

POWELL, GOLDSTEIN, FRAZER & MURPHY LLP

ATTORNEYS AT LAW

www.pgfm.com

PLEASE RESPOND: Washington Address

Sixteenth Floor
191 Peachtree Street, N.E.
Atlanta, Georgia 30303
404 572-6600
Facsimile 404 572-6999

Sixth Floor
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 347-0086
Facsimile 202 624-7222

Direct Dial: 202-624-7330
E-mail: bkappel@pgfm.com

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VIA HAND DELIVERY

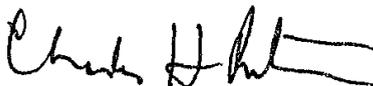
Lawrence W. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MURs 4322 and 4650

Dear Mr. Noble:

Enclosed for filing in the above-referenced matters, please find three (3) copies of the briefs of Enid Greene, D. Forrest Greene, Enid '94 and Enid Greene, as treasurer, and Enid '96 and Enid Greene, as treasurer, in opposition to the Office of General Counsel's recommendation to the F.E.C. Ten (10) copies of these briefs are being filed simultaneously with the Secretary of the Commission.

Sincerely,



Charles H. Roistacher



Brett G. Kappel

For Powell, Goldstein, Frazer & Murphy LLP

SEP 28 3 03 PM '98

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) **MURs 4322 and 4650**
Enid Greene)
Dunford Forrest Greene)

**BRIEF OF RESPONDENT D. FORREST GREENE
IN OPPOSITION TO
THE OFFICE OF GENERAL COUNSEL'S
PROBABLE CAUSE RECOMMENDATION**

I. INTRODUCTION.

On July 20, 1998, the General Counsel recommended that the Federal Election Commission (hereinafter "FEC" or "the Commission") find probable cause to believe that D. Forrest Greene violated 2 U.S.C. § 441f by making twenty-eight contributions in the name of Enid Greene to her 1994 campaign committee, Enid '94, and that, because of the amount of money involved in these alleged contributions, Mr. Greene also violated 2 U.S.C. § 441a(a)(1)(A) by making contributions in excess of \$1,000 per election and 2 U.S.C. § 441a(a)(3) by making more than \$25,000 in contributions in a single year. Counsel for D. Forrest Greene respectfully submit this brief in opposition to the General Counsel's probable cause recommendation. Counsel for D. Forrest Greene also represent Enid Greene, Enid '94, and Enid '96, and are simultaneously submitting briefs in opposition to the General Counsel's probable cause recommendations with regard to those individuals or entities.

The General Counsel's probable cause recommendation regarding D. Forrest Greene is not and cannot be supported as a matter of law or fact, and the Commission should reject it. After

an investigation that lasted more than a year, the General Counsel's recommendation is based entirely on a selective and, with regard to crucial facts, disingenuous reading of the depositions of D. Forrest and Enid Greene. The General Counsel's conclusion that there is probable cause to believe that D. Forrest Greene violated 2 U.S.C. § 441f (hereinafter "section 441f") amounts to nothing more than the General Counsel's subjective belief that a person of D. Forrest Greene's financial sophistication could not possibly have been bilked out of more than four million dollars by his son-in-law, Joseph P. Waldholtz. On the contrary, the evidence of Joseph P. Waldholtz's deception of D. Forrest Greene is so overwhelming that any finding of probable cause cannot be substantially justified. Accordingly, should the Commission follow the General Counsel's recommendation and proceed beyond the probable cause stage to seek civil penalties from D. Forrest Greene in federal court, counsel for D. Forrest Greene will seek attorneys' fees pursuant to the Equal Access to Justice Act.¹

The General Counsel reached this conclusion only by ignoring voluminous exculpatory evidence demonstrating that D. Forrest Greene was defrauded out of millions of dollars by Joseph P. Waldholtz and had no idea that those funds were subsequently contributed by Joseph P. Waldholtz to Enid '94 in the name of Enid Greene. Amazingly, the General Counsel simply ignored exculpatory statements Joseph P. Waldholtz made to the national media *just one month* before the General Counsel issued its probable cause recommendation. A June 10, 1998 article in The Hill stated that:

He [Waldholtz] said he knew that they would need more money than Enid could or would raise well before the 1994 election, and that's when he started his periodic calls to Enid's wealthy father, Forrest Greene, for 'loans' that he then funneled into their campaign - in violation of election law.

¹ 28 U.S.C. § 2412(d)(1)(A). The courts have recognized that FEC enforcement actions under 2 U.S.C. § 437g(a)(6) are civil actions within the meaning of the Equal Access to Justice Act. See, e.g., FEC v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997).

Javers, *Joe Waldholtz in Prison: Slimmer, Sober and Penitent*, The Hill, June 10, 1998, at 36, col. 1 (emphasis added). (Exhibit A).

