



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 4187

DATE FILMED 3/19/96 CAMERA NO. 2

CAMERAMAN SES

96043724613



WILLEAM A. CHOBY, D.M.D., M.P.A.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 21 1 07 PM '95

December 10, 1994

Retha Dixon
Docket Chief
Federal Election Commission
Washington, D. C. 20463

MUR 4187

Dear Retha,

I have recently encountered several printed articles that I believe could represent in-kind contributions by candidate-friendly news corporations. It is my understanding that a "contribution is anything of value given to influence a federal election, 100.7 (a)(1)." Furthermore, I understand that corporations are prohibited from making any contributions in connection with federal elections. Please evaluate the following complaints regarding this matter. Thank-you.

Sincerely

Willeam A Choby DMD
1905 Bates Drive
Johnstown, Pa 15905
814-255-3866

96043724614



WILLEAM A. CHOBY, D.M.D., M.P.A.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MUR 4187

FEB 21 1 07 PM '95

A complaint on the editorial endorsement of U.S. Rep. John P. Murtha Pa. 12th District by the Johnstown Tribune Democrat of 425 Locust Street, Johnstown, Pa. 15907-0340 on October 25, 1994.

I believe that the Tribune Democrat's editorial endorsement of incumbent Congressman John P. Murtha during a contested federal election is in effect an "in-kind" contribution of free advertising that goes beyond the newspaper's First Amendment rights normally exercised with the reporting of a public event. Furthermore, the editorial endorsement was specifically stated as having represented the views of the Johnstown Tribune Democrat as determined by the newspaper's employees, i.e. the publisher, the managing editor, the editorial page editor and the chief editorial writer. Could this private corporate opinion qualify as an "in-kind" contribution clearly designed to influence a federal election in the favor of incumbent federal candidate, Murtha and in violation of the FEC's corporate contribution regulations?

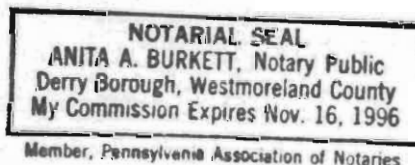
I submit this complaint along with the enclosed supporting documentation that represents, to the best of my knowledge, a true and accurate account of the incident in question.

Willam A Choby DMD MPA

Willam A Choby DMD MPA
1905 Bates Drive
Johnstown, Pennsylvania 15905
814-255-3866

Signed and sworn to before me

Anita A. Burkett 2/16/95



96043724615

12th: John Murtha a tower of strength

Choosing the representative for the 12th Congressional District is no difficult choice at all.

Rep. John F. Murtha stands head and shoulders above his opponent, William Choby. Even if Murtha's seniority did not put him in the position of doing more for his district, the choice would be obvious.

It isn't that the things Choby says don't make sense, for the most part. They are a blend of Republican Party policy and conservative views. Choby just doesn't seem to be the individual to put it all together.

He counts on opposition to Clinton and administration policies to give Republican candidates a five-point advantage that will enable the GOP to gain control of the House of Representatives.

Then, Choby argues, Murtha would become part of the underdog and would not have the power he has now. But Rep. Bud Shuster has been part of the minority in Congress for years and he still wields a lot of power on transportation issues.

There is nothing wrong with Choby proclaiming the need for less government in Washington — it's a need many Americans are proclaiming — but there is a need for some government.

Choby heralds a need to reduce taxes, and a vast chorus of Americans may sing "so say we all." But tax reduction has to be more than a theme, more than a slogan, more than a campaign gimmick. There have to be solid ideas and a working agenda.

Choby finds no disagreement when he says jobs are the No. 1 concern of the district, but he doesn't realize the complexity of attracting industries, especially those that pay what often is called "a living wage." His solution is what he calls "small up" — the deregulation and empowering of small business. All that is needed for small-business employers to spring up, he says, is to deregulate, to "just get out of their way."

He estimates that the 12th District sends about \$1 billion a year to Washington in federal taxes, but gets very little of that back. "It's not a bargain," Choby says, and he's right. But the whole concept of the federal government must change in order to affect that. Americans must stop demanding more and more services from Washington and insist, instead, on less and less.

Choby calls for creation of a national network of anti-missile missiles to protect America from its vulnerability to terrorist attack. If he isn't calling for a revitalization of the ultra-expensive Star Wars program, what he wants is close to it. This doesn't fit in with his call for tax reductions.

Choby has signed on to a program called United Students of America — not his idea but a commendable program to get high school students involved in the political process.

Against a candidate with less to offer than Murtha has, Choby could be a consideration. But politically, he's dwarfed by his opponent.

Murtha not only heads the powerful House Defense Appropriations Subcommittee, but he has been a confident and advisor to several presidents — Republican as well as Democrat — on matters of military affairs and world stability. He may not have the key to the back door of the White House, but his advice has been sought frequently and followed often.

On a local basis, Murtha considers one of his biggest accomplishments his efforts to not only re-establish some kind of a steel industry locally, but to diversify the area's employment base. He says that as a result, more high school graduates are able to remain in the district today, and he predicts the time when local employment will even attract those from other areas.

He concentrates on the need for improving the infrastructure — the highways, sewers and water systems in particular, but also hiking trails and other recreational opportunities that are essential to local residents and to those who may come.

Murtha sees tourism as one of the promising aspects of the district's future. He has been essential to the Industrial Heritage program, which both entices tourists and preserves segments of southwestern Pennsylvania's historic accomplishments.

While Choby says flatly that the United States had no business going into Haiti at all, Murtha says the biggest mistake President Clinton made with Haiti was not seeking the approval of Congress before sending troops. He had the same criticism of President Bush in the Persian Gulf situation. He says the continual deployment of U.S. troops to widespread trouble spots is a tremendous drain on the defense budget, and is a concern for Congress.

Murtha agrees that this area is not getting its fair share of federal tax money. But he points out that he has been able to bring here some federal projects that benefit the economy and are bargains for the government.

"We try to use the government to benefit this area," Murtha said. "We can spend money here more cost-effectively than anywhere else."

Murtha believes Congress has been trying to give the citizens what they want.

That isn't always easy. We believe Murtha tries, and we believe he's the best choice Nov. 8.

Election

94



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

Dr. Willeam A. Choby
1905 Bates Drive
Johnstown, PA 15905

RE: MUR 4187

Dear Dr. Choby:

This letter acknowledges receipt on February 21, 1995, 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 4187. 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 by ESB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

96043724618



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

**Robert C. Ondick, Treasurer
Murtha for Congress Committee
551 Main Street
Johnstown, PA 15901**

RE: MUR 4187

Dear Mr. Ondick:

The Federal Election Commission received a complaint which indicates that the Murtha for Congress Committee ("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 4187. 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.

96043724619

If you have any questions, please contact me 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 by ESB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

cc: The Honorable John P. Murtha

96043724620



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

**J. Allen Meath, Chief Executive Officer
Johnstown Tribune Publishing Company
c/o Prentice-Hall Corporation Systems, Inc.
100 Pine Street
Harrisburg, PA 17108**

RE: NUR 4187

Dear Mr. Meath:

The Federal Election Commission received a complaint which indicates that the Johnstown Tribune Publishing Company may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter NUR 4187. 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 Johnstown Tribune Publishing Company in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 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.

96043724621

If you have any questions, please contact me 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 by EBB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043724622



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

**Pamela J. Mayer, Publisher
Johnstown Tribune-Democrat
425 Locust Street
Johnstown, PA 15907**

RE: MUR 4187

Dear Ms. Mayer:

The Federal Election Commission received a complaint which indicates that The Johnstown Tribune-Democrat and you, as Publisher, 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 4187. 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 Johnstown Tribune-Democrat, and you, as Publisher, 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.

96043724623

If you have any questions, please contact me 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 by ESB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043724624



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

**Howard Belts, Editor
Johnstown Tribune-Democrat
425 Locust Street
Johnstown, PA 15907**

RE: MUR 4187

Dear Mr. Belts:

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 4187. 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.

96043724625

If you have any questions, please contact me 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 by ESB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043724626



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 28, 1995

**Lawrence J. Hudson
Managing Editor
Johnstown Tribune-Democrat
425 Locust Street
Johnstown, PA 15907**

RE: MUR 4187

Dear Mr. Hudson:

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 4187. 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.

96043724627

If you have any questions, please contact me 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 by JLB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

960437246228



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

**Bruce J. Wissinger
Editorial Page Editor
Johnstown Tribune-Democrat
425 Locust Street
Johnstown, PA 15907**

RE: MUR 4187

Dear Mr. Wissinger:

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 4187. 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.

96043724629

If you have any questions, please contact me 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 by ESB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043724630



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 1995

**Bill Jones
Chief Editorial Writer
Johnstown Tribune-Democrat
425 Locust Street
Johnstown, PA 15907**

RE: MUR 4187

Dear Mr. Jones:

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 4187. 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.

96043724631

If you have any questions, please contact me 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 by ESB

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043724632

MICHAEL W. SAHLANEY LAW OFFICES

430 MAIN STREET
JOHNSTOWN, PA 15901
(814) 535-6509
FAX (814) 535-1876

MICHAEL W. SAHLANEY

MICHAEL T. CRUM

ARLENE ANN DUDECK

March 14, 1995

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 15 11 36 AM '95

VIA EXPRESS MAIL

Federal Election Commission
ATTN: MARY L. TAKSAR, ESQ.
Washington, D.C. 20463

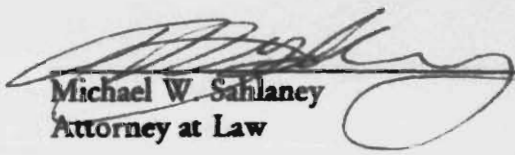
RE: MUR 4187

Dear Ms. Taksar:

I am sending to you the enclosed Statements of Designation of Counsel and response in the above matter. Please advise me if further information is needed.

