaps an economic issue for his station and sponsors. His behavior should not create a legal issue for the FEC, however, as his commentaries would appear to be clearly protected by the First Amendment and, in any event, not within the Committee's control.

Thus, the Committee urges the Commission to dismiss this complaint as it may pertain to the Committee. The Committee also suggests the complainant, in keeping with the best of American traditions, either call in the program to register his disapproval of Mr. Grant's views, or simply change the station on his radio.

Sincerely,



Robert Alan Dahl

Enclosures: Affidavit of Larry Purpuro
Memorandum of Karen DeMasters

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Haytaian

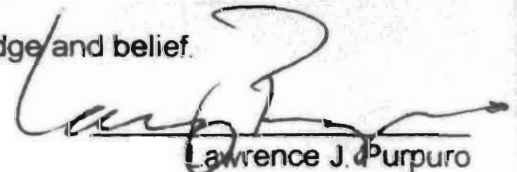
U. S. S E N A T E

Affidavit of
Lawrence J. Purpuro

Lawrence J. Purpuro, first being duly sworn, deposes and says:

- 1) I, Lawrence J. Purpuro, serve as management consultant to Haytaian - US Senate '94. In that capacity, I supervise both the campaign's press and paid media operations.
- 2) In such capacity, I had only one contact with the Bob Grant Show. On October 27, I received a call from a John Manelli (one of the show's producers) advising me that a tape from another radio station, which aired inflammatory remarks, was available from him. He thought we would value this information given the previous week's controversy over supposed inflammatory remarks by his program's host. Mr. Manelli sent me the tape but we never had any further contact.
- 3) Over the course of this nine month race, on a limited number of occasions the press office contacted various radio call-in programs including but not limited to WABC, WNBC, WKXW, etc.... There was never any special communication or treatment expected nor received from WABC's Bob Grant Show as compared to other programs. The attached memorandum from our press spokesman reflects accurately this campaign's contact with a multitude of radio stations.
- 4) With regard to our purchase of radio advertising, this campaign relied on our media consultant for guidance as to which stations to place our commercials. The recommendations we received from Murphy Pintak & Gautier were presented to the campaign in the final month of operation. The attached memorandum from our media firm outlines in further detail their media buying relationship with stations and their activities to procure radio advertising. The Bob Grant Show and WABC were not singled out for special or disproportionate advertising expenditures by the Haytaian campaign.

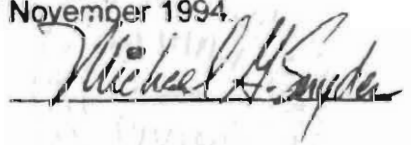
The above information is true and correct to the best of my knowledge and belief.


Lawrence J. Purpuro

Sworn and subscribed to by the said Lawrence J. Purpuro this 8th day of November 1994.

MICHAEL G. SNYDER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Apr. 7, 1998

My commission expires _____


Michael G. Snyder



Mr. Purpuro's affidavit references a memorandum from their media consultants. Unfortunately, a copy of the memorandum was omitted from the affidavit's mailing package; the memorandum will be submitted to the FEC as soon as possible.

Robert Alan Dahl

26043724265

Haytaian

U. S. S E N A T E

From: Karen DeMasters

Re: Radio appearances

Date: Nov. 4, 1994

I contacted Bob Busci, producer for the Bob Grant Show, on March 9 to see if Haytaian could be on the Bob Grant show on Haytaian's campaign announcement day. I then contacted Busci on three or four occasions over the summer when Haytaian had unusual campaign events. I usually left a message on Busci's tape machine saying Chuck Haytaian was doing something interesting that day.

I contacted Bob Vosburgh of WCBS AM on similar occasions.

During the summer, I contacted Bernard McGuirk, Don Imus' producer on WFAN, on several occasions and sent him tapes of Haytaian's commercials. Haytaian subsequently was on the Imus Show twice, once during the summer and once in October.

I talked with or left messages for Gary Dellabate, producer of the Howard Stern show on K-Rock, numerous times during the last eight months (at least a dozen or more times). Haytaian has not been on the Stern show.

I also contacted regional and local New Jersey radio stations numerous times, whenever Haytaian was in their respective areas or whenever he had unusual campaign events.

The press office also tried to cooperate with all radio stations that requested interviews to provide them access to Haytaian.



VIA FAX TO GENERAL COUNSEL

202/219-3923

STATEMENT OF DESIGNATION OF COUNSEL

NR 4099

NAME OF COUNSEL: ROBERT ALAN DART

ADDRESS: 1156 15th STREET

SUITE 350

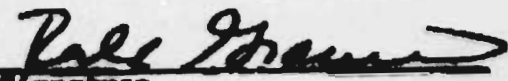
WASHINGTON, DC 20003

TELEPHONE: 202/466-8051

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OFFICE OF GENERAL
COUNSEL

Nov 4 3 54 PM '94

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.