Similarly, a June 11, 1998 article in The Salt Lake Tribune, based on a five-hour prison interview with Joseph P. Waldholtz, contained the following exculpatory statement:

Desperate for money, Waldholtz claimed his family trust was tied up in litigation and looked elsewhere. He said he devised a transfer of cash to the campaign from Enid's millionaire father, D. Forrest Greene, in exchange for a bogus piece of Pittsburgh real estate. He convinced Enid it was legal on paper, and they approached Mr. Greene, who agreed.

Semerad, *Waldholtz Is Ready to Tell His Side of Story*, The Salt Lake Tribune, June 14, 1998 (emphasis added). (Exhibit B).

Nor was this the first time that Joseph P. Waldholtz admitted publicly that he and he alone was responsible for the multiple violations of section 441f that are the subject of MURs 4322 and 4650. Standing before U.S. District Judge Norma Holloway Johnson for sentencing for election fraud, Joseph P. Waldholtz stated:

This past year has been a nightmare for so many people: my family, my friends, my former wife [Enid Greene], and her family. To them, I would like to express my deepest regret and sorrow for my actions. My behavior was deplorable. And I alone am responsible. I did commit crimes against the United States. It is my responsibility and my responsibility alone.

Partial Transcript of Sentencing Proceedings at 1B-2 (emphasis added). (Exhibit C).

The General Counsel simply does not believe D. Forrest Greene's repeated assertions under oath that he was unaware that Joseph P. Waldholtz was contributing funds he had obtained from D. Forrest Greene by fraud to the Enid '94 campaign. General Counsel's Brief at 22. Yet nowhere in his brief does the General Counsel discuss – much less refute – the documentary evidence discovered and provided to the General Counsel's office by counsel for D. Forrest and Enid Greene that corroborates D. Forrest Greene's testimony that he was defrauded by Joseph P. Waldholtz.

Among the many documents that the General Counsel failed to discuss in his brief are three password-protected documents that were retrieved from Joseph P. Waldholtz's laptop computer after he fled to evade an FBI bank fraud investigation. Those three documents – shielded from discovery by the passwords “HELP.” and “LIE” – establish conclusively that D. Forrest Greene was a victim of Joseph P. Waldholtz's elaborate plan to evade FECA's regulatory scheme by stealing millions from D. Forrest Greene and then contributing portions of those funds to Enid '94 in the name of Enid Greene. All of these documents were provided to the General Counsel months ago, long before the General Counsel issued his probable cause recommendation. Astonishingly, the General Counsel *never even questioned D. Forrest Greene* about any of these documents during his deposition.

Similarly, the General Counsel relegates to a footnote and then mischaracterizes the fraud suit that D. Forrest Greene successfully prosecuted against Joseph P. Waldholtz in a Utah state court. General Counsel's Brief at 4, n. 6. Rather than a suit for mere “misuse” of funds, D. Forrest Greene's complaint alleged that Joseph P. Waldholtz took advantage of the familial trust he enjoyed as a result of his marriage to Enid Greene and defrauded D. Forrest Greene out of nearly four million dollars. The Utah state court agreed, and granted summary judgment to D. Forrest Greene. The General Counsel failed to show any deference whatsoever to this prior court ruling – a ruling that negates entirely the General Counsel's subjective belief that D. Forrest Greene was a knowing participant in Joseph P. Waldholtz's criminal plan.

Finally, the General Counsel's probable cause recommendation rests, to a very large extent, on the fact that D. Forrest Greene never *received* documentation of the Asset Swap. General Counsel's Brief at 23. The General Counsel's representations in this regard are, at best, disingenuous and, at worst, border on misconduct. Enid Greene testified several times during

her deposition that she asked Joseph P. Waldholtz on many different occasions to provide documentation of the Asset Swap. Enid Greene Dep. at 195, 207-209, 211-212, 236-37.

And, in fact, in response to her demands, Joseph P. Waldholtz did indeed manufacture false documentation to demonstrate to both Enid and D. Forrest Greene that the Asset Swap had taken place. The elaborate ruse Joseph P. Waldholtz concocted to deceive both Enid and D. Forrest Greene about the Asset Swap was explained in detail in Enid and D. Forrest Greene's response to the Commission's reason to believe finding. Joint Response at 28-33. Moreover, the falsified documents Joseph P. Waldholtz manufactured in support of this ruse were provided to the General Counsel as exhibits to Enid and Forrest Greene's response. Exhibit Vol. 5, Tabs 2, 3, 4 and 5.

