

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

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In the Matter of:	:	
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CBS BROADCASTING, INC.;	:	MUR No. _____
KERRY-EDWARDS 2004, INC.;	:	
	:	
Respondents.	:	
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**COMPLAINT**

CENTER FOR INDIVIDUAL FREEDOM (“Center”) files this Complaint with the Federal Election Commission, in accordance with the provisions of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, upon information and belief that Respondents violated multiple provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431 *et seq.*, and the Federal Election Commission regulations promulgated thereunder, 11 C.F.R. §§ 100.1 *et seq.*

The Center is a non-partisan, non-profit organization incorporated and existing under the laws of the State of Virginia and having its offices and principal place of business at 901 N. Washington Street, Suite 402, Alexandria, Virginia 22314. The Center is a tax-exempt organization described in Section 501(c)(4) of the Internal Revenue Code and is operated exclusively for the promotion of social welfare. The Center’s mission is to protect and defend individual freedoms and individual rights guaranteed by the U.S. Constitution, including an individual’s fundamental right to vote and participate in free and fair elections. In furtherance of this mission, the Center engages in both educational and advocacy efforts, focusing public, legislative, and

judicial attention on the rule of law as the best protection for the individual freedoms and rights of all citizens. The apparent violations alleged herein represent a serious lack of compliance with the federal election and campaign finance laws, raising numerous concerns about corruption and the appearance of corruption in the 2004 presidential election.

**Respondents**

CBS BROADCASTING, INC. (“CBS”), is a subsidiary of Viacom, Inc., and directly owns and operates the CBS broadcast television network, including its news division. CBS has its offices and principal place of business at 1515 Broadway, New York, New York 10036. CBS’s registered agent is the Corporation Service Company, 80 State Street, Albany, New York, 12207.

KERRY-EDWARDS 2004, INC. (“Kerry Campaign”), is the political committee established to support the presidential candidacy of John Kerry. The Kerry Campaign can be contacted at P.O. Box 34555, Washington, DC 20043.

**Facts**

The facts supporting this Complaint are all found in materials and reports freely and readily available to the public. The relevant documents are attached to this Complaint.

Central to this Complaint is a segment developed, produced, and broadcast nationwide as a part of the program “60 Minutes II” by CBS News over the CBS broadcast television network. The segment aired on September 8, 2004, and concerned President George W. Bush and documents allegedly showing that he benefited from preferential treatment during his Texas Air National Guard service. Specifically, the

segment alleged that CBS had uncovered “new documents and new information on the President’s military service” that indicated someone “pulled ... strings to get ... George W. Bush into the Texas Air National Guard” in order to prevent him from “being drafted” for service in Vietnam. (“President Bush’s National Guard Service,” 60 MINUTES II, CBS TV, September 8, 2004, Federal News Service Transcript.) Nearly 7 million viewers watched the segment. (Jennifer Harper, “Rather rumble likely to cost CBS,” WASHINGTON TIMES, September 17, 2004, at A05.)

Five days before the segment aired, on September 3, Mary Mapes, an Associate Producer for “60 Minutes,” contacted Josh Howard, the program’s Executive Producer, to inform him that she had persuaded a source to hand over a number of documents. (Josh Getlin, Elizabeth Jensen & Scott Collins, “In the Rush for a Scoop, CBS Found Trouble Fast,” LOS ANGELES TIMES, September 18, 2004, at A1.) The source claimed that the documents were memos “written in 1972 and 1973 by the late Lt. Col. Jerry B. Killian, Bush’s squadron commander in the Texas Air National Guard. The memos, [Mapes] was told, revealed how the young pilot ... had received favorable treatment, even after refusing an order to report for a physical.” (Howard Kurtz, Michael Dobbs & James V. Grimaldi, “In Rush to Air, CBS Quashed Memo Worries,” WASHINGTON POST, September 19, 2004, at A01.) Later, CBS revealed that the source who handed over the documents was Lt. Col. Bill Burkett, also a former Texas National Guardsman. (“CBS News admits to being misled regarding documents pertaining to President Bush’s National Guard service,” CBS EVENING NEWS, CBS TV, September 20, 2004, CBS News Transcripts.) Following Mapes’ call, there “was a rush to get the pieces in place” to prepare and broadcast a segment based on the memos for the following Wednesday’s

edition of “60 Minutes II.” (Getlin, et al., “In the Rush for a Scoop, CBS Found Trouble Fast,” LOS ANGELES TIMES, September 18, 2004, at A1.)

