



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Malcolm G. Stevenson, Esquire
Schwartz, Woods & Miller
1350 Connecticut Avenue, NW, Suite 300
Washington, D.C. 20036

August 7, 2001

RE: MUR 5102
WNED Television

Dear Mr. Stevenson.

On October 2, 2000, the Federal Election Commission notified Don Boswell, CEO of WNED, 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 WNED Television. See attached narrative. Accordingly, the Commission closed its file in this matter on July 31, 2001.

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) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over a circular stamp.

Jeff S. Jordan
Supervisory Attorney
Central Enforcement Docket

Attachment.
Narrative

21-04-405-1691

MUR 5102
BUFFALO NEWS

Harry Kreskey, counsel on behalf of Jeff Graham, a New York Independence Party candidate for the Senate, alleges that Mr. Graham was excluded from the September 13, 2000, debate, which was "staged" by the Buffalo News, NBC Television, CBS Television and the local PBS affiliate. Mr. Kreskey asserts that there were no pre-established objective criteria used to determine who would participate in the debate.

In response to the complaint, the Buffalo News states that NBC's Washington Bureau managed the debate and the criteria it used to determine which candidates would be invited to the debate included, "a candidate would have to poll 15% in a basket poll consisting of those surveyed in a Marist, Quinnipiac and/or any statewide poll commissioned by a major news organization."

No response was received from NBC.

CBS states that the debate was broadcast and sponsored by WCBS-TV, which CBS owns and operates. CBS contends that WCBS-TV used "well-established journalistic criteria" in determining who would participate in the debate. Alternatively, CBS contends that the Commission regulations governing debates are unconstitutional, "to the extent applied to press sponsorship of candidate debates."

The local PBS affiliate, Western New York Public Broadcasting Association (WNED-TV), responded that it was not a staging organization and had no role in the debate. Instead, the sponsors of the debate, MSNBC and *Buffalo News*, rented Western New York Public Broadcasting Association's studio facilities.

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

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