11/4/94
Date
Signature

RESPONDENT'S NAME: RONALD R. GRAVINO, TREASURER

ADDRESS: P.O. BOX 225

COLONIA, NJ 07067

HOME PHONE: 609/883-6223

BUSINESS PHONE: 908/753-1212

26043724267

WILMER, CUTLER & PICKERING

2445 M STREET, N.W.
WASHINGTON, D. C. 20037-1420

TELEPHONE (202) 863-6000
FACSIMILE (202) 835-0818
420-8893, 420-4930, 293-3928
TELEX 440239 WCPH US

ROGER M. WITTEN

DIRECT LINE (202)

663-8770

November 3, 1994

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COMMISSION
ADMINISTRATIVE DIVISION

Nov 10 9 34 AM '94
4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE ON (447) 839-4466
FACSIMILE ON (447) 839-3837
TELEX 8813818 WCP LON

15 RUE DE LA LOI
B-1040 BRUSSELS
TELEPHONE ON (322) 831-0903
FACSIMILE ON (322) 830-4382

By Fax and Mail

Joan McEnery, Esq.
Attorney
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4092

Dear Joan:

As I stated in our telephone call yesterday, we will be representing the respondent WABC-AM Radio, Inc. in connection with MUR 4099. I will forward an executed Statement of Designation of Counsel.

As we discussed, our client's response is now due on or before November 16, 1994, which is 15 days after November 1, the date our client received the Commission's October 26 letter. We respectfully request that the deadline for our client's response be extended to December 16, 1994 for the following reasons. We were just retained to represent the client in this matter. We will need to spend some time reviewing the potentially relevant facts relating to the broadcasts in question. In addition, we have other pressing litigation commitments which make it impossible to devote full time to this matter at this point. Thank you for your anticipated cooperation.

Very truly yours,



Roger M. Witten

cc: Margaret Ackerley

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COUNSEL

Nov 10 11 56 AM '94

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 9, 1994

Mr. Roger Witten
Wilmer, Cutler & Pickering
2445 M St., N.W.
Washington, D.C. 200037

RE: MUR 4099

Dear Mr. Witten:

This is in response to your letter dated November 3, 1994, which we received on November 10, 1994, requesting an extension of twenty days until December 16, 1994 to respond to the complaint filed against your client WABC-AM Radio Inc. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on December 16, 1994.

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

Sincerely,

Mary D. Taksar

Mary Taksar, Attorney
Central Enforcement Docket

26043724269

ROBERT ALAN DAHL, Esq.

1156 FIFTEENTH STREET, N.W., SUITE 550
WASHINGTON, D.C. 20005
TEL 202/466-8051
FAX 202/828-5625

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November 10, 1994

Ms. Joan McEnery
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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COUNSEL

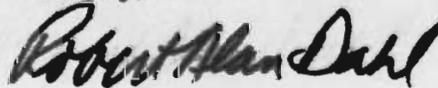
Nov 14 10 26 AM '94

RE: MUR 4099

Dear Ms. McEnery:

A copy of the memorandum from Murphy, Pintak & Gautier, media consultants to Haytaian - U.S. Senate '94, is enclosed. This memorandum was referenced in the affidavit of Larry Purpuro that was previously submitted to you. Please add this document to the Haytaian Committee's response to the complaint in this matter.

Sincerely,



Robert Alan Dahl

26043724270

AGENCY INC.
**MURPHY &
PINTAK GAUTIER**

As media consultants to Haytaian U.S. Senate '94, we evaluated, ordered and purchased all television and radio advertising for the campaign. Our professional services include analyzing ratings data for TV and radio programming to determine which outlets reach our target audience most effectively. Upon approval of our recommendations by the campaign, we then order and purchase air time.

With regard to our radio campaign, we purchased time in both the Philadelphia and New York Markets, on eight of the highest-rated stations on October 25 through election day. The Haytaian Senate campaign at no time requested a specific program on any a station.

Cliff Pintak
Treasurer
Murphy Pintak Gautier Agency, Inc.

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OFFICE OF GENERAL
COUNSEL

Nov 14 10 26 AM '94

WILMER, CUTLER & PICKERING

2445 M STREET, N.W.

WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000

FACSIMILE (202) 663-6363

ROGER M. WITTEN
DIRECT LINE (202)
663-6170

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 344711 830-4400
FACSIMILE 011 344711 830-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 3221 231-0900
FACSIMILE 011 3221 230-4322

FRIEDRICHSTRASSE 95
BRIEFKASTEN 29
10017 BERLIN
TELEPHONE 011 4930 2043-3601
FACSIMILE 011 4930 2043-3630

November 8, 1994

Joan McEnery, Esq.
Attorney
Federal Election Commission
999 E St., N.W.
Washington, D.C.

Re: MUR 4099

Dear Joan:

I enclose an executed original of Statement of
Designation of Counsel in this matter. Thank you.

