



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4396

DATE FILMED 9-23-97 CAMERA NO. 4

CAMERAMAN JMU

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 25 11 52 AM '96

COMPLAINT

To:
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

MUR4396

From:
Goodwin P. Back
413 Oak Street
Etowah, TN 37331

FAILURE OF AMERICAN BROADCASTING COMPANY, 77 WEST 66th STREET, NEW YORK, N.Y. 10023-6201 to FILE FEC REPORTS.

The This Week With David Brinkley program which is an American Broadcasting Company program violates FEC rules by not reporting the production costs, that it's a political program and Pro-Democratic.

The form or way the program is made up makes it evident that the program is Pro-Democratic and Pro-Clinton. On just about every program they have either people that are Republican, Pro-Republican or Anti-Democrat/Clinton and either people that are Democrats, Pro-Democratic or Anti-Republican. They always have the ones that are Republican or Pro-Republican and ask them questions then they have the Democrats or Pro-Democrats and ask questions many of which are on the answers of the Republicans. This procedure gives Democrats to reply to Republican statements but doesn't give Republicans the chance to reply to Democrats statements. This makes the program political and Pro-Democratic and should have to report to FEC.

Goodwin P. Back
Goodwin P. Back, Complainant

Signed and sworn to before me by Goodwin P. Back, Complainant, this 20th day of June, 1996.

Virginia Harrison
Notary Public

Com. exp. 1-13-97

97043673



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 2, 1996

Goodwin P. Back
413 Oak Street
Etowah, TN 37331

RE: MUR 4396

Dear Mr. Back:

This letter acknowledges receipt on June 25, 1996, 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.

The respondents 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 4396. 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,


Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

970433674



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 2, 1996

Roone Arledge, President
American Broadcasting Company, Inc.
47 West 66th Street
New York, NY 10023

RE: MUR 4396

Dear Mr. Arledge:

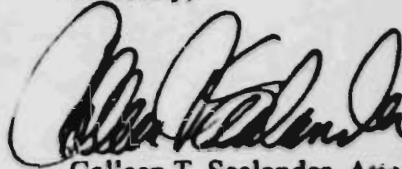
The Federal Election Commission received a complaint which indicates that the American Broadcasting Company, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4396. Please refer to this number in all future correspondence.

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

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

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

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

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

91043836676

John W. Zucker
Senior General Attorney
Law-Journalism

July 16, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 17 10 57 AM '96

Lawrence M. Noble, Esq.
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 4396

Dear Mr. Noble:

I write on behalf of Capital Cities/ABC, Inc. ("ABC") in response to the complaint filed with the Federal Election Commission ("FEC") by Goodwin P. Back of Etowah, Tennessee. In that complaint, dated June 20, 1996, Mr. Back contends that the ABC News weekly news analysis and interview program "This Week With David Brinkley" constitutes a "pro-Democratic and pro-Clinton" campaign contribution which must be reported to the FEC.

As is apparent on the face of the complaint, Mr. Back has presented no valid claim under the Federal Election Campaign Act ("FECA"). What he characterizes as an illegal campaign contribution is instead precisely the kind of news analysis and interview program which FECA expressly excludes from its definition of campaign expenditures or contributions.

That exclusion is found at 2 U.S.C. §431(9)(B)(i), which exempts from the reach of the Act "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

This provision was intended "to make it plain that it is not the intent of Congress in [FECA] to limit or burden in any way the first amendment freedoms of the press or of association. [The media exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, p. 4 (1974).

² See also 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2) ("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").

Page 2
Lawrence M. Noble Esq
July 16, 1996

There can be no question that the broadcast at issue -- the weekly news analysis and interview program "This Week With David Brinkley" -- falls squarely within this statutory media exemption.