Not only did the General Counsel not question either D. Forrest or Enid Greene about these documents during their depositions, he tried repeatedly to prevent Enid Greene from testifying about them. Enid Greene Dep. at 209-210, 212-15, 218-19. The General Counsel even went so far as to attempt to prevent counsel for Enid Greene from eliciting relevant testimony from her about these documents. Enid Greene Dep. at 220-29. Despite the best efforts of the General Counsel, Enid Greene did indeed testify as to the documents Joseph P. Waldholtz manufactured to support his Asset Swap scheme. Enid Greene Dep. at 229-32. To base a probable cause recommendation to the Commission on a lack of documentation when, in fact, supporting documentation had been provided to the General Counsel on two separate occasions is simply outrageous.

Nor is the General Counsel's apparent willingness to ignore documentary evidence the only defect in the General Counsel's brief. The General Counsel finds it incredible that anyone with D. Forrest Greene's financial background could have been duped by Joseph P. Waldholtz

into making millions of dollars in unsecured personal loans, portions of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. General Counsel's Brief at 23. D. Forrest Greene's testimony is more than credible, however, once you know that Joseph P. Waldholtz has a long track record of defrauding individuals much more financially and politically sophisticated than D. Forrest Greene out of substantial sums of money and using those funds in violation of FECA. Indeed, the Commission has already seen ample evidence of Joseph P. Waldholtz's uncanny ability to manipulate elderly, wealthy individuals into unknowingly making illegal campaign contributions. In a matter eerily similar to the one presented here, Joseph P. Waldholtz caused his former employer, Mrs. Elsie Hillman, a member of the Republican National Committee, to violate FECA's prohibition on making more than \$25,000 in political contributions in any one year (2 U.S.C. § 441a(a)(3)) in three consecutive years – 1990, 1991 and 1992. In MUR 3929, Mrs. Hillman agreed to pay a \$32,000 civil penalty rather than contest her liability for Joseph P. Waldholtz's actions as her chief of staff.

Joseph P. Waldholtz's trail of politically sophisticated victims did not end with Mrs. Hillman. He embezzled nearly \$1,500 from the Utah Republican Party while he served as its executive director. That particular crime was never discovered by the state party, and only came to light when Enid Greene retained the accounting firm of Coopers & Lybrand to perform a forensic reconstruction of the bank accounts of Enid '94 and Joseph P. Waldholtz. Finally, and most importantly, Joseph P. Waldholtz was able to persuade one of the nation's premiere FEC accounting firms – Huckaby & Associates – to file not one, not two, but *seven* separate FEC reports on behalf of Enid '94 *without any supporting documentation whatsoever*.

None of these facts appear anywhere in the General Counsel's brief, despite the fact that D. Forrest and Enid Greene informed him of these and other misdeeds by Joseph P. Waldholtz in

their joint response to the Commission's reason to believe finding. Joint Response at 48-50; Exhibit Vol. 5, Tabs 14 and 15. The General Counsel was therefore aware of Joseph P. Waldholtz's track record of manipulating very sophisticated political operatives into making unknowing violations of FECA. He nevertheless chose to base his probable cause recommendation against D. Forrest Greene, in large part, on Mr. Greene's supposedly "incredible" inability to see through Joseph P. Waldholtz's machinations. Such behavior by the General Counsel is at least incompetent, if not outright misconduct.

The Commission is charged with determining whether there is probable cause to believe that D. Forrest Greene violated sections 441f, 441a(a)(1)(A), and 441a(a)(3). A determination that D. Forrest Greene violated section 441f is a necessary prerequisite to any determination that he also violated sections 441a(a)(1)(A) or 441a(a)(3). If the Commission does not believe that there is probable cause to believe that D. Forrest Greene violated section 441f by making a contribution in the name of another, then the Commission may not find that there is reason to believe that he violated either of the monetary limits on contributions. Any fair and objective evaluation of all the evidence that has been gathered in this case – including the exculpatory evidence the General Counsel chooses to ignore – will conclude that the General Counsel has failed to establish that there is probable cause to believe that D. Forrest Greene violated any of these provisions of FECA.

II. BACKGROUND AND PROCEDURAL HISTORY.

Enid Greene represented the Second District of Utah in the U.S. House of Representatives during the 104th Congress. Enid Greene's principal campaign committee in the 1994 congressional election was named Enid '94. Enid '96 was established to be Enid Greene's principal campaign committee in the 1996 congressional election, but on March 5, 1996,

Representative Greene announced that she would not run for re-election. D. Forrest Greene is a 79-year-old retired stockbroker residing in Salt Lake City, Utah, and the father of Enid Greene.

In the four years following the 1994 election, D. Forrest Greene has suffered from a number of physical and mental ailments.

Indeed, Mr. Greene forbade counsel from raising this issue at the time of his deposition. Enid Greene, however, explained her father's mental condition during her deposition. Enid Greene Dep. at 190.