Very truly yours,



Roger M. Witten

Enclosure

cc: Sam Antar
Margaret Ackerley

Nov 17 9 36 AM '94

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OFFICE OF GENERAL
COUNSEL

Nov 17 8 55 AM '94

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COMMISSION
MAIL ROOM

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STATEMENT OF DESIGNATION OF COUNSEL

NDR 4099

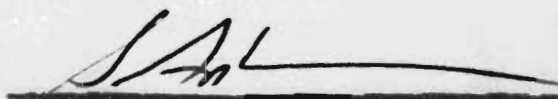
NAME OF COUNSEL: Roger Witten and Margaret AckerlyADDRESS: Wilmer, Cutler & Pickering
2445 M. Street, N.W.Washington, D.C. 20037TELEPHONE: (202) 663-6000RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

NOV 17 9 30 AM '94

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 7, 1994

Date


Signature Sam Antar
RESPONDENT'S NAME: WABC-AM Radio, IncADDRESS: c/o Capital Cities/ABC, Inc.77 West 66 StreetNew York, NY 10023ATTENTION: Sam Antar, V.P. Law & RegulationBUSINESS PHONE: (212) 456-6222

26043724273

WILMER, CUTLER & PICKERING

2445 M STREET, NW
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

ROGER M. WITTEN
DIRECT LINE (202)
663-6170

Nov 28

9 35 AM '94

COMMISSION GARDENS
D-1040 BRUSSELS
TELEPHONE ON (471) 838-4466
FACSIMILE ON (471) 838-3537

RUE DE LA LOI 15 WETSTRAAT
8-1040 BRUSSELS
TELEPHONE ON (322) 231-0903
FACSIMILE ON (322) 230-4382

FRIEDRICHSTRASSE 95
BRIEFKASTEN 29
D-10117 BERLIN
TELEPHONE ON (4930) 2643-3601
FACSIMILE ON (4930) 2643-3630

November 8, 1994

Joan McEnery, Esq.
Attorney
Federal Election Commission
999 E Street, N.W.
Washington, D.C.

Re: MUR 4099

Dear Joan:

I am enclosing a Statement of Designation of Counsel
form for this matter executed by Mr. Grant.

Very truly yours,

Roger Witten

Roger M. Witten

Enclosure

Nov 28 9 57 AM '94

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OFFICE OF GENERAL
COUNSEL

26043724274

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4099

NAME OF COUNSEL: Roger Witten and Margaret Ackerly

ADDRESS: Wilmer, Cutler & Pickering

2445 M Street, N.W.

Washington, DC 20037

TELEPHONE: 202-663-6000

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OFFICE OF GENERAL
COUNSEL

NOV 28 9 57 AM '94

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.

Date

11-9-94

Signature

Bob Grant

Bob Grant

RESPONDENT'S NAME: Bob Grant

ADDRESS:

c/o WABC-AM Radio, Inc.

2 Penn Plaza, 17th Floor

New York, NY 10121

HOME PHONE:

BUSINESS PHONE:

212-613-3800

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WILMER, CUTLER & PICKERING

2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420
TELEPHONE (202) 663-8000
FACSIMILE (202) 663-8363

WASHINGTON
LONDON
BRUSSELS
BERLIN

December 15, 1994

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

Attention: Joan McEnery, Esq.

Re: MUR 4099

Dear Mr. Noble:

On behalf of respondents Capital Cities/ABC, Inc., WABC-AM Radio, Inc., and Bob Grant (collectively "WABC"), we submit this response to the frivolous complaint Richard J. Orloski filed against WABC and Grant, alleging that WABC's broadcast of the Bob Grant Show in the weeks prior to the 1994 United States Senate election constituted an unlawful contribution or expenditure under the Federal Election Campaign Act ("FECA") because, it is alleged, Bob Grant repeatedly endorsed Chuck Haytaian's ("Haytaian") candidacy for the United States Senate. For the reasons set forth below, the Federal Election Commission ("FEC") should find no "reason to believe" and should summarily dismiss the complaint.

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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SUMMARY

For ten years, Grant has hosted a talk radio program on WABC, a wholly-owned subsidiary of Capital Cities/ABC, Inc. See Attachment A. WABC employs Grant to engage, inform, and entertain its listeners through commentary and discussion of political and other issues. To this end, Grant provides commentary on myriad issues of public interest and encourages call-in listeners and interview guests to do likewise. WABC neither hired nor employs, nor compensates, Grant for the purpose of influencing Haytaian's election to the United States Senate. *Id.* Moreover, as with all WABC talk radio commentators, Grant's terms and conditions of employment with WABC are in no way affected by the particular views he expresses or editorial positions he takes in support of or against any candidate. *Id.*

WABC's broadcast of the Bob Grant Show does not constitute an "expenditure" or "contribution" under the terms of the FECA and the regulations promulgated thereunder. 2 U.S.C. § 431; 11 C.F.R. §§ 100.7 and 100.8. The "media exemption" in the FECA clothes WABC's broadcast with immunity as a "news story, commentary, or editorial distributed through the facilities of any broadcasting station" 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Contrary to the unsupported implication in the complaint, the media exemption bestows on media entities such as WABC the unfettered right to cover and comment on political campaigns. As numerous FEC

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Lawrence M. Noble, Esq.
December 15, 1994
Page 3

Advisory Opinions and federal court decisions instruct, nothing in the FECA and companion regulations restricts the content of the commentary insulated by the media exemption, the range of permissible topics, the format of discussion, or the length of time devoted to such commentary. Thus, Grant's political commentary fits squarely within the media exemption, and the complaint is without merit.

DISCUSSION

By its express terms, the FECA excludes from the definition of "expenditure" all costs incurred in covering or carrying "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate[.]" 2 U.S.C. § 431(9)(B)(i) (emphasis added); see also 11 C.F.R. § 100.8(b)(2). A parallel provision in 11 C.F.R. § 100.7(b)(2) provides an identical exemption from the definition of "contribution": "Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not a contribution" (emphasis added).