ABC News is a division of American Broadcasting Companies, Inc., a wholly owned subsidiary of Capital Cities/ABC, Inc., which in turn is wholly owned by the Walt Disney Company; its broadcast facilities are neither owned nor controlled by any political party, political committee, or candidate. Accordingly, as courts and the Commission have recognized repeatedly, the sole issue under FECA's media exemption is whether the press entity was conducting a legitimate press function in the ordinary course of business when it disseminated the challenged news story, commentary, or editorial. See, e.g., FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 250-51 (1986); Reader's Digest Association, Inc. v. FEC, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 1982-44; AO 1980-109.

Clearly, the program in question -- a long-running news interview and analysis program, broadcast from the facilities of ABC News in Washington, D.C. and disseminated over the ABC Television Network, featuring newsworthy guests and a panel of prominent journalists serving as interviewers and commentators -- qualifies as a "normal business activity of a press entity," FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. at 251 n.5, and therefore cannot be considered a campaign contribution under FECA.³

³ Mr. Back fails to provide any dates or details concerning particular editions of "This Week With David Brinkley" in connection with his complaint. Instead, he asserts that "just about every program" appears to him to carry a "pro-Democratic" bias. However, Mr. Back himself acknowledges that the program's guests cover a wide political spectrum, including: "Republican, Pro-Republican[,] Anti-Democrat[,] Democrats, Pro-Democratic [and] Anti-Republican." Indeed, week after week, this respected and award-winning program presents leading representatives of both parties, as well as other government officials and newsmakers, for wide-ranging debate and probing questions from a panel of prominent journalists (including, we would point out, the noted conservative columnist George Will). Of course, even if this program could be deemed one-sided or partisan, it would still be protected under FECA's media exemption, which explicitly covers media editorials and commentary as well as news reports.

Page 3

Mr. Lawrence M. Noble, Esq.

July 16, 1996

The broadcast in question represents an exercise by ABC News of its "unfettered right...to cover and comment on political campaigns" as well as other news events and issues. H.R. Rep. No. 93-1239, id. at 4. It is protected by the First Amendment and explicitly exempted by Congress from the reach of FECA. The complaint should be summarily dismissed.

Sincerely,



John W. Zucker

cc: Colleen T. Sealander, Esq.
Attorney, General Enforcement Docket

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

DEC 9 9 51 AM '96

Goodwin P. Back
413 Oak St.
Etowah, TN 37331
Dec. 2, 1996

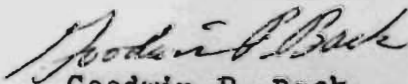
Colleen T. Sealander, Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Ms. Sealander:

Please tell me what action has been taken, when, outcome, or if it is still pending on the following complaints:

MUR 4396 or MUR 4397 (not sure which number is for this case)
Failure of the AFL-CIO, 815 Sixteenth Street, N.W., Washington, D.C.
20006 to comply to FEC rules.

Sincerely,


Goodwin P. Back

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 10, 1996

Goodwin P. Back
413 Oak Street
Etowah, TN 37331

RE: MUR 4396

Dear Mr. Back:

This is in response to your letter dated December 2, 1996, which we received on December 9, 1996, requesting information pertaining to the complaint you filed on June 25, 1996, with the Federal Election Commission.

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

As you were informed by letter date July 2, 1996, we will notify you as soon as the Commission takes final action on your complaint.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alva E. Smith", is positioned above the typed name.

Alva E. Smith, Paralegal
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 20, 1996

Mr. Goodwin P. Back
413 Oak Street
Etowah, TN 37331

re: MURs 4396, 4397

Dear Mr. Back:

This is in response to your letter to Colleen Sealander inquiring as to the status of the above-captioned Matters Under Review (MUR).

Action is still pending on all of these complaints. For your information, MUR 4397 contains the allegations regarding the AFL-CIO's alleged failure to comply with FEC rules

Many thanks for your inquiry. Please let me know if we can be of any further assistance.