Joseph P. Waldholtz -- Enid Greene's former husband and D. Forrest Greene's former son-in-law -- served as treasurer of Enid '94 from its inception on December 21, 1993 until November 14, 1995, when he was removed from that position by Enid Greene. Similarly, Joseph P. Waldholtz served as treasurer of Enid '96 from its inception on July 31, 1995 until November 14, 1995, when he was removed by Enid Greene. Accordingly, Joseph P. Waldholtz was the treasurer of both Enid committees at all times relevant to the above-referenced MURs.

A. Prior Criminal Investigation.

On November 1, 1995, the Capitol Hill newspaper The Hill reported that Joseph P. Waldholtz, the husband of freshman Rep. Enid Greene (R-UT), was under investigation for bank fraud by the U.S. Attorney's Office for the District of Columbia, the FBI, and a federal grand

jury (hereinafter "the government" or "the government's investigation").^{2/} In the midst of the ensuing controversy, Senator Orrin Hatch (R-UT) called Rep. Greene and Joseph P. Waldholtz to his office to try to get to the bottom of the matter. It was apparent to Senator Hatch at that meeting that Rep. Greene was ignorant of Joseph P. Waldholtz's criminal schemes and truly believed that he was innocent of the charges that had been made against him. Senator Hatch, however, found Joseph P. Waldholtz's explanation of the allegations lacking in credibility and told him that he would go to jail if he did not straighten out the situation right away. Letter from Senator Orrin Hatch (R-UT) to Enid Greene (September 25, 1998). (Exhibit D).

On Saturday, November 11, 1995, Joseph P. Waldholtz fled Washington, D.C. to escape the government's investigation. Over the ensuing weekend, Enid Greene discovered evidence among his papers that Joseph P. Waldholtz had falsified records and embezzled a substantial amount of money from both of the Enid committees. On November 14, 1995, Ms. Greene notified the Commission that she had removed Joseph P. Waldholtz as treasurer of these committees and had initiated an audit of both committees' records. She retained forensic accounting specialists with the national accounting firm of Coopers & Lybrand LLP and directed them to reconstruct the campaign records of both committees.

The forensic accountants from Coopers & Lybrand, working with a team of lawyers from Powell, Goldstein, Frazer & Murphy, spent more than six months reconstructing the committees' records, which had been devastated by the criminal actions of Joseph P. Waldholtz. Then, at a

² The General Counsel's Brief incorrectly states that the federal criminal investigators began their inquiry into Enid '94 based on questions raised in Utah regarding the amount of money that Enid Greene was reported to have contributed to her campaign. General Counsel's Brief at 3-4. In fact, to our knowledge, the investigation was not broadened to include potential election law violations until Ms. Greene and the Enid committees uncovered evidence that Joseph P. Waldholtz had embezzled a substantial amount of money from both Enid '94 and Enid '96 and brought that evidence to the attention of the FEC and the U.S. Attorney.

cost of well over \$150,000, the Enid committees filed corrected FEC reports for both Enid '94 and Enid '96 covering *all* of calendar years 1994 and 1995.

Enid Greene personally assumed the position of treasurer of the Enid committees on January 26, 1996. On March 8, 1996, Enid Greene, as treasurer of the Enid committees, filed with the Commission the complaint against Joseph P. Waldholtz that initiated MUR 4322. Along with the complaint, the committees provided extensive and compelling evidence that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz committed *well in excess of 850 violations* of the Federal Election Campaign Act ("FECA") and applicable FEC regulations.

One of the central allegations in the complaint was that, during the time he served as treasurer of Enid '94, Joseph P. Waldholtz, on twenty-eight (28) separate occasions, using funds he had obtained by fraud from Mr. Greene, knowingly and willfully contributed to Enid '94 a total of nine hundred eighty-four thousand dollars (\$984,000) in the name of Enid Greene. Complaint at ¶¶ 4, 26(a), 29, 31, and 32. These contributions by Joseph P. Waldholtz violated FECA's prohibition on making contributions in the name of another (2 U.S.C. § 441f), as well as the prohibition on contributing more than \$1,000 to a single candidate for any one election (2 U.S.C. § 441a(a)(1)(A)) and the prohibition on contributing more than \$25,000 in any one calendar year (2 U.S.C. § 441a(a)(3)).

Enid Greene and the Enid committees provided the U.S. Attorney for the District of Columbia with a copy of the complaint in MUR 4322 on the same day the complaint was filed with the FEC. By that point in time, D. Forrest Greene, Enid Greene and the Enid committees had already been cooperating with an investigation by the U.S. Attorney's Office into the extensive criminal activities of Joseph P. Waldholtz for more than four months. Enid Greene

voluntarily provided the government with reams of documents abandoned by Joseph P. Waldholtz when he fled Washington, D.C. Enid Greene also gave the government free access to the two homes she shared with Joseph P. Waldholtz in Salt Lake City, Utah and Washington, D.C. Within a month of his disappearance, the government, because of the extensive cooperation of Enid Greene, had a substantial amount of evidence to support the allegations that Joseph P. Waldholtz had defrauded both the Wright Patman Congressional Federal Credit Union and First Security Bank of Utah by kiting checks between the two financial institutions. Indictment at 1-7 (Exhibit E); Plea Agreement at 2-3 (Exhibit F).