Consistent with this plain language, the legislative history of the media exemption reflects Congress' desire to afford broad protection to the very activity at issue in the

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instant complaint. "[I]t is not the intent of Congress . . . to limit or burden in any way the first amendment freedoms of the press and of association. [The media exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 4 (1974) (emphasis added).

Guided by the statute, regulations, and legislative history, FEC Advisory Opinions and jurisprudence uniformly underscore the expansive protection that the media exemption affords news stories, political commentary, and editorials distributed through the facilities of a media entity. This authority teaches that the media exemption turns on only two criteria: (1) the medium -- i.e. whether the communication emanates from a broadcast station, newspaper, magazine, or periodical publication in the ordinary course of its business; and (2) the nature of the communication -- i.e. whether it is a news story, commentary, or editorial.^{1/}

Both criteria are indisputably met here. Indeed, Orloski's complaint does not dispute that WABC satisfies both criteria.

^{1/} Of course, the FECA and regulations impose a threshold bar against media entities "owned or controlled by any political party, political committee, or candidate[.]" 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 100.7(b)(2) and 100.8(b)(2). However, the attached affidavit affirms -- and Orloski does not dispute -- that WABC-AM Radio is not owned by any political party, political committee, or candidate. See Attachment A.

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Orloski rests his complaint instead on the frivolous assertion that the media exemption has been "narrowly construed" and limited to "intermittent" editorials. Complaint at 1. He seeks to engraft novel limitations of dubious constitutionality on the media exemption -- the duration of the broadcast, the time of day during which it appears, and its content -- that clash with the unequivocal language of the FECA, the regulations, and existing authority. Orloski's gloss on the media exemption -- namely, that it should apply only to "intermittent editorials" -- ignores that the statutory and regulatory language not only does not qualify the term "editorial," but also expressly includes (and does not qualify) the terms news story and commentary. 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Not surprisingly, Orloski's complaint cites no FEC authority or case law, and we have found none, that supports his argument. That is because courts and the Commission scrutinize the nature of the communication solely to discern whether the press entity was conducting a legitimate press function in the ordinary course of business when it disseminated the challenged news story, commentary, or editorial. See, e.g., Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 250-51 (1986) ("MCFL"); Reader's Digest Ass'n, Inc. v. Federal Election Comm'n, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 1982-44; AO 1980-109.

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This Commission's decisions require dismissal of Orloski's complaint. In AO 1982-44, the Commission held that the media exemption extends to a television station's donation of two hours of free air time to the Democratic and Republican National Committees to discuss public policy issues, encourage viewer support, and solicit contributions. The Commission anchored its conclusion on the absence of any content-based or temporal restrictions to the media exemption. "The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the 'commentary' exemption nor do they set a time limit as to the length of the commentary." AO 1982-44.² Citing with approval H.R. Rep. 93-1239, the FEC underscored the consistency between the absence of such limitations on the media exemption and Congress' intent to protect the "unfettered right" of the media to critique political candidates and party platforms. Id.; see also AO 1980-109 (concluding that the media exemption permits a financial newspaper to endorse, and urge readers to contribute to, a candidate for the U.S. House of Representatives because the media exemption "insure[s] the right of the media to cover and comment on election campaigns"); MUR 3366 (finding "no reason to

² The FEC in AO 1982-44 further explained that the media exemption insulates not just broadcasters themselves, but also "third persons" who offer their political commentary through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.

believe" that KABC-TV, KABC Radio, and Capital Cities/ABC, Inc. violated the FECA by employing a candidate for federal office as a political commentator because, inter alia, the news exemption insulated the daily broadcasts);³ AO 1987-8 (opining that the media exemption extends to corporate sponsorship of candidate interviews published in a national magazine and aired on television).

Nor does the case law support Orloski's position. In MCFL, the Supreme Court held that a special edition newsletter published by Massachusetts Citizens for Life, Inc. ["MCFL"] did not fit within the media exemption of 2 U.S.C. § 431(9)(B)(i) due to the marked production differences between the special edition and MCFL's regular newsletter. MCFL, 479 U.S. at 250-51.⁴ The MCFL Court's media exemption analysis focused, not on whether the publication constituted an "intermittent editorial," but rather on whether it was produced by a media entity in the normal course of its business.

The analysis MCFL employed was presaged by Reader's Digest, 509 F. Supp. at 1214-15, and Federal Election Comm'n v.

³ Although two "Statements of Reasons" were issued in MUR 3366, both concluded that the news exemption applied to the challenged conduct. See MUR 3366 (Statement of Reasons, Chairman Joan D. Aikens and Commissioner Lee Ann Elliot) (Statement of Reasons, Vice Chairman Scott E. Thomas and Commissioner John Warren McGarry).

⁴ The Court did not decide whether the media exemption applies to MCFL's regular newsletter. MCFL, 479 U.S. at 250.

Phillips Publishing, Inc., 517 F. Supp. 1308, 1312-13 (D.D.C.