Very truly yours,

F. Andrew Tutley
Supervisory Attorney
Central Enforcement Docket

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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ENFORCEMENT PRIORITY

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SENSITIVE

AUG 19 1997

**EXECUTIVE SESSION
SUBMITTED LATE**

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

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

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 34 cases which do not warrant further action relative to other pending matters.¹

¹ These cases are: MUR 4470 (Ward for Congress); MUR 4478 (Citizens for Tom Reynolds); MUR 4492 (Friends of Ken Poston); MUR 4498 (Darryl Roberts for Congress); MUR 4506 (The Hon. Ted Little); MUR 4512 (Friends of Lane Evans); MUR 4517 (Unknown Respondent); MUR 4518 (Kansas for Rathbun); MUR 4520 (Larry Little)

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Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more distant in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more remote and consequently more difficult to develop. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of these facts, EPS also provides us with the means to identify those cases which, though earning a higher rating when received, remained unassigned due to a lack of resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

Congress); MUR 4522 (*Republican Party of Bexar County*); MUR 4523 (*Cong. Andrea Seastrand*); MUR 4524 (*Danny Covington Campaign Fund Committee*); MUR 4526 (*Hoeffell for Congress*); MUR 4528 (*Pete King for Congress*); MUR 4529 (*Pete King for Congress*); MUR 4532 (*Citizen's Committee for Gilman for Congress*); MUR 4535 (*Visclosky for Congress*); MUR 4537 (*Di Nicola for Congress*); MUR 4541 (*Ross Penot*); MUR 4548 (*Blagojevich for Congress*); MUR 4550 (*Friends of Wamp for Congress*); MUR 4551 (*John N. Hostettler*); MUR 4557 (*De La Rose for Congress*); MUR 4559 (*Bill Baker for Congress*); MUR 4560 (*George Situart Jr. for Congress*); MUR 4562 (*Wayne E. Schile*); MUR 4566 (*Al Gore*); MUR 4574 (*Danny Covington Campaign Fund Committee*); MUR 4576 (*Volunteers for Shimkus*); MUR 4579 (*New Zion Baptist Church*); MUR 4580 (*Friends of Mike Forbes*); MUR 4584 (*Bill Baker for Congress*); MUR 4588 (*Navarro for Congress*); and MUR 4613 (*Guy Kelley for Congress*).

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The U.S. District Court for the District of Columbia, however, held in *Democratic Senatorial Campaign Committee v. FEC*, Civil Action No. 95-0349 (D.D.C. April 17, 1996) that 24 months was too long a time in which to hold a case in an inactive status.

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Twenty one cases have remained on the Central Enforcement Docket for a sufficient period of time to render them stale, all of which are recommended for closure in this Report.⁴ This group includes four MURs that became stale several months ago, but were held pending criminal prosecution by the Department of Justice.⁵ DOJ obtained convictions in the two criminal cases related to these four MURs (*U.S. v. Jay Kim* and *U.S. v. Dynamic Energy Resources*) based upon guilty pleas by the key defendants, who are also the principal respondents in our pending matters. Pursuit of civil enforcement action in view of the satisfactory results obtained in the criminal cases would not be the most effective use of the Commission's scarce resources at this time.

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective August 29, 1997. Closing these cases as

3

⁴ These cases are: MUR 4274 (GOPAC); MUR 4358 (Miller for Senate); MUR 4361 (ABC-TV); MUR 4368 (Citizens Business Bank); MUR 4380 (AFGE Local 2391 PAC); MUR 4385 (Dial for Congress); MUR 4386 (Zimmer for Senate); MUR 4396 (ABC); MUR 4404 (Friends of Steve Stockman); MUR 4410 (39th Legislative District); MUR 4417 (Our Choice II); MUR 4422 (Desana for Congress Committee); and Pre-MUR 336 (Park National Bank & Trust).

⁵ These cases are: MUR 3796 (Jay Kim for Congress); MUR 3798 (Jay Kim); MUR 4275 (Jay Kim); and MUR 4356 (Dynamic Energy Resources). In dismissing the Jay Kim cases, we also recommend closing Pre-MUR 352, which is the transmittal of the guilty plea agreement and related documentation in the criminal case against Congressman Kim forwarded by United States Attorney's office.