As part of an “understanding” with CBS that included his agreement to turn over the documents, however, the source, Burkett, insisted that CBS arrange for him to speak with a senior member of the Kerry Campaign. (Kevin Johnson, Dave Moniz & Jim Drinkard, “CBS had source talk to Kerry aide,” USA TODAY, September 21, 2004, at 1A.) On September 4, CBS Producer Mapes called Joe Lockhart, a senior advisor and strategist for the Kerry Campaign, and asked him to call the CBS source, Burkett. (“Kerry adviser spoke with CBS document source,” CNN.com, September 21, 2004.) According to senior Kerry advisor Lockhart, CBS’s Mapes told him about the documents, and after Mapes told him about the planned CBS broadcast segment, Lockhart agreed to call the CBS source, Burkett. (*Id.*; Howard Kurtz, “White House Links Memos, Kerry Effort,” WASHINGTON POST, September 22, 2004, at A08.) CBS’s Mapes provided senior Kerry advisor Lockhart with a phone number for Burkett, CBS’s star source. (Johnson, et al., “CBS had source talk to Kerry aide,” USA TODAY, September 21, 2004, at 1A.) Senior Kerry advisor Lockhart then called Burkett on September 5 or September 6, and the two spoke for several minutes. (*Id.*) This was not the first time CBS’s primary source, Burkett, had spoken with a Kerry Campaign operative. Burkett had previously spoken with former U.S. Senator Max Cleland, also an advisor to the Kerry Campaign. (Kelley Shannon, “Ex-Guardsman: I contacted Kerry campaign,” ASSOCIATED PRESS, September 19, 2004.) Burkett’s conversation with Cleland was the result of an effort to reach a person of authority at the Kerry Campaign. (*Id.*)

At CBS, Producer Mapes sought outside endorsement for the authenticity of the memos. Beginning on September 3, she asked at least four people who she believed to be document or signature experts to review and report on the authenticity of the documents that Burkett had provided. (Kurtz, et al., “In Rush to Air, CBS Quashed Memo Worries,” WASHINGTON POST, September 19, 2004, at A01; Getlin, et al., “In the Rush for a Scoop, CBS Found Trouble Fast,” LOS ANGELES TIMES, September 18, 2004, at A1.) According to the *Washington Post*:

Emily Will of North Carolina, one of the experts CBS had asked to examine the memos, sent Mapes an e-mail outlining her concerns over discrepancies in Killian’s signature. She also phoned CBS and raised more questions about whether the typography in the memos existed in 1972 and differences with other military documents. “They looked like trouble to me,” Will said.

(Kurtz, et al., “In Rush to Air, CBS Quashed Memo Worries,” WASHINGTON POST, September 19, 2004, at A01.) Linda James, another document examiner, raised similar questions. “The two memos she looked at ‘had problems,’ James recall[s] telling CBS, and she could not rule out that they had been ‘produced on a computer.’” (*Id.*) James isolated five ways in which the Killian signature on [one] memo did not match up with the other provided samples of his handwriting.” (Getlin, et al., “In the Rush for a Scoop, CBS Found Trouble Fast,” LOS ANGELES TIMES, September 18, 2004, at A1.) Even Marcel Matley, a purported document analyst “whose only formal document training was a mail-in correspondence course,” reviewed the documents for CBS at Producer Mapes’ request and registered his indecision about their authenticity. (“CBS News, Dan Rather admit source of Bush documents unreliable,” NBC NIGHTLY NEWS, NBC TV, September 20, 2004, NBC News Transcripts; Kurtz, et al., “In Rush to Air, CBS Quashed Memo