1981) -- and has been consistently employed by the Commission in its Advisory Opinions. In Reader's Digest, the court stated that the media exemption turns on "whether the press entity was acting as a press entity in making the distribution complained of."

Reader's Digest, 509 F. Supp. at 1215. There, a magazine publisher sought to enjoin the Commission from investigating whether the publisher's dissemination of a video tape to other media outlets violated the FECA ban on corporate expenditures. The court concluded that the media exemption would apply if the magazine publisher had acted "in its magazine publisher capacity" by distributing a news story through its facilities, but not if the publisher "was acting in a manner unrelated to its publishing function." Id.

The court in Phillips Publishing embraced Reader's Digest and likewise held that the media exemption applied to a newsletter publisher's solicitation letter to existing and potential subscribers that strongly emphasized the newsletter's opposition to United States Senator Edward M. Kennedy. Phillips Publishing, 517 F. Supp. at 1312-13. In seeking to enforce two Commission orders requiring the publisher to answer written interrogatories, the Commission maintained that the challenged mailing stood apart from the publisher's typical publications and thus fell outside the media exemption. The district court concluded that the media exemption insulated the promotional

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mailing, "[b]ecause the purpose of the solicitation letter was to publicize [the newsletter] and obtain new subscribers, both of which are normal, legitimate press functions[.]" *Id.* at 1313. In dicta, the court suggested that "[c]learly further investigation would be warranted if [the newsletter] had not been in existence for over 10 years but rather had been established for the sole purpose of supporting or opposing a candidate, or if the FEC had some evidence linking [the newsletter] with a political organization or candidate." *Id.* at 1314.

Similarly, the Commission has opined that the media exemption applies to a media entity "engaged in the normal press-business of covering and commenting on political campaigns," AO 1989-28, but not to non-media corporate entities. For instance, whereas AO 1982-44 and AO 1980-109 held that the media exemption applied to the typical activities of a television station and financial newspaper, AO 1989-28 denied the media exemption to the Maine Right to Life Committee's ("MRLC") financing of a newsletter because MRLC is "not the type of entity contemplated by Congress when it adopted the . . . press exemption." *Id.* See also AO 1980-90 (media exemption does not extend to the Atlantic Richfield Company's independent distribution of taped interviews of U.S. Presidential candidates because the exemption "was intended to apply to election related communications by a broadcaster, newspaper or other form of recognized public media"). In each instance, the Commission did not base its

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decision on the content of the commentary or the length of air time devoted thereto. Nor could we find any instance in which the Commission denied the media exemption to any news story, commentary, or editorial, produced by a media entity, that reflected the subjective views of the broadcaster, publisher, or commentator.

What this authority teaches is that the media exemption applies to "any" news story, commentary, or editorial that a media entity produces in its ordinary course of business. 2 U.S.C. § 431(9)(B)(i) (emphasis added); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). The Bob Grant Show clearly satisfies this standard. Unlike the MRLC in AO 1989-28, and Atlantic Richfield in AO 1980-90, WABC is a media corporation and aired the Bob Grant Show as an integral component of its business objective to inform, engage, and entertain listeners. See Attachment A. In short, WABC-AM Radio's broadcast of the Bob Grant Show constituted a "legitimate press function[]." Phillips Publishing, 517 F. Supp. at 1313; AO 1980-109. Moreover, whereas the unusual production form and distribution of the "special edition" in MCFL glaringly stood apart from MCFL's typical newsletter, the production characteristics of Grant's challenged political commentary unmistakably "associated it . . . with the normal [Bob Grant Show production]." MCFL, 479 U.S. at 250.

In sum, the media exemption protects the "unique role that the press plays in 'informing and educating the public,

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offering criticism, and providing a forum for discussion and debate.'" Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 667-68 (1990) (upholding the constitutionality of an identical media exemption in § 51 of the Michigan Campaign Finance Act) (quoting First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 781 (1978)).^{5/} Grant's political commentary advances these objectives and fits squarely within the media exemption. To hold otherwise, and to accept Orloski's gloss, would ignore the unequivocal language of, and Congressional intent underlying, the media exemption and would raise grave First Amendment issues.

^{5/} Cf. Columbia Broadcasting Sys., Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 117 (1973) (plurality) ("The power of a privately owned newspaper to advance its own political, social, and economic views is bounded by only two factors: first, the acceptance of a sufficient number of readers -- and hence advertisers -- to assure financial success; and second, the journalistic integrity of its editors and publishers).

Lawrence M. Noble, Esq.
December 15, 1994
Page 12

CONCLUSION

For the foregoing reasons, Orloski's complaint against Capital Cities/ABC, Inc., WABC-AM Radio, Inc., and Bob Grant should be dismissed.

Respectfully submitted,


Roger M. Witten
Alex E. Rogers

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
Tel: (202) 663-6000

Counsel for Capital
Cities/ABC; WABC-AM Radio; and
Bob Grant

December 15, 1994

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ATTACHMENT A

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 16 10 34 AM '94

RE: MUR 4099

AFFIDAVIT OF
DONALD P. BOULOUKOS

CITY OF NEW YORK)
COUNTY OF NEW YORK) ss:

DONALD P. BOULOUKOS, being duly sworn, deposes and
says:

1. I am President and General Manager of radio
station WABC-AM ("WABC") in New York, New York, which is owned
and operated by WABC-AM Radio, Inc. I am also President of
Capital Cities/ABC Radio Stations - Group I, a group of radio
stations which includes WABC.