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of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:

Pre-MUR 336

Pre-MUR 352

B. Take no action, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:

MUR 3796	MUR 4396	MUR 4522	MUR 4559
MUR 3798	MUR 4404	MUR 4523	MUR 4560
MUR 4274	MUR 4410	MUR 4524	MUR 4562
MUR 4275	MUR 4417	MUR 4526	MUR 4566
	MUR 4422	MUR 4528	MUR 4574
MUR 4356	MUR 4470	MUR 4529	MUR 4576
MUR 4358	MUR 4478	MUR 4532	MUR 4579
MUR 4361	MUR 4492	MUR 4535	MUR 4580
MUR 4368	MUR 4498	MUR 4537	MUR 4584
	MUR 4506	MUR 4541	MUR 4588
MUR 4380	MUR 4512	MUR 4548	MUR 4613
MUR 4385	MUR 4517	MUR 4550	
MUR 4386	MUR 4518	MUR 4551	
	MUR 4520	MUR 4557	

8/14/97

Date

Lawrence M. Noble (42)

Lawrence M. Noble
General Counsel

Attachment:

Case Summaries

970433686

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In the Matter of)
)
Enforcement Priority) Agenda Document No. X97-55

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 19, 1997, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions with respect to Agenda Document No. X97-55:

- A. Decline to open a MUR, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:
1. Pre-MUR 336. 2. Pre-MUR 352.
- B. Take no action, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:
1. MUR 3796. 2. MUR 3798. 3. MUR 4274.
4. MUR 4275. 5. MUR 4356. 6. MUR 4358.
7. MUR 4361. 8. MUR 4368. 9. MUR 4380.
10. MUR 4385. 11. MUR 4386. 12. MUR 4396.
13. MUR 4404. 14. MUR 4410. 15. MUR 4417.
16. MUR 4422. 17. MUR 4470. 18. MUR 4478.

(continued)

Federal Election Commission
Certification: Enforcement Priority
August 19, 1997

Page 2

19. MUR 4492. 20. MUR 4498. 21. MUR 4506.
22. MUR 4512. 23. MUR 4517. 24. MUR 4518.
25. MUR 4520. 26. MUR 4522. 27. MUR 4523.
28. MUR 4524. 29. MUR 4526. 30. MUR 4528
31. MUR 4529. 32. MUR 4532. 33. MUR 4535.
34. MUR 4537. 35. MUR 4541. 36. MUR 4548
37. MUR 4550. 38. MUR 4551. 39. MUR 4557.
40. MUR 4559. 41. MUR 4560. 42. MUR 4562.
43. MUR 4566. 44. MUR 4574. 45. MUR 4576.
46. MUR 4579. 47. MUR 4580. 48. MUR 4584.
49. MUR 4588. 50. MUR 4613.

Commissioners Aikens, McDonald, McGarry, and Thomas
voted affirmatively for the decision; Commissioner Ellicott
dissented.

Attest:

8-21-97
Date

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

970433683



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 29, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Goodwin P. Back
413 Oak Street
Etowah, TN 37331

RE: MUR 4396

Dear Mr. Back:

On June 25, 1996, 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 exercised its prosecutorial discretion to take no action in the matter. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on August 29, 1997. 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. § 437(g)(a)(8).

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turyley", is written over a horizontal line.

F. Andrew Turyley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 29, 1997

John W. Zucker, Senior General Attorney
Capital Cities/ABC, Inc.
77 West 66 Street
New York, NY 10023

RE: MUR 4396

Dear Mr. Zucker:

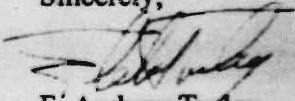
On July 1, 1997, the Federal Election Commission notified Rooney Arledge, President of American Broadcasting Company, Inc., of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against the American Broadcasting Company, Inc. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in the matter on August 29, 1997.

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

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,


F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4394

DATE FILMED 9-23-97 CAMERA NO. 4

CAMERAMAN JML

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