Worries,” WASHINGTON POST, September 19, 2004, at A01.) “Matley limited his examination to Killian’s signature, which he believed was probably valid, but not certain — the lowest endorsement he offers.” (*Id.*) On September 6, “60 Minutes” Correspondent and “CBS Evening News” Managing Editor Dan Rather interviewed Matley for the “60 Minutes II” segment. (*Id.*) CBS’s Rather did not interview Will, James, or the fourth document analyst, James J. Pierce.

On September 7, CBS News President Andrew Heyward, Senior Vice President Betsy West, Executive Producer Josh Howard, Associate Producer Mapes, Senior Broadcast Producer Mary Murphy, and others met to discuss the broadcast segment. (*Id.*) “‘We asked core questions,’ West said ... The executives were satisfied by Mapes’s answers.” (*Id.*) Later, Howard, West, Murphy and other CBS News staffers, including two attorneys, watched a portion of the segment and discussed the story. (*Id.*)

Meanwhile, CBS’s experts continued to raise concerns about the validity of the documents that the source, Burkett, had provided. (*Id.*) “In separate phone calls to Mapes [on September 7], two of the network’s outside experts tried to stop the journalistic train, or at least slow it down ... Emily Will said she called the network [on September 7] and repeated her objections as strongly as possible. ‘If you air the program on Wednesday,’ she recalled saying, ‘on Thursday you’re going to have hundreds of document examiners raising the same questions.’” (*Id.*) This questionable verification methodology coupled with the cumulative warnings regarding the authenticity of the memos, including far more detail than is outlined above, provide no support whatsoever for a reasonable professional belief that the documents were authentic.

On September 8, CBS completed the segment and prepared it for broadcast. (*Id.*) “At 7 p.m., Heyward joined the other [CBS] executives ... for a final look at the piece ... He could still raise objections ... No changes were made.” (*Id.*)

The “60 Minutes II” segment had an immediate impact on the presidential campaign. It generated follow-up media coverage in the *New York Times* (Katharine Q. Seelye & Ralph Blumenthal, “Documents Suggest Guard Gave Bush Special Treatment,” *NEW YORK TIMES*, September 9, 2004), *Washington Post* (Michael Dobbs & Thomas B. Edsall, “Records Say Bush Balked at Order,” *WASHINGTON POST*, September 9, 2004, at A01), *Chicago Tribune* (Mark Silva & Jeff Zeleny, “Memos say Bush pushed for move,” *CHICAGO TRIBUNE*, September 9, 2001), *USA Today* (Dave Moniz & Jim Drinkard, “Guard commander’s memos criticize Bush,” *USA TODAY*, September 9, 2004, at 4A), and all other notable print and broadcast outlets. On September 10, the *New York Times* criticized President Bush’s National Guard service in an editorial which relied on the questionable documents first unveiled in the “60 Minutes II” segment. (“The Long Shadow of War,” *NEW YORK TIMES*, September 10, 2004, at A24.)

On September 9 and 10, major news organizations and individual citizens began to question the validity of the documents on which CBS based its broadcast segment. (Kurtz, et al., “In Rush to Air, CBS Quashed Memo Worries,” *WASHINGTON POST*, September 19, 2004, at A01.) Ten days later, on September 20, CBS News admitted that its reliance on the documents was a mistake, that it could not verify their authenticity, that it could not stand by the content of the broadcast segment, and apologized for its irresponsibility in developing, producing, and broadcasting the segment. (“CBS News admits to being misled regarding documents pertaining to President Bush’s National

Guard service,” CBS EVENING NEWS, CBS TV, September 20, 2004, CBS News Transcripts.)