Moreover, while cooperating with the investigation of the bank fraud allegations, Enid Greene discovered and turned over to the government substantial and compelling evidence that Joseph P. Waldholtz had also committed a truly astounding number of other federal and state crimes over a period of ten (10) years, starting years before he met Ms. Greene. Among other crimes, Joseph P. Waldholtz:

- Defrauded his grandmother, an elderly Alzheimer's patient, out of at least \$400,000;
- Forged and counterfeited Government National Mortgage Association ("Ginnie Mae") securities as part of his scheme to defraud his grandmother out of hundreds of thousands of dollars;
- Committed perjury in a state court proceeding initiated by his own father to recover the funds that Joseph P. Waldholtz had stolen from his grandmother;
- Defrauded his mother out of her entire life savings -- \$96,000 -- by inducing her to cash in her pension, take out a mortgage on the home she owned free and clear, and give the money to him to "invest" for her;
- Misappropriated at least \$100,000 from his employer, Republican National Committeewoman Elsie Hillman, and was fired for using her funds for expensive hotel suites, first-class airline tickets, and lavish meals while travelling to Republican Party events on her behalf and while working as the Executive Director of Pennsylvania for Bush-Quayle '92;

- Caused Mrs. Hillman to violate the Federal Election Campaign Act's prohibition on contributing more than \$25,000 in any one year (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 by failing to keep track of her political contributions, resulting in Mrs. Hillman having to pay a \$32,000 civil penalty;
- Converted contribution checks made out to the Utah Republican Party to his own use while employed as the Party's Executive Director;
- Committed bank fraud by using falsified tax returns showing more than \$250,000 in annual income from a now-known-to-be non-existent "Waldholtz Family Trust" to obtain a home mortgage from First Security Bank of Utah;
- Committed additional bank fraud violations by kiting checks between accounts Joseph P. Waldholtz maintained with Merrill Lynch, Pittsburgh National Bank, and NationsBank;
- Falsified Ms. Greene's 1994 and 1995 congressional financial disclosure statements;
- Forged Ms. Greene's endorsement on her congressional paychecks on two separate occasions and converted the proceeds to his own use;
- Committed three separate instances of tax fraud involving the tax returns Joseph P. Waldholtz filed for tax years 1992 through 1994; and
- Committed massive (more than 850) violations of the Federal Election Campaign Act and applicable FEC regulations while serving as treasurer of Enid '94 and Enid '96, as alleged in the complaint in MUR 4322.
- Embezzled funds from both Enid '94 and Enid '96.

Plea Agreement at 4-5 (Exhibit F).

Most of this documentary evidence was turned over to the government by the end of 1995. During the six months it took the government to evaluate and corroborate the evidence of Joseph P. Waldholtz's criminal activities provided by Enid Greene, both D. Forrest and Enid Greene continued to cooperate with the government's investigation. By early 1996, however, it was evident that, with so much compelling evidence of Joseph P. Waldholtz's guilt already in hand, the principal focus of the government's investigation had somehow turned to D. Forrest and Enid Greene. In particular, the government seemed intent on trying to prove that both D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to funnel funds belonging to D.

Forrest Greene into Enid Greene's 1994 congressional election campaign, in violation of section 441f.

There was no truth to this theory, and both D. Forrest and Enid Greene continued to cooperate with the government. Both D. Forrest and Enid Greene submitted voluntarily to numerous interviews with agents of the government. Government agents were given complete and open access to the homes and offices of both D. Forrest and Enid Greene. Both D. Forrest and Enid Greene voluntarily complied with document requests related to Ms. Greene's 1994 congressional campaign, turning over more than 10,000 pages of documents. Enid Greene voluntarily testified before a federal grand jury investigating these transactions on three separate occasions. D. Forrest Greene also voluntarily appeared before the same grand jury.

After nearly five months of exhaustively investigating the financial transactions between D. Forrest Greene, Enid Greene and Joseph P. Waldholtz, the government failed to find any *credible* evidence that D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to violate section 441f. On May 2, 1996 -- seven months after Joseph P. Waldholtz fled Washington, D.C. -- the grand jury returned a twenty-seven count indictment against Joseph P. Waldholtz for bank fraud concerning his massive check kiting scheme. Indictment at 1-7 (Exhibit E). The grand jury took no action against either D. Forrest or Enid Greene.

