

# Kerry Edwards

A STRONGER AMERICA

October 15, 2004

David D. Smith  
President and CEO  
Sinclair Broadcast Group, Inc.  
10706 Beaver Dam Road  
Hunt Valley, Maryland 21030

**Re: "Stolen Honor: Wounds That Never Heal"**

Dear Mr. Smith:

I am writing on behalf of Senator John Kerry and Kerry-Edwards 2004, Inc. Press reports indicate that the stations operated by the Sinclair Broadcast Group plan to air a program entitled "Stolen Honor: Wounds That Never Heal" later this month. See, e.g., Howard Kurtz & Frank Ahrens, *Family's TV Clout in Bush's Corner*, THE WASHINGTON POST, Oct. 12, 2004, at A1; Elizabeth Jensen, *Conservative TV Group to Air Anti-Kerry Film*, LOS ANGELES TIMES, Oct. 9, 2004, at A1. This program constitutes an attack on Senator Kerry by supporters of President Bush. It was not produced by Sinclair, nor by any reputable journalistic organization. It is our understanding that Sinclair plans to air this program during hours when entertainment programming is normally provided on its stations.

The legality of Sinclair's attempt to broadcast this program has already been called into serious legal question. The Democratic National Committee recently filed a complaint with the Federal Election Commission pointing out that Sinclair's airing of the program constitutes an illegal corporate-funded "electioneering communication." As the DNC correctly notes, the broadcast does not qualify for the exemption afforded to news stories under federal campaign finance law and thus would constitute an illegal corporate expenditure.

Under the Federal Communications Commission's decision in *Nicholas Zapple*, 23 F.C.C.2d 707 (1970), a broadcasting station that permits supporters of a candidate to use its facilities to advance that candidate's campaign must provide supporters of the opposing candidate "quasi-equal opportunities." Despite the repeal of the Fairness Doctrine, the FCC has made clear that stations' *Zapple* obligations continue in effect. See *RTNDA v. FCC*, 184 F.3d 872, 884 n.10 (D.C. Cir. 1999) (recognizing that the *Zapple* Doctrine complements Section 315(a) of the Communications Act); *The Handling of Public Issues Under the Fairness Doctrine*

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901 15th Street, NW • Suite 700 • Washington, DC 20005 • 202-712-3000 • 202-712-3001 fax

[www.JohnKerry.com](http://www.JohnKerry.com)

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*and the Public Interest Standards*, 48 F.C.C.2d 1, 31 (1974); 36 F.C.C.2d 40, 47-49 (1972).

Sinclair's planned airing of this documentary produced by opponents of Senator Kerry is precisely the kind of use of a broadcasting station to advance one campaign that the *Zapple* Doctrine was intended to address. The documentary is clearly intended to advance the campaign of President Bush by attacking Senator Kerry's record.

The program does not meet any of the requirements for the exemptions from the equal opportunities requirement. *See Request for Declaratory Ruling that Independently Produced Bona Fide News Interview Programs Qualify for the Equal Opportunities Exemption*, 7 F.C.C.R. 4,681 (1992). It is not regularly scheduled on Sinclair's stations and will not be shown when news programming is regularly aired. The content of the program will not be controlled by Sinclair or an independent journalistic organization. The program instead is intended to be an attack on Senator Kerry and thus is not the result of decisions made on the basis of newsworthiness rather than to advance or retard a particular candidate. *Id.* Thus, the program cannot qualify as either a *bona fide* news program or news interview.

It also cannot be viewed as an exempt documentary. As the FCC has made clear, "that exemption explicitly applies only if the appearance of the candidate is 'incidental to the presentation of the subject or subjects covered by the news documentary.'" *Request of A&E Television Networks for Declaratory Ruling*, 15 F.C.C.R. 10,796 (2000). The subject of the proposed program is Senator Kerry's activities in connection with the Vietnam War and his appearance is, therefore, central, rather than incidental, to the program.

Section 315(a) of the Communications Act was intended to prevent the licensee of a broadcasting station using the public airwaves to use that facility to promote one candidate for public office over another. The FCC in *Zapple* recognized that Congress's intent could be frustrated by stations that aired programs featuring supporters of one candidate instead of the candidate himself or herself. *See RTNDA*, 184 F.3d at 884 n.10. If Sinclair does air this program in which supporters of President Bush attack Senator Kerry, it must provide a similar opportunity for Senator Kerry's supporters.


Please consider this a request that each Sinclair station that airs the documentary provide supporters of the Kerry-Edwards campaign with a similar

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amount of time on that station before the election at a time where an audience of similar size can be expected to be viewing the station. Please contact me or have a representative of each station do so in order to schedule an appearance by supporters of Senator Kerry.

Very truly yours,



Marc E. Elias  
General Counsel,  
Kerry-Edwards 2004, Inc.

cc: Bobby Baker  
Assistant Division Chief, Policy Division  
Media Bureau  
Federal Communications Commission