2. WABC-AM Radio, Inc., the licensee of WABC, is a
wholly-owned subsidiary of ABC Holding Company, Inc., which is
wholly-owned by Capital Cities/ABC, Inc. Neither WABC-AM Radio,
Inc., ABC Holding Company, Inc., nor Capital Cities/ABC, Inc. is
owned or controlled by any political party, political committee
or political candidate.

3. WABC's format is "TALKRADIO," in which WABC's on-

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air hosts offer their opinions on matters of public concern and speak with listeners who call in to the station. The hosts' commentaries and their dialogue with listeners form the heart of the "TALKRADIO" format.

4. WABC employs Bob Grant as the host of a radio call-in program on weekday afternoons between the hours of 3:00 PM and 7:00 PM. Mr. Grant has hosted radio programs in New York continuously since 1970. He has been employed in that role at WABC since 1984. During his twenty-four years in the New York market, Mr. Grant has consistently engaged in provocative discussions with his listeners on a wide range of topics, with an emphasis on politics and current events. Mr. Grant's program also attracts newsmakers and public officials as guests.

5. As part of his programs, Mr. Grant has regularly offered his views on local and national elections, and discussed those views with callers and studio guests who both agree and disagree with his comments. As the article attached as Exhibit A indicates, Mr. Grant's commentary can provoke a spirited exchange of views. Indeed, this dialogue is the focus of all of WABC's programming. The station seeks to attract listeners who are interested in politics and current events, and who are engaged by the opinions expressed on WABC.

6. As a broadcast licensee, WABC is obligated, pursuant to FCC rules and policies, to meet the needs and

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interests of the listeners in its New York area community of license through its programming. The management of WABC has determined that the Bob Grant program, and other similar programs, in which the host is given wide-ranging discretion to express his personal views in order to foster debate on public issues, including political campaigns, is one appropriate means for meeting its public interest obligations. WABC permits Bob Grant and other talk show hosts to editorialize on behalf of candidates on their programs. WABC does not require that Grant (or any other host) obtain management approval for the political views he expresses, nor do those views necessarily represent those of WABC or its corporate parents.

7. Mr. Grant has never solicited funds for any candidate while on the air at WABC.


Donald P. Bouloukos

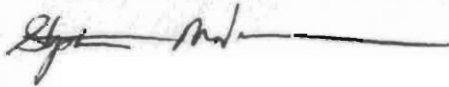
Sworn and subscribed to before me
this 13 day of December, 1994.

STEPHANIE McNAMARA
Notary Public, State of New York
No. 41-4964549

Qualified in Queens County, 1997
Commission Expires April 2, 1997

Notary Public

My commission expires: 4-2-97



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EXHIBIT A

REGION

Whitman Rebukes Bob Grant on the Air

Avoid 'Troubling' Racial Comments, New Jersey Governor Asks

By IVER PETERSON

Gov. Christine Todd Whitman went back on the Bob Grant radio talk show this evening to politely lecture the talk show host on his responsibility to avoid the sometimes "troubling" racial comments that occasionally come from him and his callers.

Mr. Grant maintains that his comments about blacks, relayed to Mrs. Whitman by a coalition of black clergymen during the recent Senate campaign in New Jersey, were "edited" and taken out of context.

While she stopped short of calling the afternoon talk show host a pro-racist, the Republican Governor said that reports of his comments have upset her.

"I was very disturbed by what I had read, both in quotes by you and from callers," the Governor said. Last month, she had declared she would no longer appear with Mr. Grant, whose show is broadcast on WABC-AM (770) and was one of her most ardent on-the-air supporters during her campaign for the governorship last year.

The Governor has frequently made racial tolerance the theme of her speeches, and she gained national attention late last winter, during her first months in office, when she organized symposia and showings of the Holocaust film, "Schindler's List," to counter a visit to New Jersey campuses by Khalid Abdul Mohammed. Mr. Mohammed, a mem-

ber of the Nation of Islam, has made frequent speeches attacking Jews, homosexuals and others.

The Governor told Mr. Grant that as a high-profile commentator, he had a responsibility to restrain both his own remarks and those of his callers.

Mr. Grant has called South African blacks "savages," has referred to the Rev. Dr. Martin Luther King with an unprintable term and has asserted that the United States immigration problems would be solved if Haitian boat people were left to drown.

She said she agreed to go on the show today to "clear the air" about her feelings. Mr. Grant, has complained several times that Mrs. Whitman had used him as a campaign tool and thrown him away.

"I felt like a pair of old shoes on a rainy day, the kind that are discarded when one has no further use for them," Mr. Grant told some friends this morning over a cup of coffee at a Woodbridge, N.J., diner.

In response to the New Jersey black ministers' complaints, Mrs. Whitman had said that she would no longer appear on Mr. Grant's show if the allegations about him were true.

On the show, Mr. Grant attempted to make the Governor recant.

"I didn't really believe at that time, and I don't believe now, sitting here looking at you, that you really enunciated those words," he said.