On June 5, 1996, Joseph P. Waldholtz pleaded guilty to a three count information alleging, *inter alia*, that, as treasurer of Enid '94, he had knowingly and willfully filed a report with the FEC in which he falsely and fraudulently certified that Enid Greene had contributed approximately \$1,800,000 of her personal funds to Enid '94 when, in fact, Joseph P. Waldholtz knew that the \$1,800,000 had not come from Ms. Greene's personal funds but, instead, had been taken from funds that Joseph P. Waldholtz had, by various schemes and devices, obtained from

Mr. Greene.^{3/} Information at 1-2 (Exhibit G); Plea Agreement at 3-4 (Exhibit F). Based on a number of false representations made by Joseph P. Waldholtz before and during their marriage. Ms. Greene believed that the funds being contributed to her campaign were legally hers. lawfully contributed to her campaign in accordance with 11 C.F.R. § 110.11.

As part of his plea agreement, Joseph P. Waldholtz agreed to "cooperate" with the U.S. Attorney's investigation of Ms. Greene's 1994 congressional election campaign. This investigation was aimed primarily at discovering whether there was any *credible* evidence that D. Forrest and/or Enid Greene had conspired with Joseph P. Waldholtz to violate section 441f. Plea Agreement at 7 (Exhibit F). In exchange for this guilty plea and pledge of cooperation, the U.S. Attorney agreed not to prosecute Joseph P. Waldholtz for a myriad of other crimes -- including additional charges of bank fraud, tax fraud, forgery, uttering, and numerous violations of the Federal Election Campaign Act he committed while he served as treasurer of Enid '94 and Enid '96. Plea Agreement at 4-6 (Exhibit F).

During the summer of 1996, the U.S. Attorney's Office attempted to corroborate claims by Joseph P. Waldholtz that both D. Forrest and Enid Greene had conspired with him to violate 2 U.S.C. § 441f. Several additional witnesses were called before the grand jury investigating D. Forrest and Enid Greene. On October 31, 1996, however, the U.S. Attorney took the virtually unprecedented step of issuing a press release to announce that he would not pursue criminal charges against either D. Forrest or Enid Greene.

³ Joseph P. Waldholtz also pleaded guilty to one count of a twenty-seven count indictment for bank fraud (18 U.S.C. § 1344) for carrying out a \$3 million check-kiting scheme using a joint checking account he shared with Ms. Greene at the Wright Patman Congressional Federal Credit Union. Indictment at 1-8 (Exhibit E); Plea Agreement at 1-3 (Exhibit F). Joseph P. Waldholtz also pleaded guilty to the remaining count in the information - willfully aiding in the filing of a false tax return (26 U.S.C. § 7206(2)) for knowingly providing Ms. Greene with false information regarding the value of stock he had supposedly given to her, knowing that she would incorporate that false information on her 1993 tax return. Information at 3 (Exhibit G); Plea Agreement at 4 (Exhibit F).

On November 7, 1996, Joseph P. Waldholtz was sentenced to 37 months in federal prison for one count of bank fraud (18 U.S.C. § 1344), one count of making a false statement to the Commission (18 U.S.C. § 1001), one count of making a false report to the Commission (2 U.S.C. §§ 437g(d) and 441a) and one count of willfully assisting in the filing of a false tax return (26 U.S.C. § 7206(2)). In the three-month period between his guilty plea and his sentencing, Joseph P. Waldholtz:

- Admitted to the FBI agent supervising his release that he had been using heroin on a daily basis for several weeks;
- Stole his dentist father's prescription pad and forged his father's name to a prescription for Vicodin (a narcotic painkiller);
- Stole his parents' checkbook, forged his father's signature on a check for \$415 made payable to himself and cashed it;
- Wrote seven bad checks totaling \$24,600 to his parents;
- Obtained a credit card from a friend and made \$550 in unauthorized charges on it;

- Stole another credit card from the same friend and made approximately \$193 in purchases with it;
- Obtained a credit card issued to his father and, without his father's authorization or consent, made \$1,446 in purchases; and
- Wrote a bad check for approximately \$615 to an optometrist.

Not surprisingly, in its sentencing memorandum, the U.S. Attorney's Office called Joseph P. Waldholtz, "a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions." Government's Memorandum In Aid Of Sentencing at 16 (Exhibit H). U.S. District Court Judge Norma Holloway Johnson not only agreed, but sentenced Joseph P. Waldholtz to three additional months in federal prison over and above the sentence sought by the government. Sentencing Memorandum at 3 (Exhibit I)

B. Procedural History of FEC Investigation.

On June 17, 1997 -- more than six months after D. Forrest and Enid Greene were exonerated and Joseph P. Waldholtz was convicted -- the Commission found reason to believe, based on the very same information that led to Joseph P. Waldholtz's conviction, that (1) D. Forrest Greene violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) and 2 U.S.C. § 441f by, respectively, making contributions in excess of the \$1,000 limit per election, by making contributions in excess of the overall annual \$25,000 limit, and by making contributions in the name of another; (2) Enid Greene violated 2 U.S.C. § 441f by knowingly permitting her name to be used to effect these contributions; and (3) the Enid committees and Enid Greene, as treasurer, should be held responsible for various violations of FECA and applicable FEC regulations that were committed by Joseph P. Waldholtz during the time he served as treasurer of the Enid committees.