Sincerely,

MICHAEL W. SAHLANEY LAW OFFICES


Michael W. Sahlaney
Attorney at Law

MWS:Imp

Enclosure

cc: Pamela Mayer

96043724633

STATEMENT OF DESIGNATION OF COUNSEL

NUR 4187

NAME OF COUNSEL: Michael W. Sahlaney Law Offices

ADDRESS: 430 Main Street
Johnstown, PA 15901

TELEPHONE: (814) 535-6509

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 15 11 35 AM '95

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.

March 14, 1995
Date

Pamela J. Mayer
Pamela J. Mayer

Howard Saltz
Howard Saltz

Lawrence J. Hudson
Lawrence J. Hudson

RESPONDENT'S NAME: Pamela J. Mayer, Howard Beltz (sic), correct name
is Saltz and Lawrence J. Hudson

ADDRESS: Johnstown Tribune Publishing Company
425 Locust Street
Johnstown, PA 15901

HOME PHONE: _____

BUSINESS PHONE: (814) 532-5199

96043724634

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4187

NAME OF COUNSEL: Michael Sahlaney

ADDRESS: 430 Main St.

Johnstown, Pa.

15901

TELEPHONE: (814) 535-6509

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 15 11 36 AM '95

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.

3-13-95
Date

Bruce J. Wissinger
Signature

RESPONDENT'S NAME: Bruce J. Wissinger

ADDRESS: 133 Blackberry Drive
South Fork, Pa.

15956

HOME PHONE: (814) 495-5142

BUSINESS PHONE: (814) 532-5050

96043724635

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4187

NAME OF COUNSEL: Michael Sahlaney

ADDRESS: 430 Main Street

Johnstown, PA

15901

TELEPHONE: (814) 535-6509

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 15 11 36 AM '95

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.

3-13-95
Date

Bill Jones
Signature

RESPONDENT'S NAME: Bill Jones

ADDRESS: 429 Decker Avenue

Johnstown, PA

15906-1766

HOME PHONE: (814) 536-6435

BUSINESS PHONE: (814) 532-5050

96043724636

FEDERAL ELECTION COMMISSION

INQUIRY BY
WILLEAM A. CHOBY, D.M.D.

MUR 4187

RESPONDENTS:

JOHNSTOWN TRIBUNE PUBLISHING
COMPANY., GARDEN STATE
NEWSPAPERS, INC., AND THEIR
RESPECTIVE OFFICERS, DIRECTORS,
AND EMPLOYEES NAMED IN
CONNECTION WITH THIS MATTER
UNDER REVIEW, INCLUDING
WITHOUT LIMITATION PAMELA J.
MAYER, HOWARD SALTZ, (erroneously
identified as Beltz), LAWRENCE J.
HUDSON, BILL JONES, BRUCE J.
WISSINGER, DEAN SINGLETON,
and J. ALLEN HEATH

RESPONSE TO MATTER UNDER REVIEW

Michael W. Sahlaney Law Offices, states this response to inquiries registered by Willeam A. Choby, D.M.D. in the above matter under review on behalf of all of the identified Respondents. Choby, in letters dated on or about December 10, 1994 and docketed with the Federal Election Commission on or about February 21, 1995, has inquired whether editorials by the Tribune-Democrat endorsing Choby's opponent in the United States Twelfth Congressional District Race constitute in kind contributions to the Murtha campaign.

Because Choby's complaint was made against a number of individuals employed by the Respondent corporations, this Response is filed on behalf of the employees, directors, and officers of the corporations in order to avoid a duplication of responses. It is intended that this response will address any further complaints filed by Choby against any of the class of individuals with respect to the questioned Editorial.

Copies of the editorials which are alleged to be in kind contributions were filed with Choby's inquiries. A copy of the October 25, 1994 editorial is also attached to this response as Exhibit 1.

The Johnstown Tribune Publishing Company is a for-profit corporation which publishes the Tribune-Democrat. The Tribune-Democrat is a daily newspaper of general circulation in the City of Johnstown and areas surrounding the City. The Johnstown Tribune Publishing Company is a subsidiary of Garden State Newspapers, Inc.

Neither Garden State Newspapers, Inc., the Johnstown Tribune Publishing Company nor the Tribune-Democrat is owned or controlled by any political party, political committee or candidate.

Choby specifically inquires whether the Tribune's editorial endorsement of his opponent constitutes a "contribution". This issue is specifically addressed in the Federal Election Commission's regulations at 11.C.F.R. §100.7(b)(2) which states, in relevant part,

(b) The term contribution does not include the following payments, services or other things of value:

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any... newspaper... or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate...

The foregoing regulation is dispositive of the matter under review. The Tribune's editorial was a valid exercise of its first amendment rights and did not constitute a contribution. Although no further response is required, the Tribune points out that it responsibly fulfilled its reporting and editorial roles during the 1994 Congressional election.

Willeam A. Choby was the Republican nominee for the Twelfth United States Congressional District seat in the election campaign culminating in the November 1994 election. Choby ran against John P. Murtha, the incumbent Democratic congressman from the Twelfth District.

96043724638

During the course of the election campaign, the Johnstown Tribune Publishing Company accepted paid political advertisements from Choby and Murtha at the Tribune's prevailing advertising rates. Each candidate was charged the same advertising rate.

During the course of the campaign, the Tribune, in the exercise of its first amendment rights, covered both campaigns and reported on campaign activities and communications by both John P. Murtha and Choby. In addition, the Tribune published letters to the Editor written by Choby on the Tribune's Op-Ed page.

On October 25, 1994, the Tribune, by its editorial staff, endorsed John P. Murtha in the editorial attached as Exhibit 1. The editorial was published after the Tribune editorial staff interviewed both Murtha and Choby concerning their positions on various issues.

At no time did the Tribune request, nor would the Tribune have accepted any compensation for its endorsement. The Tribune's editorial policy is determined independently by the editorial staff in the exercise of its first amendment rights under the United States Constitution. An editorial endorsement could not be purchased by any candidate from the Tribune and there is therefore no "usual or normal charge" for an editorial endorsement.

Choby, a disgruntled candidate who failed to win election, could have quickly determined that the editorial was not a contribution by reading that portion of §100.7 of Title 11 of the C.F.R.

If further information is required, please advise counsel for the Respondents. The factual statements set forth in this response are verified by the attached Affidavit signed by the Publisher, Editor in Chief, and Managing Editor respectively of the Tribune.

Respectfully submitted,

MICHAEL W. SAHLANEY LAW OFFICES

By:


Michael W. Sahlaney, Attorney

12th: John Murtha a tower of strength

Choosing the representative for the 12th Congressional District is no difficult choice at all.

Rep. John P. Murtha stands head and shoulders above his opponent, William Choby. Even if Murtha's seniority did not put him in the position of doing more for his district, the choice would be obvious.

It isn't that the things Choby says don't make sense, for the most part. They are a blend of Republican Party policy and conservative views. Choby just doesn't seem to be the individual to put it all together.

He counts on opposition to Clinton and administration policies to give Republicans candidates a five-point advantage that will enable the GOP to gain control of the House of Representatives.

Then, Choby argues, Murtha would become part of the undertow and would not have the power he has now. But Rep. Bud Shuster has been part of the minority in Congress for years and he still wields a lot of power on transportation issues.

There is nothing wrong with Choby proclaiming the need for less government in Washington — it's a need many Americans are proclaiming — but there is a need for some government.

Choby heralds a need to reduce taxes, and a vast chorus of Americans may sing "so say we all." But tax reduction has to be more than a theme, more than a slogan, more than a campaign gimmick. There have to be solid ideas and a working agenda.

Choby finds no disagreement when he says jobs are the No. 1 concern of the district, but he doesn't realize the complexity of attracting industries, especially those that pay what often is called "a living wage." His solution is what he calls "small up" — the deregulation and empowering of small business. All that is needed for small-business employers to spring up, he says, is to deregulate, to "just get out of their way."

He estimates that the 12th District sends about \$1 billion a year to Washington in federal taxes, but gets very little of that back. "It's not a bargain," Choby says, and he's right. But the whole concept of the federal government must change in order to affect that. Americans must stop demanding more and more services from Washington and insist, instead, on less and less.

Choby calls for creation of a national network of anti-missile missiles to protect America from its vulnerability to terrorist attack. If he isn't calling for a revitalization of the ultra-expensive Star Wars program, what he wants is close to it. This doesn't fit in with his call for tax reductions.

Choby has signed on to a program called United Students of America — not his idea but a commendable program to get high school students involved in the political process.

Against a candidate with less to offer than Murtha has, Choby could be a consideration. But politically, he's dwarfed by his opponent.

Murtha not only heads the powerful House Defense Appropriations Subcommittee, but he has been a confidant and adviser to several presidents — Republican as well as Dem-

ocrat — on matters of military affairs and world stability. He may not have the key to the back door of the White House, but his advice has been sought frequently and followed often.

On a local basis, Murtha considers one of his biggest accomplishments his efforts to not only re-establish some kind of a steel industry locally, but to diversify the area's employment base. He says that as a result, more high school graduates are able to remain in the district today, and he predicts the time when local employment will even attract those from other areas.

He concentrates on the need for improving the infrastructure — the highways, sewers and water systems; in particular, but also hiking trails and other recreational opportunities that are essential to local residents and to those who may come.

Murtha sees tourism as one of the promising aspects of the district's future. He has been essential to the Industrial Heritage program, which both entices tourists and preserves segments of southwestern Pennsylvania's historic accomplishments.

While Choby says flatly that the United States had no business going into Haiti at all, Murtha says the biggest mistake President Clinton made with Haiti was not seeking the approval of Congress before sending troops. He had the same criticism of President Bush in the Persian Gulf situation. He says the continual deployment of U.S. troops to widespread trouble spots is a tremendous drain on the defense budget, and is a concern for Congress.

Murtha agrees that this area is not getting its fair share of federal tax money. But he points out that he has been able to bring here some federal projects that benefit the economy and are bargains for the government.

"We try to use the government to benefit this area," Murtha said. "We can spend money here more cost-effectively than anywhere else."

Murtha believes Congress has been trying to give the citizens what they want.

That isn't always easy. We believe Murtha tries, and we believe he's the best choice Nov. 8.

