



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
Acting General Counsel

FROM: Office of the Commission Secretary 

DATE: August 27, 2001

SUBJECT: Statement of Reasons for MURs 5110 and 5162

Attached is a copy of the Statement of Reasons for
MURs 5110 and 5162 signed by Commissioner Scott E. Thomas.

This was received in the Commission Secretary's Office on
Monday, August 27, 2001 at 12:33 p.m.

cc: Vincent J. Convery, Jr.
Information Division
Press Office
Public Disclosure

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the matter of)
)
Christian Broadcasting Network (CBN)) MUR 5110

In the matter of)
)
ABC News, CBS News, and CNN News) MUR 5162

STATEMENT OF REASONS
Commissioner Scott E. Thomas

While I joined my colleagues in voting to find no reason to believe there was a violation in these matters, certain issues were not as clear-cut as their Statement of Reasons, dated July 24, 2001, would suggest. In particular, in MUR 5110, there is some question about whether the CBN's role in producing and paying to air the program at issue is within the press exemption at 2 U.S.C. § 431(9)(B)(i).

The Commission's authority to investigate communications by broadcasters or other media-related entities has been circumscribed by some courts. For example, as my colleagues note, in *Readers Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981), the court required the FEC to first limit its inquiry to whether the entity in question was engaging in a 'legitimate press function.' Contrary to my colleagues' Statement, though, this is not a simple matter of whether the program at issue happened to air over a broadcast station's facilities or whether the station is owned or controlled by a candidate or party. There must be an assessment of whether the entity involved in producing or paying for the program's airing engaged in a function that is within the ordinary course of business for a press entity.

In this case, CBN's response suggests that CBN produced the program and then paid the television station to air the program. CBN's web site indicates CBN has an overall goal well beyond that of traditional media: "CBN's mission is to prepare the Unites States of America, the nations of the Middle East, the Far East, South America and other nations of the world for the coming of Jesus Christ and the establishment of the kingdom of God on earth. We are achieving this end through the strategic use of mass communications, especially television and film, the Internet and New Media, radio, the distribution of cassettes, literature, and the educational training of students"

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www.cbn.com (visited 7/19/01). The web site then relates: "Today, CBN is a multifaceted institution that comprises several national and international broadcasting entities, a 24-hour telephone prayer line, and a hotel and conference center. Chief among CBN's broadcasting components is The 700 Club, a daily television program featuring Pat Robertson. . . . The show's news/magazine format presents a lively mix of information, interviews, and inspiration to an average daily audience of more than 1,000,000 viewers." *Id.*

While the communication complained of apparently was part of a 700 Club program that probably would qualify as a 'legitimate press function,' only an investigation of certain factual issues would give full assurance. Without knowing what component of the CBN "institution" in fact produced the program, and without knowing whether it is 'ordinary course of business' for a station to be paid by CBN to run a news segment (rather than paying CBN for such program), one cannot categorically say this case presented no possible basis for a violation. In this age of 'infomercials,' entertainment programs that include candidate interviews, television and radio programs produced by party-controlled entities, cable stations devoted to programs of particular parties, media outlets owned by candidates, and entire broadcasting networks owned by non-media conglomerates, the lines are often blurry.

I voted not to initiate an investigation because there was a very slim likelihood that the actions of CBN in this instance were outside the 'legitimate press function.' I agree with my colleagues that most complaints alleging media bias will not rise to the level of a 'reason to believe' finding. But my colleagues go too far when they say, "The complaints cite only the broadcasts of the Respondent entities, leading to a *per se* conclusion that the activities complained of fall within the statutory exemption of any 'news story, editorial or commentary' . . ." The mere fact that a communication is made through a broadcast is not dispositive. A station could not repeatedly run one candidate's campaign advertisements without charge, for example, simply because the ads were being 'broadcast' by a media entity. And though a station itself might be insulated when airing a commentary piece, an organization paying to produce and air it might not qualify for the statutory exemption, particularly if this is not the standard way of airing commentary on the station. There are nuances in this area of the law that should not be overlooked.

8/24/01
Date



Scott E. Thomas
Commissioner

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