On September 10, barely two days after the “60 Minutes II” segment was broadcast, the Democratic National Committee launched a new ad campaign entitled the “Fortunate Son,” which incorporated many of the same facts as the CBS report. (<http://www.democrats.org/fortunateson/index.html>), last visited September 22, 2004.) A Fox News Reporter following the Kerry Campaign, Carl Cameron, has gone so far as to say that even Democratic Presidential Candidate John Kerry, himself, “was pushing this 60 Minutes piece as a ‘must see’ to his traveling press” before the CBS broadcast segment ever aired. (Jeff Gannon, “Kerry Allies Tied to Forged Document Scandal,” TALON NEWS, September 21, 2004.)

### **Apparent Violations**

The gravamen of this Complaint is really quite simple. First, the broadcast segment that aired nationwide on the CBS television network on September 8, 2004, constituted a prohibited and regulated “electioneering communication.” *See* 2 U.S.C. §§ 434(f)(3), 441b(a), (b)(2), (c)(1). Second, that “electioneering communication” was unlawfully coordinated with the Kerry Campaign through at least one senior advisor and political operative. *See* 11 C.F.R. § 109.21. In fact, the coordination with the Kerry Campaign only reinforces the conclusion that the broadcast segment constituted a prohibited and regulated “electioneering communication,” and that it was not an exception to the reach of the federal election and campaign finance laws. Third, because the broadcast segment was coordinated with the Kerry Campaign, it also constituted an unlawful contribution to and expenditure by that campaign. *See* 2 U.S.C. §



441a(a)(7)(C). Finally, the “electioneering communication” developed, produced, and broadcast by CBS and coordinated with the Kerry Campaign necessarily triggered the reporting and disclosure requirements imposed under the Federal Election Campaign Act of 1971, as amended, and the Federal Election Commission regulations promulgated thereunder. *See* 2 U.S.C. §§ 434(f)(1), (f)(2).

The Federal Election Campaign Act of 1971, as amended by the Bipartisan Campaign Reform Act of 2002, defines an “electioneering communication” as:

any broadcast, cable, or satellite communication which—(I) refers to a clearly identified candidate for Federal office; (II) is made within ... 60 days before a general ... election for the office sought by the candidate; ... and (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

2 U.S.C. § 434(f)(3)(A).

There can be no doubt that the broadcast segment developed, produced, and aired by CBS meets the above definition of an “electioneering communication.” It was a “broadcast ... communication” aired nationwide on CBS, one of the four major television networks. It “refer[red] to a clearly identified candidate for Federal office,” namely, President George W. Bush, who is the Republican Party’s Candidate for the Office of President of the United States in the 2004 general election. It was “made within ... 60 days before [the] general ... election for the office sought by the candidate” because the broadcast segment aired on September 8, 2004, just 55 days before the 2004 presidential election that will take place on November 2, 2004. And, since the candidate referred to in the broadcast segment is seeking election to the Office of President of the United

States, it was unnecessary for the “electioneering communication” to be “targeted to the relevant electorate.”

The only question as to whether the broadcast segment constituted a prohibited and regulated “electioneering communication” arises from the exception for “news stor[ies] ... distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate.” 2 U.S.C. § 434(f)(3)(B)(i). However, because the broadcast segment lacked all of the hallmarks of a legitimate “news story” and responsible journalism, such an exception does not apply in this case.

While it is true that the broadcast segment masqueraded as a legitimate “news story,” details about the development, production, and broadcasting of the segment demonstrate that it was anything but objective news, or even subjective commentary or editorializing. In fact, the details show that the broadcast segment bore far more resemblance to a political attack advertisement coordinated with and supported by the opponent’s campaign and political party than to a journalistically sound, well-researched “news story.” Unlike a legitimate “news story,” the broadcast segment that aired on the CBS television network on September 8, 2004, lacked all of the requirements for responsible journalism. Both the documents and the sources that served as the basis for the broadcast segment have been unequivocally and universally discredited, and those who were primarily responsible for the development, production, and publication of the broadcast segment have admitted their irresponsible and reckless behavior by fully disavowing the segment’s content and apologizing for their actions and its publication. What’s more, details have emerged showing that not only did the broadcast segment have

no basis in fact, but that it was also specifically coordinated with at least one senior advisor and political operative from the Kerry Campaign and the Democratic Party. Surely this is not the type of legitimate “news story” that is an exception to the prohibitions on and regulations of “electioneering communications.”