Although the Governor spent most of the 45-minute interview avoiding a direct challenge to Mr. Grant, on this occasion she stood her ground.

"Well, Bob, I can't back off those" words, she said. She added that she had not personally heard Mr. Grant use racial language.

Mrs. Whitman mentioned she had read an article in New York magazine that described Mr. Grant's remarks about allowing Haitian boat people to drown. The cover story was headlined, "Why He Hates Blacks."

Mr. Grant replied, "Articles can distort."

"Well," Mrs. Whitman replied, "there were more than one, and that's where the concern comes."

After a few more words, the Governor added, "If we can get anybody to stop for a moment and think for a little bit about what their words imply, then I think we've made a difference."

Thereupon, Mr. Grant went on to explain his comments on the Haitians, noting that the country had been getting daily reports of Haitian boat people adrift in the Caribbean Sea and being picked up by Coast Guard cutters.

"I said, 'Well, if we stop picking them up, they would stop making those boats, and sailing out from Port-au-Prince and risking their lives.'"

Mr. Grant explained that a caller had asked, "And what if they



Maria Almeida/The New York Times

The radio talk show host Bob Grant shook hands yesterday with Christine Todd Whitman, the New Jersey Governor, who chided him about racial comments made by him or attributed to him on his program.

drown?"

"I said, 'If they drown, word would go back to Port-au-Prince and they would stop.'"

Mrs. Whitman made no effort to rebut or rebuke him, and after a moment's silence, the host went to a

caller.

"People felt very personally betrayed, I know. It was a very interesting phenomenon all those letters," Mrs. Whitman went on. "My feeling in response to them is, I'm not betraying you. I'm trying to be a

leader and fulfilling my responsibility."

She noted that her administration plans a new program next month, called "New Jersey — Many Faces, One Family," which will return to a theme of tolerance.

BEFORE THE FEDERAL ELECTION COMMISSION FEB 6 12 10 PM '96

In the Matter of

)
) Enforcement Priority
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

This report is the General Counsel's Report to recommend that the Commission no longer pursue the identified lower priority and stale cases under the Enforcement Priority System.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

A critical component of the Priority System is identifying those pending cases that do not warrant the further expenditure of resources. Each incoming matter is evaluated using Commission-approved criteria and cases that, based on their rating, do not warrant pursuit relative to other pending cases are placed in this category. By closing such cases, the Commission is able to use its limited resources to focus on more important cases.

Having evaluated incoming matters, this Office has identified 10 cases which do not warrant further pursuit relative to the other pending cases.¹ A short description of each case and the factors leading to assignment of a relatively

1. These matters are: MUR 4165 (Attachment 2); MUR 4187 (Attachment 3); MUR 4188 (Attachment 4); MUR 4199 (Attachment 5); MUR 4211 (Attachment 6); MUR 4212 (Attachment 7); MUR 4216 (Attachment 8); MUR 4224 (Attachment 9); MUR 4243 (Attachment 10); MUR 4245 (Attachment 11).

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low priority and consequent recommendation not to pursue each case is attached to this report. See Attachments 2-11. As the Commission requested, this Office has attached the responses to the complaints for the externally-generated matters and the referrals for matters referred by the Reports Analysis Division in instances where this information was not previously circulated. See Attachments 2-11.

B. Stale Cases

Investigations are severely impeded and require relatively more resources when the activity and evidence are old. Consequently, the Office of General Counsel recommends that the Commission focus its efforts on cases involving more recent activity. Such efforts will also generate more impact on the current electoral process and are a more efficient allocation of our limited resources. To this end, this Office has identified 33 cases that

do not

warrant further investment of significant Commission resources.²

2. These matters are: PM 308 (Attachment 12); RAD 94L-29 (Attachment 13); RAD 94L-34 (Attachment 14); RAD 94NF-10 (Attachment 15); RAD 94NF-13 (Attachment 16); MUR 4027 (Attachment 17); MUR 4028 (Attachment 18); MUR 4033 (Attachment 19); MUR 4042 (Attachment 20); MUR 4045 (Attachment 21); MUR 4047 (Attachment 22); MUR 4049 (Attachment 23); MUR 4057 (Attachment 24); MUR 4059 (Attachment 25); MUR 4062 (Attachment 26); MUR 4065 (Attachment 27); MUR 4066 (Attachment 28); MUR 4067 (Attachment 29); MUR 4069 (Attachment 30); MUR 4070 (Attachment 31); MUR 4077 (Attachment 32); MUR 4079 (Attachment 33); MUR 4086 (Attachment 34); MUR 4089 (Attachment 35); MUR 4095 (Attachment 36); MUR 4099 (Attachment 37); MUR 4102 (Attachment 38); MUR 4104 (Attachment 39); MUR 4111 (Attachment 40); MUR 4113 (Attachment 41); MUR 4117 (Attachment 42); MUR 4127 (Attachment 43); and MUR 4132 (Attachment 44).

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Since the recommendation not to pursue the identified cases is based on staleness, this Office has not prepared separate narratives for these cases. As the Commission requested, the responses to the complaints for the externally-generated matters and the referrals for the internally-generated matters are attached to the report in instances where this information was not previously circulated. See Attachments 12-44.