D. Forrest Greene, Enid Greene and the Enid committees filed a joint response to the Commission's reason to believe determination on July 28, 1997. The joint response was accompanied by five volumes of exhibits documenting Joseph P. Waldholtz's sole personal and individual responsibility for the violations alleged against D. Forrest Greene, Enid Greene, and the Enid committees. On July 28, 1997, D. Forrest and Enid Greene also filed a preliminary response to the subpoenas accompanying the Commission's reason to believe determination. On August 7, 1997, counsel for D. Forrest and Enid Greene supplemented the response to the Commission's subpoenas by providing the General Counsel with a transcript of Enid Greene's December 5, 1995 press conference. A videotape of the press conference was provided to the General Counsel on August 28, 1997. On September 17, 1997, D. Forrest and Enid Greene filed yet another supplemental response to the Commission's subpoenas in anticipation of the depositions of D. Forrest and Enid Greene.

The General Counsel deposed D. Forrest Greene on September 25, 1997. He testified truthfully and accurately, to the best of his ability.

Enid Greene was deposed the next day. She, too, testified truthfully and accurately, but her deposition was significantly more contentious. The General Counsel did not appear to have read the joint response and accompanying exhibits filed by D. Forrest and Enid Greene and the Enid committees. Enid Greene Dep. at 224. Moreover, the General Counsel tried to prevent Enid Greene from testifying about the most important exhibits supporting the joint response. Enid Greene Dep. at 209-210, 212-15, 218-19. The General Counsel even went so far as to

attempt to prevent counsel for Enid Greene from eliciting relevant testimony from her about these documents when the General Counsel failed to do so. Enid Greene Dep. at 220-229. Enid Greene did, however, testify eventually as to these crucial documents. Enid Greene Dep. at 229-32.

Less than a week after the depositions of D. Forrest and Enid Greene, the existence of the Commission's investigation was leaked to the press in violation of 2 U.S.C. § 437g(a)(12)(A). On October 1, 1997, The Salt Lake Tribune published an article entitled, *FEC Starts Greene Probe*, in which three former employees of Enid '94 – David Harmer, KayLin Loveland, and Peter Valcarce – confirmed that they had been interviewed by representatives of the Office of General Counsel within the past two months. (Exhibit J). The former campaign workers characterized the interviews as “wide-ranging” and gave the reporter the impression that “the FEC investigation is a new one and not limited to the allegations and issues raised in Greene’s complaint [against Joseph P. Waldholtz].” All three former campaign workers cited FECA’s confidentiality provisions in declining to discuss specific issues raised in their interviews. The fact that they nevertheless then confirmed that they had been interviewed by the Office of General Counsel and felt free to characterize the interviews as “wide-ranging” indicated that the witnesses had not been adequately advised as to their duties under FECA by the Office of General Counsel.

Counsel for D. Forrest and Enid Greene brought these apparent violations of 2 U.S.C. § 437g(a)(12)(A) to the attention of the General Counsel, but were told that it was highly unlikely that the Commission would exercise its discretionary enforcement authority to initiate an investigation of the Commission’s own personnel. On October 8, 1997, Enid Greene received a letter from the Utah State Bar announcing that, as a direct result of The Salt Lake Tribune article,

the Office of Attorney Discipline had opened a file on Enid Greene and would consider taking action against her depending upon the outcome of the Commission's investigation. (Exhibit K).

Despite these egregious violations of 2 U.S.C. § 437g(a)(12)(A), both D. Forrest and Enid Greene continued to cooperate with the General Counsel's investigation. On December 1, 1997, counsel for D. Forrest and Enid Greene provided the General Counsel with a copy of the contract between Enid '94 and the FEC accounting firm of Huckaby & Associates. On December 17, 1997, counsel for D. Forrest and Enid Greene responded to yet another request for documents from the General Counsel and turned over D. Forrest Greene's personal calendar for 1995 and copies of all of the password-protected documents retrieved from Joseph P. Waldholtz's laptop computer.