Election

94

EXHIBIT

1

96043724640

AFFIDAVIT

We, **PAMELA J. MAYER**, Publisher, **HOWARD SALTZ**, Editor and Chief, and **LAWRENCE J. HUDSON**, Managing Editor of the Johnstown Tribune Publishing Company, have reviewed and hereby verify that the facts set forth in the foregoing Response are true and correct to the best of our knowledge, information and belief.

Pamela J. Mayer
Pamela J. Mayer

Howard Saltz
Howard Saltz

Lawrence J. Hudson
Lawrence J. Hudson

Sworn to and subscribed
before me this 14th day
of March, 1995.

Christine M. Lingafelt
Notary Public



MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW

2000 ONE LOGAN SQUARE

PHILADELPHIA, PENNSYLVANIA 19103-6993

TELEPHONE: (215) 963-5000

FAX: (215) 963-5200

PHILADELPHIA

NEW YORK

MIAMI

PRINCETON

BRUSSELS

WASHINGTON

LOS ANGELES

HARRISBURG

LONDON

FRANKFURT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 17 11 53 AM '95

GREGORY M. HARVEY

DIAL DIRECT (215) 963-5427

March 16, 1995

VIA FEDERAL EXPRESS

Federal Election Commission
Washington, D.C. 20463

Attention: Marielle Taksar, Attorney
Central Enforcement Docket

Re: MUR 4187 and MUR 4188
Murtha for Congress Committee
and Robert C. Ondick, Treasurer

Greetings:

This will respond to the two documents which have been docketed as complaints made by Willeam A. Choby, D.M.D., against Murtha for Congress Committee ("the Committee") and Robert C. Ondick, C.P.A., as Treasurer ("Respondents") of that committee.

Enclosed is the facsimile of an affidavit of Robert C. Ondick (the original being sent to you directly) responding to Dr. Choby's factual allegations against Respondents, which are implied rather than explicitly stated; also enclosed is the executed Statement of Designation of Counsel.

The implied allegations against Respondents at MUR 4187 relate to an editorial endorsement of Congressman Murtha published in the Johnstown Tribune-Democrat, a newspaper of general circulation not owned or controlled by any political party, political committee or candidate. The implied allegations at MUR 4188 refer to the size (alleged to be "excessively large") of a reproduction of a photograph of Congressman Murtha accompanying an article which described the business of a company operating in his Congressional District (Operation Assistance, Inc.) and which article included a quotation from Congressman Murtha commending Operation Assistance, Inc.

As stated in the Affidavit of Robert C. Ondick, Respondents are not affiliated with either periodical. Moreover, Mr. Ondick is not aware of any action taken by the Committee or any of its representatives in respect of the publication of the photograph of Congressman Murtha in Central Pennsylvania

96043724642

Federal Election Commission
March 16, 1995
Page 2

Medicine, much less any action to cause the photograph to be "excessively large."

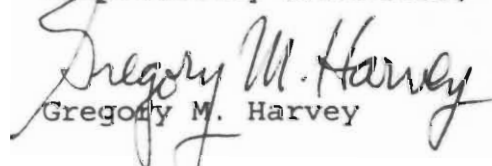
Under these circumstances, the conduct of the two periodicals is exempt from the Federal Election Campaign Act ("the Act") pursuant to 2 U.S.C. § 431(9)(b)(i) and 11 C.F.R. § 100.7(2), as well as pursuant to the First Amendment to the Constitution of the United States, and Dr. Choby's complaint against Respondents on an implied theory of secondary liability should fail.

Because the legal principles applicable to this matter are well known to the staff of the Commission, we believe that detailed argument on these points is not necessary. For your convenience, we enclose the First General Counsel's Report at MUR 3713 disposing of the complaints of William D. White docketed at MUR 3713; not enclosed but also pertinent is the First General Counsel's Report at MUR 3660 dealing with a photograph of First Lady Barbara Bush published on the cover of a periodical.

Please note that Mr. Ondick's Affidavit expressly denies that the Murtha for Congress Committee engaged in the conduct in which the complainant, Dr. Choby appears to implicate himself, to wit, using an entity which he, Dr. Choby, controls (Health Market Associates) to purchase favorable news coverage in Central Pennsylvania Medicine, April 1994, page 21, illustrated with a photograph of Dr. Choby. Since Dr. Choby's complaint appears based on the size of the photograph of Congressman Murtha, we note that in the photocopy provided to me as counsel the photograph of Dr. Choby appears to be three and 1/8 column inches whereas the photograph of Congressman Murtha, complained of by Dr. Choby as being "excessively large," appears in the photocopy provided to me to be only two and 3/4 column inches.

Please communicate with the undersigned if any additional information is desired from Respondents Murtha for Congress Committee and Robert C. Ondick, Treasurer.

Respectfully submitted,


Gregory M. Harvey

enclosure
cc: Robert C. Ondick, C.P.A.

96043724643

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4187 and 4188

NAME OF COUNSEL: Gregory M. Harvey

ADDRESS: Morgan, Lewis, Rocking
2000 One Logan Square
Philadelphia, PA 19103

TELEPHONE: (215) 963-5427

FAX: (215) 963-5299

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.

MAR. 15, 1995
Date

Robert C. Ondick
Signature

RESPONDENT'S NAME: Robert C. Ondick, Treasurer

ADDRESS: BT Financial Plaza, Suite 220
551 Main Street
Johnstown, PA 15901

HOME PHONE: _____

BUSINESS PHONE: (814) 536-7579

FAX: (814) 539-2474

96043724644

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CAMBRIA

ss.:

:

AFFIDAVIT OF ROBERT C. ONDICK, C.P.A.

Robert C. Ondick, being first duly sworn according to law, deposes and says, to the best of his personal knowledge or on information and belief, as follows:

1. Murtha for Congress Committee has been the authorized campaign committee of Congressman John P. Murtha since the campaign year 1974; I have served as Treasurer of Murtha for Congress Committee since June 24, 1974; I am by profession a Certified Public Accountant.

2. This affidavit is submitted in respect of purported "complaints" which have been docketed by the Federal Election Commission as MUR 4187 and MUR 4188.

3. Although the "complaint" docketed at MUR 4187 does not call for a factual response on behalf of the Murtha for Congress Committee, no allegation being made in that complaint of any impropriety or indeed, of any action whatsoever taken by Murtha for Congress Committee in respect of the editorial endorsement published by the newspaper known as the Johnstown Tribune-Democrat, I represent that Murtha for Congress Committee is entirely unrelated to the entity which owns the Johnstown Tribune-Democrat and, further, that although the title of that newspaper includes the word "Democrat," the entity which owns that newspaper has no affiliation with or ownership by the Democratic Party of the Commonwealth of Pennsylvania, the

96043724645

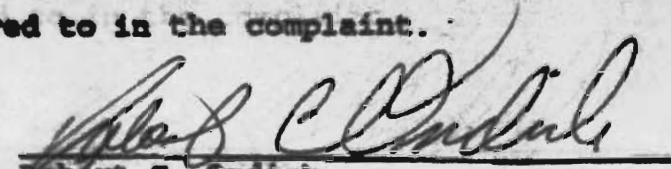
9 6 0 4 3 7 2 4 6 4 6

Democratic National Committee, or any other political party committee or entity; to the best of my knowledge, the Johnstown Tribune-Democrat is an independent newspaper of general circulation.

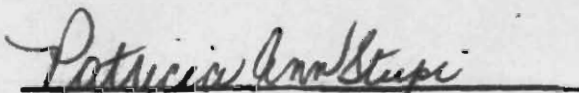
4. Concerning the purported "complaint against Central Pennsylvania Medicine," docketed at MUR 4188, and in response to the implied allegations set forth on the second page of that document, I represent, to the best of my personal knowledge and on information and belief after inquiry of all persons in positions of supervisory responsibility in the campaign conducted by Murtha for Congress in the 1994 campaign cycle, that Murtha for Congress Committee took no actions whatsoever to cause a photograph of Congressman Murtha to be published at page 14 of the periodical titled "Central Pennsylvania Medicine" with issue date of July 1994; the photograph of Congressman Murtha which appears to have been reproduced on that page is routinely made available to any person or periodical which requests a photograph of Congressman Murtha, but I have been unable to determine whether any request was made for that photograph by or on behalf of Central Pennsylvania Medicine.

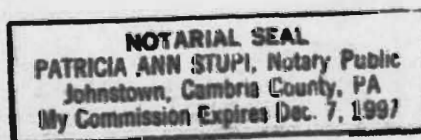
5. Further in response to the complaint docketed at MUR 4188, I represent, to my personal knowledge and on information and belief after inquiry, that Murtha for Congress Committee made no arrangements whatsoever with Ankney Publishing, Inc., alleged in the complaint to be the publisher of Central

Pennsylvania Medicine, intended to obtain favorable news coverage of Congressman Murtha, nor did Murtha for Congress Committee make any such arrangements indirectly through the entity described as "Operation Assistance" referred to in the complaint.


Robert C. Ondick

Sworn and subscribed to
before me this 16th day
of MARCH, 1995:


Notary



96043724647

PHILADELPHIA
NEW YORK
MIAMI
PRINCETON
BRUSSELS

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW

2000 ONE LOGAN SQUARE

PHILADELPHIA, PENNSYLVANIA 19103-6000

TELEPHONE: (215) 963-5000

FAX: (215) 963-5299

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

MAR 21 1 19 PM '95

WASHINGTON
LOS ANGELES
HARRISBURG
LONDON
FRANKFURT
TOKYO

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

March 20, 1995

VIA FEDERAL EXPRESS

Federal Election Commission
Washington, D.C. 20463

Attention: Marielle Taksar, Attorney
Central Enforcement Docket

Re: MUR 4187 and MUR 4188
Murtha for Congress Committee
and Robert C. Ondick, Treasurer

Greetings:

By inadvertence, the First General Counsel's Report at MUR 3713 disposing of the complaints of William D. White docketed at MUR 3713 was omitted from the Federal Express envelope sent to you on March 16, 1995. We apologize for the inconvenience and enclose a copy of that document.

Respectfully submitted,

Gregory M. Harvey
Gregory M. Harvey

enclosure
cc: Robert C. Ondick, C.P.A.

