

DISCUSSION

(i) The exempt status of the proposed broadcast under section 315 of the Communications Act

Section 315 provides that an appearance by a legally qualified candidate shall not constitute a "use" if the appearance occurs on a

"(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary),".

The Law Department advised CBS News that while the broadcast would clearly constitute a documentary, it did not believe that a documentary whose subject was solely concerned with the political candidacy of a single Presidential candidate—in this case, former Governor Wallace—would qualify as an exempt documentary. It was the Law Department's view that Wallace's appearance on this proposed broadcast was not merely "incidental" to the presentation of the subject of the documentary—it was the subject of the documentary.

(ii) Candidates for the Presidency as of June 1968

In connection with the Law Department's consideration of the proposed Wallace documentary, we learned from the CBS News Election Unit, that based on the information then available to it, the Prohibition Party and the Socialist Workers Party had already nominated their candidates for the Presidency and the Socialist Labor Party would do so prior to June. It also appeared quite likely that by June additional candidates for the Presidency would be selected by other political parties. If at the time of the proposed June broadcast, Mr. Wallace was merely a candidate for the American Independent Party's Presidential nomination, it was clear that a non-exempt broadcast would not give rise to valid "equal time" requests from candidates nominated by other political parties. See FCC Public Notice, *Use of Broadcast Facilities by Candidates for Public Office*, April 27, 1966, Section V, Questions 3 and 4. Since we were not aware of any other candidates for the Presidential nomination of the American Independent Party, we did not believe the "equal time" risks of such a broadcast to be great.

Based, however, on the information available to it regarding Mr. Wallace's candidacy, the Law Department concluded that at least in some states Mr. Wallace was not merely a candidate for the nomination of a Party, but was currently a candidate for the Presidency. Due to the nature of the campaign being conducted on Mr. Wallace's behalf, as well as the varying state requirements regarding third party candidacies in general, it was quite difficult for the Election Unit to collect information with regard to Mr. Wallace's electoral status. It did appear clear, however, that while in some states Mr. Wallace may well be merely a candidate for the nomination of the American Independent Party, in at least two states—Virginia and Pennsylvania—Mr. Wallace was a candidate for the Presidency, and he is likely to be a candidate for the Presidency in Nebraska by March 15 and South Carolina by March 30. While there may well be a number of other states in which Wallace will be a Presidential candidate by June, our information to date is limited to the above four states.

CONCLUSION

In these circumstances, we advised CBS News that in the opinion of the Law Department the proposed half-hour Wallace broadcast in June over the CBS Television Network could well result in valid "equal time" requests from the Presidential candidates of the Socialist Workers, Socialist Labor and Prohibition Parties—and possibly from other Presidential candidates nominated prior to the broadcast.

Dr. STANTON. Let me just say this: that in treating with a candidate who is self-declared and may or may not have to have a convention, it is pretty difficult to know when he is a candidate and when he isn't a candidate. If he says he is a candidate and he doesn't have to go through the same convention procedures that the Republican or Democratic Convention candidates have to go through, then it becomes a little more troublesome.

As I understand the situation further, if this has been a regular program series devoted to and treating with candidates for public