The coordination between those at CBS responsible for the development, production, and publication of the broadcast segment and senior advisor(s) and political operative(s) from the Kerry Campaign raises even greater and more particular concerns. Not only does such coordination demonstrate that the broadcast segment was a politically motivated “electioneering communication,” but it also shows an attempt to evade the contribution and expenditure rules and limitations, all with the intent of influencing a federal election through actions that obviously transgress the Federal Election Campaign Act of 1971, as amended, and the Federal Election Commission Regulations promulgated thereunder. Specifically, as to coordination, Section 441a(a)(7)(C) states:

if—(i) any person makes, or contracts to make, any disbursement for any electioneering communication . . . ; and (ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee; such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate’s party and as an expenditure by that candidate or that candidate’s party.

2 U.S.C. § 441a(a)(7)(C). That section was triggered here, when at least one senior advisor and political operative from the Kerry Campaign has admitted that he was consulted with and received prior notice about the broadcast segment attacking President George W. Bush that was aired by CBS on September 8, 2004. In fact, the circumstances

demonstrate that the coordination went far deeper. As news reports have indicated, those at CBS who developed, produced, and published the broadcast segment attacking President Bush went so far as to broker a relationship between themselves, the content of the broadcast segment, and at least one of their sources with at least one senior advisor and political operative for the Kerry Campaign. In fact, news reports now indicate the story would have never been aired but for the brokering of the relationship between those at CBS, at least one of the sources they were relying upon, and a senior advisor and political operative for the Kerry Campaign. Because of this obvious and unlawful political and campaign coordination, the broadcast segment, which constitutes an “electioneering communication” under 2 U.S.C. § 434(f)(3), must be “treated as a contribution to the candidate supported by the electioneering communication,” namely, the Kerry Campaign, “and as an expenditure by that candidate.” 2 U.S.C. § 441a(a)(7)(C).

Moreover, not only does the Kerry Campaign face regulatory, disclosure, and reporting requirements on account of its coordination with the development, production, and broadcasting of the “electioneering communication,” but so does CBS. Under Section 434(f)(1):

Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of \$10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

2 U.S.C. § 434(f)(1). There can be little question that CBS incurred direct costs of more than \$10,000 in the development, production, and publication of the broadcast segment that constituted an “electioneering communication.” As such, the regulatory, reporting,

and disclosure requirements of Section 434(f)(2) were triggered, and CBS needed to file a statement with the Commission under penalty of perjury containing the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than \$200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of \$ 1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of \$1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

2 U.S.C. § 434(f)(2). Because such a statement was never filed, CBS is engaged in a continuing violation of the regulatory, reporting, and disclosure requirements imposed under the “electioneering communications” provisions and must be held accountable.

## **Conclusion**

For the reasons discussed above, the Federal Election Commission should initiate an immediate and thorough investigation into the allegations contained in this Complaint and take all appropriate action against Respondents for their violations of the Federal Election Campaign Act of 1971, as amended, and the Federal Election Commission regulations promulgated thereunder.

Respectfully submitted,

Jeffrey Mazzella  
Executive Director

**Verification**

The complainant listed below hereby verifies that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

**For Complainant**  
**Center for Individual Freedom**

\_\_\_\_\_  
Jeffrey Mazzella, Executive Director

**CITY OF ALEXANDRIA:**  
**STATE OF VIRGINIA:**

Sworn to and subscribed before me this \_\_\_\_\_ day of September, 2004.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_