96043724648

MAR 21 3 01 PM '95

OFFICE OF GENERAL COUNSEL

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

92 JUL -2 10 9:15

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 3713
DATE COMPLAINT RECEIVED
BY OGC 11/23/92
DATE OF NOTIFICATION TO
RESPONDENTS 11/30/92
STAFF MEMBER Craig D. Reifner

COMPLAINANT:

William D. White

RESPONDENTS:

League of Women Voters
of Pennsylvania
Pittsburgh Post-Gazette
Lynn Hardy Yeakel
Lynn Yeakel for U.S. Senate and
Sidney Rosenblatt, as treasurer
The Honorable Arlen Specter
Citizens for Arlen Specter and
Stephen J. Harmelin, as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED:

Disclosure materials

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter arose from a complaint by William White challenging certain expenditures made by the League of Women Voters of Pennsylvania (the "League") and the Pittsburgh Post-Gazette (the "Post-Gazette"). Responses have been received. Attachments A-D.

II. FACTUAL AND LEGAL ANALYSIS

In this complaint, William White alleges that the League prepared and distributed a "16 page supplement to the Pittsburgh Post-Gazette newspaper purporting to be a comprehensive guide"

96043724649

to Pennsylvania's 1992 primary elections. Complaint at 1.¹ In addition, complainant alleges that the Post-Gazette also printed numerous articles concerning that year's Senate election. According to the complainant, these expenditures are actually contributions to Lynn Hardy Yeakel and Arlen Specter, two 1992 Senate candidates. In support of this allegation, Complainant maintains that he was an independent senatorial candidate in that election, yet Respondents failed to include him in the supplement and the news articles in question or "make any mention of the procedure to nominate an independent candidate" for that seat. Id. He alleges that they instead featured only

1. Mr. White has filed numerous other complainants challenging the activities of various persons in connection with Pennsylvania's 1991 and 1992 Senate elections. These include, MURs 3706, 3709 and 3710, all of which the Commission closed with no reason-to-believe findings on May 25, 1993. Mr. White is also the complainant in two other matters, MURs 3612 and 3714, which have not yet been addressed by the Commission. This Office is currently preparing a First General Counsel's Report in these matters.

In addition, Mr. White has filed several related civil actions in U.S. District Court. First, he filed suit challenging the constitutionality of the Act. His suit, in which this agency was a party, was dismissed for lack of jurisdiction. White v. United States, No. 92-1202, (W.D. Pa. Jan. 7, 1992). Second, he filed suit against some of the Respondents involved in MURs 3612 and 3714. This suit was similarly dismissed, inter alia, for lack of jurisdiction over the Act. White v. Pennsylvania Ass'n. of Broadcasters, No. 92-0979 (W.D. Pa. Sept. 15, 1992). Third, Mr. White filed several suits challenging Pennsylvania's method of conducting special and general elections. These suits were similarly dismissed, for lack of standing or failure to state a claim for which relief could be granted. White v. Commonwealth of Pennsylvania, No. 91-1059 (W.D. Pa. December 10, 1991); White v. Commonwealth of Pennsylvania, No. 91-1060 (W.D. Pa. Oct. 18, 1991) aff'd, 968 F.2d 15 (3d Cir. 1992); White v. Commonwealth of Pennsylvania, No. 92-0710 (W.D. Pa.) aff'd, 983 F.2d 1054 (3d Cir. 1992). Last and most recent, Mr. White has filed suit pursuant to 2 U.S.C. § 437g(a)(8)(A) with respect to the enforcement matters currently pending before the Commission.

96043724650

the Democratic and Republican party candidates.²

With regard to the League's supplement, complainant further alleges that Respondents prepared the supplement "in coordination" with the Yeakel and Specter campaigns, which purportedly furnished photographs of the candidates as well as other information in connection with the preparation of the supplement. Complainant characterizes the supplement as "a news event" and states that "there was no attempt . . . 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 publication from contribution reporting requirements." Id. at 1.³

Although neither the complainant nor the Respondents provided copies of either the League's publication or the Post-Gazette's news articles, Respondents acknowledge making the expenditures at issue in the complaint. In her response on behalf of the League, Diane Edmundson, the Chair of the League,

2. Ms. Yeakel and Mr. Specter were, respectively, the Democratic and Republican party candidates in the 1992 general election. The earlier primary election included a total of seven Democratic and Republican party candidates. The Democratic party candidates included: Robert Colville; Freddy Mann Friedman; Mark Stephen Single; Philip Valenti and Lynn Hardy Yeakel. The Republican party candidates included: Stephen F. Freind and Arlen Specter.

3. The complainant also alleges that the League is "a partisan organization which functions on behalf of the Republican and Democrat parties." Complaint at 2. Apparently, the complainant is challenging the League's status under Section 501(c)(3) of the Internal Revenue Code, which requires organizations qualifying for tax-exempt status to meet certain nonpartisan criteria. The determination of whether an organization like the League qualifies for Section 501(c)(3) status, however, is not within the Commission's jurisdiction.

96043724651

describes the supplement in question as a "Voters Guide" and explains that the complainant was not included because he was not a candidate on the primary election ballot. Attachment A. Ms. Edmundson asserts that the League's policy with respect to the publication of its voters guide is to include "[a]ll candidates who are certified to appear on the ballot" and, as a purported independent candidate, Mr. White was not certified to appear on the primary ballot. Id. She explains that in Pennsylvania, "political party candidates are nominated at primaries [while]. . . . [m]inor political parties do not conduct primaries but circulate and file minor political party nomination papers in order to nominate candidates directly to the November ballot." Id. at 1 (emphasis in original). She notes that "[a]s with minor political party candidates, the nomination of independent candidates must be made by nomination papers instead of primary elections." Id. at 2.

Counsel for the Post-Gazette similarly acknowledges that her client "printed newspaper articles and an election supplement regarding the primary election in Pennsylvania." Attachment B at 1. She maintains, however, that the Post-Gazette's "conduct is specifically exempt" under Section 431(9)(B)(i) of the Act, which exempts from the definition of expenditure the costs of any news articles.

96043724652

96043724653

Id. at 1-3.⁴ Counsel further notes that she "is informed and believes that Mr. White was not a candidate in the April, 1992 primary election [and]. . . . [t]o the extent Mr. White planned to wage a 'write-in' campaign, he stood in a position no different from that of any of a potentially infinite number of such candidates [whom] the Post-Gazette was under no obligation to print a news story [about]."
Id. at 4.

The Act broadly prohibits corporations from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a).⁵ Broadcasting stations, newspapers, magazines or other periodical publications may, however, make expenditures toward news stories, commentaries, or editorials in connection with Federal elections. 2 U.S.C. § 431(9)(B); 11 C.F.R. 100.7(b)(2) and 100.8(b)(2). In addition, corporations may also make certain nonpartisan communications to the general public. Federal Election Comm'n. v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). These permissible corporate communications include registration and get-out-the-vote efforts and the preparation and distribution of voting records of Members of Congress. 11 C.F.R. §§ 114.4(b).

4. Counsel for the Yeakel and Specter campaigns also raise the Act's press exemption in their respective responses. See Attachments C at 1 (Yeakel)(activities in question are "appropriate public affairs programming or news coverage") and D at 2 (Specter)(law explicitly provides that the expenditures in question are not contributions).

5. According to the Pennsylvania Secretary of State's Office, the Pennsylvania League is a non-profit corporation. Similarly, the Post-Gazette is published by the PG Publishing Company, a Pennsylvania corporation.

Corporations may also prepare and distribute voter guides to the general public.⁶ Such communications may, however, result in prohibited in-kind contributions if they are made in coordination with a candidate's campaign.

As an initial matter, Respondents' assertions concerning Mr. White's failure to qualify as a candidate on the primary and general election ballots appear accurate. Indeed, Mr. White has acknowledged that he was an independent candidate and under Pennsylvania law candidates in the primary election must be nominated by a political party to have their names placed on that election ballot. 25 P.S. § 2862 (1964). Although Pennsylvania law provides for independent candidates to have their names placed on the general election ballot, Mr. White, who challenged Pennsylvania's general election candidate nomination process, was unsuccessful in having his name placed on that election ballot. White v. Commonwealth of Pennsylvania, No. 92-0710 (W.D. Penn.), aff'd, 983 F.2d 1054 (3d Cir. 1992). Furthermore, Mr. White did not file a statement of candidacy with the Commission in connection with the 1992 Senate election

6. In Faucher v. Federal Election Comm'n., 928 F.2d 466 (1st Cir. 1991), cert. denied, 495 U.S. ____ (October 7, 1991), the court held that the Commission's regulations governing the preparation and distribution of voter guides by corporations exceeded the statutory authority of the Act. However, such communications may constitute prohibited expenditures if they expressly advocate the election or defeat of a candidate. Federal Election Comm'n. v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). In the matter at hand, however, the complainant is challenging the expenditures in question as in-kind contributions and not as prohibited expenditures which contain express advocacy.

96043724654

at issue here.⁷ In this regard, there appears to be no factual basis supporting Mr. White's assertion that he was a candidate in the 1992 Senate election, let alone a candidate who should have been included in the League's publication or the Post-Gazette's news articles.

9 6 0 4 3 7 2 4 6 5 5

With regard to the allegation of coordination, the Chair of the League explains that in preparing its "Voters Guide," the League obtained a list of the certified ballot candidates in the primary election and then used that list to solicit photographs and other information from the various candidates. Although the League was apparently in contact with various candidates, the contacts at issue here, in the context of preparing a publication featuring the candidates in the election, would not appear to rise to the level of coordination. Indeed, the Act permits corporations to make certain nonpartisan communications to the general public and in the case of voter guides, the Commission has recognized the need for such contact, noting that there is a distinction "between the limited contact with candidates that is necessary to produce voter guides . . . and the more extensive discussions resulting in arrangement, coordination or direction of [the] . . . activities by the candidate. See 57 Fed. Reg. 33548 at 33554 July 29, 1992 (notice of proposed rulemaking for "MCFL" regulations). Here,

7. Disclosure materials show that Mr. White filed a statement of candidacy in connection with an earlier Senate election in Pennsylvania. That election was a special election held in 1991 for the purpose of filling the vacancy that arose when the Honorable John Heinz died in a helicopter crash.

the information shows that the League's contact with the various candidates did not extend beyond a request for information and photographs to include in the publication.