This Office recommends that the Commission exercise its prosecutorial discretion and no longer pursue the cases listed below in Section III.A and III.B effective February 13, 1996. By closing the cases effective February 13, 1996, CED and the Legal Review Team will respectively have the additional time necessary for preparing the closing letters and the case files for the public record.

III. RECOMMENDATIONS

A. Decline to open a MUR and close the file effective February 13, 1996 in the following matters:

- 1) PM 308
- 2) RAD 94L-29
- 3) RAD 94L-34
- 4) RAD 94NF-10
- 5) RAD 94NF-13

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B. Take no action, close the file effective February 13, 1996, and approve the appropriate letter in the following matters:

- 1) MUR 4027
- 2) MUR 4028
- 3) MUR 4033
- 4) MUR 4042
- 5) MUR 4045
- 6) MUR 4047
- 7) MUR 4049
- 8) MUR 4057
- 9) MUR 4059
- 10) MUR 4062
- 11) MUR 4065
- 12) MUR 4066
- 13) MUR 4067
- 14) MUR 4069
- 15) MUR 4070
- 16) MUR 4077
- 17) MUR 4079
- 18) MUR 4086
- 19) MUR 4089
- 20) MUR 4095
- 21) MUR 4099
- 22) MUR 4102
- 23) MUR 4104
- 24) MUR 4111
- 25) MUR 4113
- 26) MUR 4117
- 27) MUR 4127
- 28) MUR 4132
- 29) MUR 4165
- 30) MUR 4187
- 31) MUR 4188
- 32) MUR 4199
- 33) MUR 4211
- 34) MUR 4212
- 35) MUR 4216
- 36) MUR 4224
- 37) MUR 4243
- 38) MUR 4245

Date

2/6/96

Lawrence M. Noble
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

**In the Matter of
Enforcement Priority**

)
) **Agenda Document #X96-13**
)

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission, do hereby certify that the Commission decided by votes of 4-0 to take the following action in the above-captioned matter:

A. Decline to open a MUR and close the file effective March 5, 1996, in the following matters:

- 1) PM 308
- 2) RAD 94L-29
- 3) RAD 94L-34
- 4) RAD 94MF-10
- 5) RAD 94MF-13

B. Take no action, close the file effective March 5, 1996, and approve appropriate letter in the following matters:

- 1) MUR 4027
- 2) MUR 4028
- 3) MUR 4033
- 4) MUR 4042
- 5) MUR 4045
- 6) MUR 4047
- 7) MUR 4049
- 8) MUR 4057
- 9) MUR 4059

(continued)

26043724298

Federal Election Commission
Certification: Enforcement Priority
March 6, 1996

Page 2

10) MUR 4062
11) MUR 4065
12) MUR 4066
13) MUR 4067
14) MUR 4069
15) MUR 4070
16) MUR 4077
17) MUR 4079
18) MUR 4086
19) MUR 4089
20) MUR 4095
21) MUR 4099
22) MUR 4102
23) MUR 4104
24) MUR 4111
25) MUR 4113
26) MUR 4117
27) MUR 4127
28) MUR 4132
29) MUR 4165
30) MUR 4187
31) MUR 4188
32) MUR 4199
33) MUR 4211
34) MUR 4212
35) MUR 4216
36) MUR 4224
37) MUR 4243
38) MUR 4245

(continued)

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Federal Election Commission
Certification: Enforcement Priority
March 5, 1996

Page 3

Commissioners Aikens, Elliott, McDonald, and Thomas
voted affirmatively on the above-noted decisions.
Commissioner McGarry was not present.

Attest:

3/7/96
Date

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

26043724300



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 7, 1996

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Richard J. Orloski, Esquire
Orloski & Hinga
111 North Cedar Crest Boulevard
Allentown, PA 18104

RE: MUR 4099

Dear Mr. Orloski:

On October 24, 1994, the Federal Election Commission received the complaint you filed alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action in the matter. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 5, 1996. This matter will become part of the public record within 30 days.

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,

Mary L. Taksar (JBT)

Mary L. Taksar, Attorney
Central Enforcement Docket

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

26043724301



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 7, 1996

Robert Alan Dahl, Esquire
1156 15th Street
Suite 550
Washington, DC 20003

RE: MUR 4099
Haytaian - U.S.
Senate '94 and Ronald
Gravino, as treasurer

Dear Mr. Dahl:

On October 26, 1994, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against Haytaian - U.S. Senate '94 and Ronald Gravino, as treasurer. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 5, 1996.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Mary L. Taksar (JBT)

Mary L. Taksar, Attorney
Central Enforcement Docket

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26043724302



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 7, 1996

Roger Witten, Esquire
Margaret Ackerley, Esquire
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

RE: MUR 4099
WABC-AM Radio, Inc., Bob Grant

Dear Mr. Witten and Ms. Ackerley:

On October 26, 1994, the Federal Election Commission notified your clients, WABC-AM Radio, Inc., and Bob Grant, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against WABC-AM Radio, Inc., and Bob Grant. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 5, 1996.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Mary L. Taksar (FBH)
Mary L. Taksar, Attorney
Central Enforcement Docket

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

26043724303



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4099

DATE FILMED 3/19/96 CAMERA NO. 2

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