Likewise, the allegation that Respondents' expenditures were "news stories" which should have provided equal coverage of all candidates to qualify for the media exemption is misplaced here. Under the Commission's regulations, the requirement of equal coverage is only imposed when the media entity in question is owned or controlled by a political party, political committee or candidate. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). In the case of the League, it does not appear that that organization was operating as a media entity, much less one that was owned or controlled by a political party or a candidate. In the case of the Post-Gazette, counsel submitted the affidavit of William Deibler, the managing editor of the newspaper, who states that the Post-Gazette is "a newspaper of general circulation serving the greater Pittsburgh area. . . . [and that it is not] ^xowned or controlled by any political party, political committee or candidate." Attachment B at 6-7. In this regard, it does not appear that the Post-Gazette would have been required to report on Mr. White's election efforts, even if Mr. White actually had been a candidate in the 1992 Senate election. In short, it appears that the news stories in question would clearly fall within the legitimate press function for the Post-Gazette and thus within the Act's media exemption. See Reader's Digest Ass'n. v. Federal Election Comm'n., 509 F. Supp. 1210 (S.D.N.Y. 1981).

96043724656

Based upon the above considerations, this Office recommends that the Commission find no reason to believe that any of the respondents in this matter violated any provision of the Act based upon the complaint filed in MUR 3713.

III. RECOMMENDATIONS

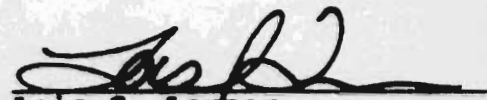
1. Find no reason to believe that the League of Women Voters of Pennsylvania, the Pittsburgh Post-Gazette, Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, The Honorable Arlen Specter, and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, violated any provision of the Act based upon the complaint filed in MUR 3713.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

7/1/93

BY:


Lois G. Lerner
Associate General Counsel

Attachments

- A. Response of the League of Women Voters
- B. Response of the Pittsburgh Post-Gazette
- C. Response of the Honorable Arlen Specter and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer
- D. Response of Lynn Hardy Yeakel and Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer

96043724657



**THE LEAGUE
OF WOMEN VOTERS
OF PENNSYLVANIA
CITIZEN EDUCATION FUND**

December 14, 1992

**Ms. Lisa E. Klein
Assistant General Council
Federal Election Commission
Washington D.C. 20463**

Re: MUR 3713

Dear Ms. Klein:

I am writing in regard to the complaint (MUR 3713) about the 1992 primary election Voters Guide filed against the Pittsburgh Post-Gazette and the League of Women Voters of Pennsylvania by William D. White. It is our contention that there is no basis for the complaint filed by Mr. White.

The main purpose of a League of Women Voters Voters Guide is to help voters make informed choices. All candidates who are certified to appear on the ballot are invited to respond to Voters Guide questionnaires. All candidates for an office are treated alike, major and minor party candidates as well as independents.

In Pennsylvania, political party candidates are nominated at primaries. A candidate's name is printed on the primary ballot upon the filing of a candidate's affidavit, filing fee, and nomination petitions signed by party electors in the district.

Minor political parties do not conduct primaries but circulate and file minor political party nomination papers in order to nominate candidates directly to the November ballot.

Attachment

96043724658

92DEC 14 4:32P

As with minor political party candidates, the nomination of independent candidates must be made by nomination papers instead of primary elections.

It is my understanding from conversations with the Pennsylvania Department of State that Mr. White filed a suit against the state prior to the 1992 primary election seeking to require the state to distribute his nomination petitions to all primary election polling places in the state. He also requested that the state be compelled to pay the notary fees and postage for the filing of these petitions with the state. He lost this suit.

At any rate, in accordance with the Pennsylvania electoral process, Mr. White's name would not have appeared on the primary election ballot. The League of Women Voters obtains a copy of the official ballot after the last day to file nomination petitions has passed. This list of certified ballot candidates is then used to solicit Voters Guide information from candidates. Since Mr. White's name did not appear on the certified ballot list he was not sent a request for Voters Guide information.

Mr. White did not contact me regarding the Voters Guide. To my knowledge, he did not contact the office of the League of Women Voters of Pennsylvania or the office of the League of Women Voters of Allegheny County, which is the League in the area of the Pittsburgh Post-Gazette, regarding the Voters Guide.

It is not clear to me from Mr. White's complaint if he intended to be a write-in candidate. In Pennsylvania there is no provision for a write-in candidate to declare candidacy. Write-in candidates cannot be officially identified. Since it is League of Women Voters of Pennsylvania policy to include only certified ballot candidates in the Voters Guide, write in candidates are never included.

We trust that you will agree with our contention that Mr. White's complaint against the League is without merit. He was not a qualified candidate in the 1992 primary election in Pennsylvania. A "mention of the procedure to nominate an independent candidate" in the Voters Guide is not an appropriate use for the Voters Guide since the purpose of the Voters Guide is to give the voters ballot information to enable them to make informed choices on election day.

96043724659

For further information on this matter, contact:

Lynda Trowbridge
Voter Service Director
328 Tower Lane
Narberth, PA 19072
215-664-7796

Sincerely,

Diane Edmundson

Diane Edmundson, Chair

cc: Lynda Trowbridge

96043724660

FEDERAL ELECTION COMMISSION

William D. White

Petitioner,

8
8
8
8
8
8
8
8

Matter Under Review No. 3713

**Pittsburgh Post-Gazette
League of Women Voters**

League of Women Voters

Respondents.

RESPONSE TO COMPLAINT

The Pittsburgh Post-Gazette responds to the above-referenced Complaint as follows:

The Pittsburgh Post-Gazette is a general circulation newspaper serving the greater Pittsburgh area. As stated in the Complaint, the Pittsburgh Post-Gazette printed newspaper articles and an election supplement regarding the primary election in Pennsylvania in April of 1992.

This conduct is specifically exempt from the Federal Election Campaign Act (the "Act") under 2 U.S.C. § 431(9)(B)(i) and 11 CFR § 100.7(2) which provide that expenses incurred in

Attention. T^B
12/7

9 6 0 4 3 7 2 4 6 6 2
producing new stories are not expenditures or contributions under the Act.

Section 431(9)(B)(i) provides that:

"The term expenditure does not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication unless such facilities are owned or controlled by any political party, political committee or candidate."

2 U.S.C. § 431(9)(B)(i).

Similarly 11 CFR § 100.7(b)(2) provides:

"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 unless the facility is owned or controlled by any political party, political committee or candidate in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcast facility and (ii) which is 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, is not a contribution."

11 CFR § 100.7(b)(2).

9 6 0 4 3 7 2 4 6 6 3

The Pittsburgh Post-Gazette is not a facility "owned or controlled by any political party, political committee, or political candidate." See Declaration of William Deibler, Managing Editor, Pittsburgh Post-Gazette, attached as Exhibit A. Thus, the articles and election supplement cited in the Complaint are neither expenditures nor contributions within the meaning of the Act.

Additionally, the Complainant's claim that the 11 CFR § 100.7(B)(2)(ii) "requires reasonably equal coverage to all opposing candidates in the circulation or listening area" is patently incorrect. The regulation imposes this requirement only "when the facility is owned or controlled by any political party, political committee or candidate." There is no such requirement for an independent newspaper of general circulation such as the Post-Gazette.

Such a requirement of enforced equal access would violate the First Amendment guarantee of freedom of the press. See Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974). In Miami Herald the United States Supreme Court held that a statute imposing a right of "equal access" on a newspaper violated the newspaper's rights under the First Amendment. The

9 6 0 4 3 7 2 4 6 6 4

court expressly rejected the argument for equal access implicit in the Complaint in this matter, stating that:

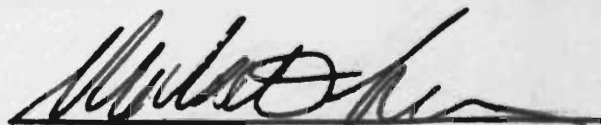
"A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper and treatment of public issues and public officials - whether fair or unfair - constitutes the exercise of editorial control and judgment."

Miami Herald Publishing Co. v. Tornillo, 418 U.S. at 258.

Moreover, even if a right of equal access existed, Mr. White would not be entitled to exercise this right because the Post-Gazette is informed and believes that Mr. White was not a candidate in the April, 1992 primary election. To the extent Mr. White planned to wage a "write-in" campaign, he stood in a position no different from that of any of a potentially infinite number of such candidates and the Post-Gazette was under no obligation to print a news story concerning his activities. See Miami Herald, 418 U.S. at 256-257 (noting the economic burden that would be imposed by a requirement that a newspaper afford all interested parties a "right to reply" to stories in the newspaper).

For the reasons set forth above and in the attached Declaration of William Deibler, the Post-Gazette urges the Commission to dismiss MUR 3713.

December 16, 1992


Marketa Sims

Reed Smith, Shaw & McClay
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-4292

Counsel for the Pittsburgh
Post-Gazette

96043724665

FEDERAL ELECTION COMMISSION

William D. White

Petitioner,

v

**Pittsburgh Post-Gazette
League of Women Voters**

Respondents.

:
:
:
:
:
:
:
:

Matter Under Review No. 3713

DECLARATION OF WILLIAM DEIBLER

I, William Deibler, declare that I am the Managing Editor of the Pittsburgh Post-Gazette Newspaper. I make this declaration of my own personal knowledge and if called upon to do so would testify truthfully to the following:

The Pittsburgh Post-Gazette is a newspaper of general circulation serving the greater Pittsburgh area and is owned by Blade Communications. Neither the Pittsburgh Post-Gazette nor Blade Communications is owned or controlled by any political party, political committee or candidate.

96043724666

6-2

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 1992 at Pittsburgh, Pennsylvania.

William Deibler
William Deibler

96043724667

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW

2000 ONE LOGAN SQUARE

PHILADELPHIA, PENNSYLVANIA 19103-5593

TELEPHONE: (215) 963-5000

FAX: (215) 963-5299

PHILADELPHIA

LOS ANGELES

MIAMI

LONDON

FRANKFURT

WASHINGTON

NEW YORK

HARRISBURG

SAN DIEGO

BRUSSELS

TOKYO

GREGORY M. HARVEY

Small Street (215) 963-5427

December 11, 1992

VIA FEDERAL EXPRESS

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

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3713 and MUR 3714

Greetings:

This letter responds to the Complaints of William D. White, pursuant to Ms. Klein's two letters dated November 30, 1992 addressed to our client Lynn Hardy Yeakel.

We incorporate by reference our earlier response to the Complaint of William D. White docketed at MUR 3706, especially the portion of that response dealing with whether William D. White was a bona fide candidate for election to the office of United States Senator.

The activities challenged by Mr. White in the Complaints docketed at MUR 3713 and MUR 3714 constitute appropriate public affairs programming or news coverage in which the participation of the League of Women Voters was appropriate and proper.

On behalf of Lynn Yeakel, we respectfully request that the two additional Complaints of William D. White be dismissed.

Respectfully yours,

Gregory M. Harvey
Gregory M. Harvey

GMH:pg
enclosure

92 DEC 14 PM 1:40

Att. to MUR 3713
1/12

96043724668

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW

2000 ONE LOGAN SQUARE

PHILADELPHIA, PENNSYLVANIA 19103-6993

TELEPHONE: (215) 563-8000

FAX: (215) 563-8288

PHILADELPHIA

LOS ANGELES

MIAMI

LONDON

FRANKFURT

WASHINGTON

NEW YORK

HARRISBURG

SAN DIEGO

BRUSSELS

TOKYO

GREGORY M. HARVEY

CHAL STREET (215) 563-8427

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 1706

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.

92 DEC 14 10 11 AM

96043724669

298

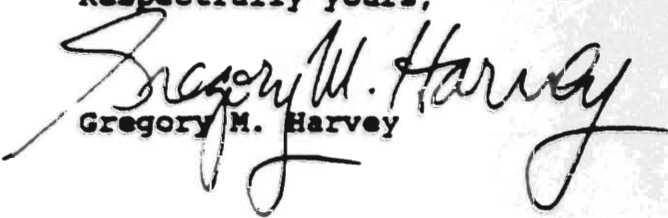
Federal Election Commission
December 4, 1992
Page 2

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

bcc: Ms. Lynn Hardy Yeakel
Ernest Sanchez, Esquire

96043724670

VERIFICATION TO RESPONSE

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF PHILADELPHIA

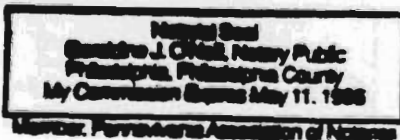
ss.:
:

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
Gregory M. Harvey

Dated: December 4, 1992

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



96043724671

DEC 14 11:41

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.



92 DEC 16 11:14

96043724672

96043724673

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 candidates) 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 Mr. 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, 1992

Subscribed and sworn to before me on this 1st day of
December, 1992

Sharon A. Crawford
Notary Public
Notary Seal
Sharon A. Crawford, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 24, 1995
Member, Pittsburgh Association of Notaries

(SEAL)

OBERMAYER, REBMANN, MAXWELL & HIPPEL

PACKARD BUILDING - 15TH FLOOR

S.E. CORNER 15TH AND CHESTNUT STREETS

PHILADELPHIA, PA. 19102-2688

(215) 992-3000

FAX (215) 992-1555

Oct 15 1 33 PM '92

OF COUNSEL
RICHARD W. THORNTON
FRANK E. NARR, JR.

204 STATE STREET
HARRISBURG, PA. 17101
(717) 234-8750

700 BRIDGE HIGHWAY WEST
HADDONFIELD, NJ 08033
(609) 788-3300

88 TRENTON ROAD
FAIRLESS HILLS, PA. 19033
(215) 440-4400

DIRECT DIAL: 665-

KARIN WEINBERG
PETER H. BRITLAND
ROBERT L. WHITELAND***
C. PERRY WARRER
JAMES H. PENNY, JR.
W. CRAIG LEWIS
THORLEY C. HILLS, JR.**
WARREN W. AYRES
CHARLES H. GOLDEN
THOMAS A. LEONARD
LOUIS E. KUPFERMAN
JOSEPH R. BOUGHER
PAUL S. SHANEN
AND E. VERBER**
JEFFREY S. SATOFF**
SCOTT C. SCHMAN
VICTOR ALAN YOUNG
CATHERINE C. MYERS
CHARLES S. A. BOUGHER
MICHAEL C. ROEMER
RUTH ROSSARD WESSEL
SAMUEL R. FRIEDMAN*
RICHARD R. LINSBURG
WILLIAM J. LEONARD
J. ROBERT STOLTZBUS
J. ERIC RATHBURN
BETH GOLDEN FRIEDER
JAMES R. THOMPSON*
JONATHAN H. WEINBERG***
ELIZABETH A. LLOYD
ROBERT R. CAMERON*
JOHN V. O'HARA*
D. MARILYN MILLER*
JOHN B. GIBSON*
KRISTEN WELTGE*
KATHERINE V. SHANT*

PAUL S. HEWITT
HUGH S. SUTHERLAND
ROBERT A. MACDONNELL
JEFFREY S. ROYHITT
GREGORY D. SAPUTELLA*
KENNETH L. OLIVER, JR.
JOHN J. ENLINDER, JR.
NORM A. LUBIN
JAMES W. BAUMBACH
STEPHEN B. SCHNEPP
JOSEPH J. HUGOVERN***
JULIUS H. STEINER
LAWRENCE J. TABAS
SEBASTIAN A. CROCKETT
W. ATLEE BARR, II***
PAUL H. ALLEN
ANASTASIOS EPSTATHADES*
JERALD S. SATOFF
ALLAN WEINBERG
LARRY BISHOFF
MICHAEL A. WEINSTEIN**
JOHN E. RYAN
MAURICE H. GORDON
ROBERT L. ELDON
JACQUELINE T. SHULMAN*
EDMOND H. GEORGE*
ELIZABETH S. SHEVLYN*
NICHOLAS PODULENKO*
THOMAS R. WILD*
STEVEN A. HABER*
DENISE H. CARUSO*
JOEL R. SPINACK***
SUSAN M. BYRONIDA*
CATHERINE C. FLYNN*
JULIE A. WILLIAMSON*

December 15, 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

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

Re: Matters Under Review 3706, 3713, and 3714

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

Attachment 11
1012

96043724676

01:31:11 11/15/92

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:

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).

MUR 3713. Once again, White directs this complaint not against CAS, but against the Pittsburgh Post-Gazette and the League of Women Voters. Nonetheless, White gratuitously suggests that an election guide provided by both respondents and the Post-Gazette's coverage of the senatorial campaign constituted prohibited "in-kind" contributions to CAS. Once again, the law explicitly provides exactly the opposite. 11 CFR §§100.7(b)(2), 100.8(b)(2). See U.S.C. §431(a)(B).

MUR 3714. Finally, White alleges that the production, distribution, and coverage of the debate between Senator Specter and Ms. Yeakel constituted a prohibited "in-kind" contribution. Again, the law provides exactly the opposite. 11 CFR §§100.7(b)(2), 100.8(b)(2). See §431(a)(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 Benis 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

MICHAEL W. SAHLANEY LAW OFFICES

430 MAIN STREET
JOHNSTOWN, PA 15901
(814) 535-6509
FAX (814) 535-1876

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 29 2 02 PM '96

MICHAEL W. SAHLANEY

MICHAEL T. CRUM

ARLENE ANN DUDECK

January 25, 1996

Federal Election Commission
ATTN: MARY L. TAKSAR, ESQ.
Washington, D.C. 20463

RE: MUR 4187

Dear Ms. Taksar:

On March 14, 1995, I sent to you the response of the Johnstown Tribune Publishing Company in connection with the matter under review by the Federal Election Commission relating to an inquiry by Willeam A. Choby. Mr. Choby is now running for office again. The Tribune intends to monitor the election and maintain its editorial integrity. We do need to have a response to the matter under review at this time, however. We would appreciate your review and statement of any resolution. Your response by February 23 would be greatly appreciated.

Sincerely,

MICHAEL W. SAHLANEY LAW OFFICES

Michael W. Sahlaney
Michael W. Sahlaney
Attorney at Law

MWS:imp

cc: Pamela Mayer

96043724678

Dr. Bill Choby

Professional Adviser - Business, Non-Profit and Political Organizations

"The wise seek the council
of many, but a fool
listens to them all."
Proverbs 15:22

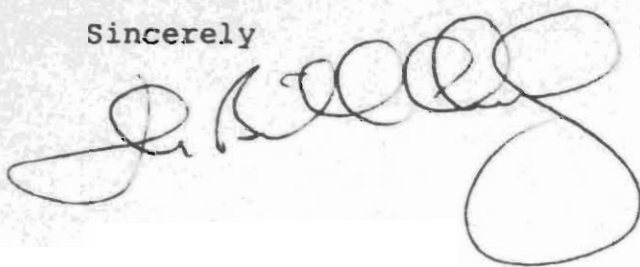
February 23, 1996

Retha Dixon
Docket Chief
Federal Election Commission
Washington, D. C. 20463

Dear Retha,

This is an admendment to a previous complaint FEC # MUR 4187 against the Murtha for Congress Committee and the Johnstown Tribune Democrat. As I have repeatedly mentioned in the past, I believe that this non-newsworthy promotion of Mr. Murtha by the local newspaper is a form of an in-kind contributions by a business corporation. Again, it is my understanding that a "contribution is anything of value given to influence a federal election, 100.7 (a)(1)." Furthermore, I understand that corporations are prohibited from making any contributions in connection with federal elections. Given the repeated nature of these promotions by the same corporation, I would wish to amend my previous complaint to include this evidence to demonstrate the Trubune Democrat's policy of promoting the re-election of Mr. Murtha.

Sincerely



RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 21 3 00 PM '96



WILLEAM A. CHOBY, D.M.D., M.P.A.

December 10, 1994

Retha Dixon
Docket Chief
Federal Election Commission
Washington, D. C. 20463

Dear Retha,

I have recently encountered several printed articles that I believe could represent in-kind contributions by candidate-friendly news corporations. It is my understanding that a "contribution is anything of value given to influence a federal election, 100.7 (a)(1)." Furthermore, I understand that corporations are prohibited from making any contributions in connection with federal elections. Please evaluate the following complaints regarding this matter. Thank-you.

Sincerely

Willeam A Choby DMD
1905 Bates Drive
Johnstown, Pa 15905
814-255-3866

96043724680



WILLEAM A. CHOBY, D.M.D., M.P.A.

A complaint on the editorial endorsement of U.S. Rep. John P. Murtha Pa. 12th District by the Johnstown Tribune Democrat of 425 Locust Street, Johnstown, Pa. 15907-0340 on October 25, 1994.

I believe that the Tribune Democrat's editorial endorsement of incumbent Congressman John P. Murtha during a contested federal election is in effect an "in-kind" contribution of free advertising that goes beyond the newspaper's First Amendment rights normally exercised with the reporting of a public event. Furthermore, the editorial endorsement was specifically stated as having represented the views of the Johnstown Tribune Democrat as determined by the newspaper's employees, i.e. the publisher, the managing editor, the editorial page editor and the chief editorial writer. Could this private corporate opinion qualify as an "in-kind" contribution clearly designed to influence a federal election in the favor of incumbent federal candidate, Murtha and in violation of the FEC's corporate contribution regulations?

I submit this complaint along with the enclosed supporting documentation that represents, to the best of my knowledge, a true and accurate account of the incident in question.

Willeam A Choby DMD MPA
1905 Bates Drive
Johnstown, Pennsylvania 15905
814-255-3866

96043724681



Montel Williams hosts "Terrors of the Deep" on CBS.

Among tonight's choices on television:

"The Bodyguard": Whitney Houston in her big screen debut with Kevin Costner plays a pop star who hires an ex-Secret Service agent (Costner) to guard her after she receives death threats. The two fall in love and see you will probably have to listen to her hit, "I Will Always Love You" again 8 p.m., ABC.

"Terrors of the Deep": Talk-show host Montel Williams hosts a special about mythical and actual dangers of the sea. Also included a first person account of a shark attack 8 p.m. CBS.

"Caroline in the City": A chance encounter with Del (Eric LaRue) sends Richard job hunting. Kevin and Annie tell Caroline that she's unaware of Richard's feelings for her. 9:30 p.m., NBC.

"48 Hours": A report on family violence focuses on what comprises a family and what makes up the values segments on nontraditional families, charity and sex and violence also included 10 p.m. CBS.

Complete listings, Page B4

THE LIST

From Key 95 "Morning News" Jack Michaels, the top 10 things to look for at the Jack Kevorkian murder trial:

1. Carlson monoxide in courtroom
2. Kevorkian admits he once killed a man
3. Kevorkian won't wait three hours of "Death Machine" for three easy installments of 300 M.
4. Kevorkian will end up assisting the suicide of his jurors.
5. In a surprise move, Kevorkian hires Glen Rooper as defense attorney
6. New line of "Dr. Death" action wear.
7. Cameo appearance by O.J.
8. At recess, Kevorkian passes out complimentary packs of Lucky's
9. Admits that he learned everything he knows from the Menendez brothers.
10. Starting revelation... the "Death Machine" was actually invented by Thomas Edison.

but with a variety to be self-conscious and overly image-conscious.

Now about a George? Steady, modest, seemingly well-grounded, with a penchant for the spiritual. Can be aloof, but not problematic like John without Yoko. Consistent, if unsettling. Given to flashes of artistic brilliance ("Here comes the sun").

Maybe you're a Ringo? Everyone's little brother (or sister). The tag-along who's always welcome because of perpetual, if at times farfetched, good cheer ("I'd like to be, under the sea, in an octopus's garden in the shade").

Names that type

To demonstrate this theory of Beatology, let's take some people in the news and determine their inner Beatle.

Susan Swann, Cambria County commissioner: Paul. An optimist, who is hard working and wants to do what is best for the county. She realizes the need for a new report between the commissioners and the public.

Paul Bonanni, Cambria County commissioner: John. He is the Democratic leader of the pack now, but he was the odd man out under the Republicans. He has fervent opinions but can suffer from melancholia. Remember, he filed the lawsuit against the previous commissioners, claiming they didn't include him in on decision making.

Fred Salomon, Cambria County com-

missioner: Ringo. How can you not like this guy? For a politician he has a non-threatening image and is happy to take on any project the commissioners decide to pass his way. And, he's a doctor!

Bill Lloyd, Somerset state house representative: George. As a legislator he is always in the background making the deals and sticking to his principles. His legislation often deals with areas of great concern to the public and environment.

Jeff Allen, Channel 3 television news-center: Paul. Can he be one of the hardest working men on local television? He never seems to leave his office. He is also keenly aware of how important it is for his newscast to score points with the audience. How many times can you use the word "we" in a newscast?

John Martin, U.S. congressman: George. Like an old navy warship, the man is consistent. He doesn't seem to flinch or move from his position and everyone can count on him for federal help. His flashes of brilliance come when you discuss funding.

Art Cook, a Somerset county district justice: Paul. Always optimistic and courteous, he often treats people who come before him as if they were part of his family.

Mark Singel, head of the state Democratic party: Paul. The consummate

politician, he always has a smile on his face and an outstretched hand. While he was lieutenant governor, he did all he could to bring prosperity to the area, but he lost bids for both U.S. Senate and governor.

Andy Lucky, radio personality on WJAC-AM: Ringo. The man is pumped up with happiness and cheer. You can talk about the worst things in the world and he can find the little good that exists. After all his radio show is called "The Good Life."

Brad Geber, Somerset County commissioner: John. He is the leader of the commissioners even though he is the minority member.

Colin Powell, former Joint Chiefs of Staff chairman: George. Steady, consistent, not one to rock the boat, a bit aloof. Briefly carried everyone last full with hints of presidential run.

Reverend John: Can be hilarious with a couple notes of humor. Also a magnanimous who will fire a half dozen TV writers at a moment's notice. Tom Arnold formerly his Yoko.

Ray Lewis Paul: Eager to please. Tireless. Proof that hard work pays off. (Has Ringo rising: He just happened to be in the right place at the right time when he landed "Tonight Show" gig.)

David Letterman, talk-show superstar: John. At times, brilliantly funny. Few think quicker on their feet than the gap-toothed

one. At other times, bitter and sarcastic with a mean streak a mile wide.

What to expect

Now that you see how it works, you can apply this theory to anyone. So, here's what to expect in the real world once Beatle-type is determined.

Paul: Know what to say and always make a good impression. They'll make you feel good. But watch out. They can be shallow and a bit power-hungry. Still, they're loyal (Paul is the only Beatle who's never been divorced).

John: If you suspect you're in the presence of a John, try to determine if the person is an early or late John. If early, you're in for the time of your life. If late, you may be asking for trouble.

George: Might not send your pulse beating to three-digit levels at all times, but their spiritual predilection could lead to deep personal discoveries.

Ringo: Are good fun and always are up for giving back rubs. But they tend to be high-maintenance, requiring more coddling, coddling and nurturing than most. How does Travolta see himself? "Paul baby, Paul all the way," he says. "Who I actually am, you maybe can answer better."

Staff writer Steven Liebman contributed to this report.

Paul



Susan Swann



Mark Singel

George



Colin Powell



John Martin



Ringo



Andy Lucky



Fred Salomon

John



Ted Baranik



David Letterman

Comics/53
Television/54

STYLE

B

WHAT'S UP

Pulitzer-winning composer Morton Gould dead at 62

Pulitzer Prize-winning composer Morton Gould, who wrote for the concert hall and the marching band alike, imbuing his music with the sounds and spirit of America, has died at 62.



Gould

Gould died overnight in his sleep while in Orlando, Fla., to give seminars there, his son David said Wednesday. The cause of death was not immediately known. Like his older contemporary Aaron Copland, who died in 1990, Gould used popular themes in his symphonic compositions.

The titles of some of Gould's works reflect these themes: "Cowboy Rhapsody," "Boogie Woogie Etude," "Foster Gallery" (based on Stephen Foster melodies), "Lincoln Legend," "Chorale and Fugue for Jazz," "Spirituals for Orchestra." He won a Pulitzer in music last year for "Stringmusic," a piece commissioned by Marius Rostropovich.

A child prodigy who published his first composition, "Just Six," at age 6, Gould remained active until his death.

Grab a chance to jam with jazz masters

What could be better for a jazz student than spending a weekend improvising with a master such as Nathan Davis?

Applications are available now for the Mellon Jazz Festival's Student Jam Spectacular at The Carnegie on April 27-28. The free annual weekend event for high school students, sponsored by Mellon Bank, The Carnegie and George Wein's Festival Productions, offers outstanding music students an opportunity to play with leading national and local jazz musicians and teachers.

The 1985 Master Teachers are Curtis Fuller, trombone; Donald Harrison, saxophone; Dave Barrell, piano; Davis, saxophone; Roger Humphries, drums; Jimmy Ponder, guitar; David Marsh, bass; and Danny Conn, trumpet.

Students from outside the city of Pittsburgh are required to submit their audition on audio tape by March 11. About 50 participants will be selected to perform in public.

To request an application or receive more information, call (412) 324-2275.

From staff and wire reports

discovering
your
inner

Beatle

Everyone is
either a John,
Paul, George
or Ringo.

Which one
are you?

STAFF AND WIRE REPORTS

Forget psychology or psychic hot lines or the harknayed "So, what's your sign?" when trying to figure out what makes someone tick. If you really want to get to know someone, ask, "Who's your Beatle?"

It's true: Most people seem to be a John, Paul, George or Ringo.

No less than Hollywood comeback king John Travolta has noticed.

"Every man and woman represents a Beatle," he says in the Feb. 22 Rolling Stone. "You're either a Paul type, a George type, a Ringo type or a John type."

Are you a John? A John is complex, a person of contradictions. Can be witty and a barrel of fun ("Twist and Shout") or a tortured artist type, given to melancholia ("No one I think is in my tree, I mean it must be high or low," from the song "Strawberry Fields Forever"). Can be a





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 29, 1996

Dr. Willeam A. Choby
1905 Bates Drive
Johnstown, PA 15905

RE: MUR 4187

Dear Dr. Choby:

This letter acknowledges receipt on February 27, 1996, of the supplement to the complaint you filed on February 21, 1995. The respondents will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

96043724684



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 29, 1996

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

RE: MUR 4187
Murtha for Congress Committee and
Robert C. Ondick, as treasurer

Dear Mr. Harvey:

On February 28, 1996, your clients, Murtha for Congress Committee and Robert C. Ondick, as treasurer, were notified that the Federal Election Commission received a complaint from Dr. Willeam A. Choby alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On February 27, 1996, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure

96043724685



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 29, 1998

Michael W. Sahlaney, Esquire
430 Main Street
Johnstown, PA 15901

RE: MUR 4187
Johnstown Tribune Publishing
Company

Dear Mr. Sahlaney:

On February 28, 1994, your clients were notified that the Federal Election Commission received a complaint from Dr. Willeam A. Choby alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time they were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On February 27, 1996, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

96043724686

2000 One Logan Square
Philadelphia, PA 19103-6990
215-963-5000
Fax: 215-963-5299

Morgan, Lewis
& Bockius LLP
COUNSELORS AT LAW

Gregory M. Harvey
215-963-5427

March 6, 1996

Federal Election Commission
Washington, D.C. 20463

Attention: Mary L. Taksar, Attorney
Central Enforcement Docket

Re: MUR 4187
Murtha for Congress Committee
and Robert C. Ondick, as Treasurer

Greetings:

This will respond to the papers enclosed with your letter dated February 29, 1996 as purported "additional information from the complainant pertaining to the allegations" in the above-docketed complaint.

As stated in my letter dated March 16, 1995, the original allegations against Respondents at MUR 4187 relate to an editorial endorsement of Congressman Murtha published in the Johnstown Tribune-Democrat, a newspaper of general circulation not owned or controlled by any political party, political committee or candidate.

The purported "additional information" includes a letter from the complainant dated December 10, 1994 which refers to an editorial endorsement of Congressman Murtha on October 25, 1994, but this is in fact an unsworn version of the original allegation and was referred to in your letter dated February 28, 1995. The only new material enclosed with your letter dated February 29, 1996 is a copy of a whimsical item published on the "Style" page of the Tribune-Democrat on February 22, 1996, the thesis of which is that most people can be compared to one of the four Beatles ("most people seem to be a John, Paul, George or Ringo.") and which describes various public officials and broadcast personalities by reference to one of the four Beatles; Congressman Murtha is linked in the text of the item to Beatle George Harrison (described as "steady, modest, seemingly well-grounded, with a penchant for the spiritual" and "Given to flashes of artistic brilliance . . ."). The complainant contends that this publication on the

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 8 3 06 PM '96

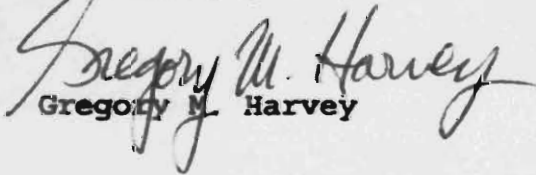
96043724687

Federal Election Commission
March 6, 1996
Page 2

"Style" page of a newspaper constitutes a prohibited in-kind contribution.

We are aware that the Commission has no procedures to screen complaints and believes it must process everything which is submitted in affidavit form. Nonetheless, the complainant's new allegation is manifestly frivolous and should be promptly rejected. We also incorporate herein by reference our prior responses dated March 16, 1995 and March 20, 1995 and the legal arguments enclosed therein (copies of which are attached).

Very truly yours,


Gregory M. Harvey

GMH:pg

enclosures

cc: Robert C. Ondick, C.P.A.

96043724688

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).

96043724689

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).

96043724690

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

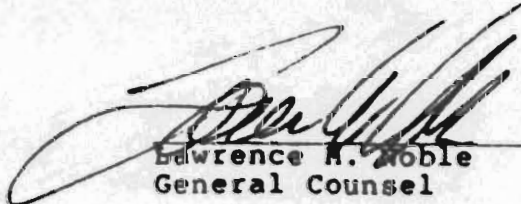
96043724691

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

96043724692

96043724693

,

)

Agenda Document #X96-13

)

(continued)

Federal Election Commission
Certification: Enforcement Priority
March 6, 1996

Page 3

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)

96043724694

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

96043724695



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 7, 1996

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Dr. Willeam A. Choby
1905 Bates Drive
Johnstown, PA 15905

RE: MUR 4187

Dear Dr. Choby:

On February 21, 1995, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Johnstown Tribune Publishing Company, Jamestown Tribune - Democrat and Pamela J. Mayer, as Publisher, Howard Saltz, Lawrence J. Hudson, Bruce J. Wissinger, Bill Jones and Murtha for Congress Committee and Robert C. Ondick, as treasurer. See attached narrative. Accordingly, the Commission closed 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 (7BH)

Mary L. Taksar, Attorney
Central Enforcement Docket

Attachment
Narrative

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

96043724696

MUR 4187

JOHNSTOWN TRIBUNE DEMOCRAT

Willeam A. Choby filed a complaint alleging that an editorial endorsement of incumbent Congressman John Murtha in the Johnstown Tribune Democrat represents an in-kind corporate contribution. The complaint states that the editorial is the opinion of the Tribune as determined by the Editorial Board and that it was clearly designed to influence a federal election.

In response to the complaint, the Murtha for Congress Committee states that it is in no way affiliated with the Johnstown Tribune Democrat and made no arrangements for favorable news coverage.

The response of the Johnson Tribune Democrat and its employees and directors states that the editorial in question was a valid exercise of the newspaper's first amendment rights. According to respondents, Section 100.7.(b)(2) of Commission regulations exempts from the definition of contribution editorials by news organizations provided that the facility is not owned or controlled by any political party, political committee or candidate. Respondents indicate that neither the Garden State Newspapers, Inc. nor its subsidiary Tribune Democrat is owned or controlled by any political party, political committee or candidate.

This matter is less significant relative to other matters pending before the Commission.

96043724697



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 7, 1996

**Gregory N. Harvey
Morgan, Lewis, Bockius
2000 One Logan Square
Philadelphia, PA 19103**

**RE: MUR 4187
Murtha for Congress
Committee and
Robert C. Ondick,
as treasurer**

Dear Mr. Harvey:

On February 28, 1995, 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 has determined to exercise its prosecutorial discretion and to take no action against Murtha for Congress Committee and Robert C. Ondick, as treasurer. See attached narrative. Accordingly, the Commission closed 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.

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

96043724698

Mr. Harvey, Esq.
Page 2

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

Sincerely,

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

Attachment
Narrative

96043724699

MUR 4187

JOHNSTOWN TRIBUNE DEMOCRAT

Willeam A. Choby filed a complaint alleging that an editorial endorsement of incumbent Congressman John Murtha in the Johnstown Tribune Democrat represents an in-kind corporate contribution. The complaint states that the editorial is the opinion of the Tribune as determined by the Editorial Board and that it was clearly designed to influence a federal election.

In response to the complaint, the Murtha for Congress Committee states that it is in no way affiliated with the Johnstown Tribune Democrat and made no arrangements for favorable news coverage.

The response of the Johnson Tribune Democrat and its employees and directors states that the editorial in question was a valid exercise of the newspaper's first amendment rights. According to respondents, Section 100.7.(b)(2) of Commission regulations exempts from the definition of contribution editorials by news organizations provided that the facility is not owned or controlled by any political party, political committee or candidate. Respondents indicate that neither the Garden State Newspapers, Inc. nor its subsidiary Tribune Democrat is owned or controlled by any political party, political committee or candidate.

This matter is less significant relative to other matters pending before the Commission.

96043724700



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 7, 1996

Michael W. Sahlaney, Esquire
430 Main Street
Johnstown, PA 15901

RE: MUR 4187
Johnstown Tribune
Publishing Company
Pamela J. Mayer
Howard Saltz
Lawrence Hudson
Bruce Wissinger
Bill Jones

Dear Mr. Sahlaney:

On February 28, 1995, 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 has determined to exercise its prosecutorial discretion and to take no action against Johnstown Tribune Publishing Company, Pamela J. Mayer, Howard Saltz, Lawrence Hudson, Bruce Wissinger, and Bill Jones. See attached narrative. Accordingly, the Commission closed 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.

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

96043724701

Mr. Sahlaney, Esq.
Page 2

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

Sincerely,

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

Attachment
Narrative

96043724702

MUR 4187

JOHNSTOWN TRIBUNE DEMOCRAT

Willeam A. Choby filed a complaint alleging that an editorial endorsement of incumbent Congressman John Murtha in the Johnstown Tribune Democrat represents an in-kind corporate contribution. The complaint states that the editorial is the opinion of the Tribune as determined by the Editorial Board and that it was clearly designed to influence a federal election.

In response to the complaint, the Murtha for Congress Committee states that it is in no way affiliated with the Johnstown Tribune Democrat and made no arrangements for favorable news coverage.

The response of the Johnson Tribune Democrat and its employees and directors states that the editorial in question was a valid exercise of the newspaper's first amendment rights. According to respondents, Section 100.7.(b)(2) of Commission regulations exempts from the definition of contribution editorials by news organizations provided that the facility is not owned or controlled by any political party, political committee or candidate. Respondents indicate that neither the Garden State Newspapers, Inc. nor its subsidiary Tribune Democrat is owned or controlled by any political party, political committee or candidate.

This matter is less significant relative to other matters pending before the Commission.

96043724703



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4187

DATE FILMED 3/19/96 CAMERA NO. 2

CAMERAMAN ESS

96043724704