During the first two weeks of June, 1998, Joseph P. Waldholtz gave prison interviews to a number of members of the national media. In these interviews, Joseph P. Waldholtz repeatedly indicated that neither D. Forrest nor Enid Greene was a knowing participant in his plan to circumvent FECA's regulatory scheme. Counsel for D. Forrest and Enid Greene provided the General Counsel with copies of the resulting articles on June 18, 1998.

On July 20, 1998 -- approximately one month later -- the General Counsel recommended that the Commission find probable cause to believe that D. Forrest Greene violated 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3).

II. SCIENTER ELEMENT OF SECTION 441f VIOLATION.

Based, apparently, on nothing more than the depositions of D. Forrest and Enid Greene, the General Counsel has recommended that the Commission find probable cause to believe that D. Forrest Greene violated the prohibition on making contributions in the name of another (2 U.S.C. § 441f), and that, because of the amount of money involved in these alleged

contributions, Mr. Greene also violated the prohibition on making contributions in excess of \$1,000 per election (2 U.S.C. § 441a(a)(1)(A)) and the prohibition on making more than \$25,000 in contributions in any one calendar year (2 U.S.C. § 441a(a)(3)). General Counsel's Brief at 22-24. There is no basis in law or fact to support this probable cause recommendation.

It is difficult to discern from the General Counsel's inartfully drafted brief how D. Forrest Greene could have violated section 441f given the General Counsel's concession that "D. Forrest Greene did not make contributions directly to Enid Greene's campaign." General Counsel's Brief at 22. The General Counsel's lack of precision is perhaps understandable given that he is attempting to apply section 441f to a set of facts that was never envisioned by Congress or the Commission. The Commission's regulations implementing section 441f assume that only two parties will be involved in the course of conduct that constitutes a violation of section 441f.

The Commission's regulations set out two examples of contributions in the name of another. First, a violation of section 441f occurs when an individual gives money, all or part of which was provided to the contributor by another person, without disclosing the source of the money to the recipient committee at the time the contribution is made. 11 C.F.R. § 110.4(b)(2)(i). The only person in these matters who violated section 441f in this manner is Joseph P. Waldholtz, who took money that he obtained by fraud from D. Forrest Greene, converted it to his own use, and then contributed it to Enid '94 without disclosing that he, Joseph P. Waldholtz, was the true contributor.

Second, the Commission's regulations also indicate that section 441f may be violated by making a contribution and attributing as the source of the money another person when in fact the contributor is the source. 11 C.F.R. § 110.4(b)(2)(ii). Here again, however, the only person who violated section 441f in this manner is Joseph P. Waldholtz, who contributed money he had

obtained by fraud from D. Forrest Greene and attributed it to another person, Enid Greene. The Commission's regulations thus do not contemplate the facts in this case, where the true contributor obtained funds from one individual, D. Forrest Greene, and then contributed them to the campaign in the name of a third individual, Enid Greene.

The Commission's regulations interpreting 2 U.S.C. § 441f state that the prohibition on making contributions in the name of another can be violated in one of four different ways: (1) Making a contribution in the name of another; (2) Knowingly permitting your name to be used to effect such a contribution; (3) Knowingly helping or assisting any person in making a contribution in the name of another; or (4) Knowingly accepting a contribution made by one person in the name of another. 11 C.F.R. § 110.4(b)(1)(i)-(iv).

The General Counsel has conceded, as he must, that D. Forrest Greene never made a contribution *directly* to Enid '94 in the name of Enid Greene. 11 C.F.R. § 110.4(b)(1)(i); General Counsel's Brief at 22. Instead, D. Forrest Greene has acknowledged that between January 21, 1994 and October 12, 1995, he made a series of twenty-four transfers of funds to Joseph P. Waldholtz totalling nearly \$4 million. Joseph P. Waldholtz then, without D. Forrest Greene's knowledge or consent, in a series of eighty separate transactions, transferred approximately \$1,800,000 to Enid '94. It was Joseph P. Waldholtz, not D. Forrest Greene, who then reported to the Commission that Enid Greene contributed a total of \$984,000 to Enid '94 in twenty-eight separate transactions.

Nor has the General Counsel alleged that D. Forrest Greene permitted his name to be used to effect a contribution in the name of another (11 C.F.R. § 110.4(b)(1)(ii)) or accepted a contribution made by one person in the name of another (11 C.F.R. § 110.4(b)(1)(iv)). Thus, the only way Mr. Greene could have possibly violated section 441f is if he *knowingly* assisted

Joseph P. Waldholtz in making contributions to Enid '94 in the name of Enid Greene. 11 C.F.R. § 110.4(b)(1)(iii).

The parameters of the scienter requirement codified at 11 C.F.R. § 110.4(b)(1)(iii) were established by the only known court decision to interpret the term "knowingly" in a section 441f case.⁵ In FEC v. Rodriguez, No. 86-687 Civ-T-10(B) (M.D. Fla. May 5, 1987)(unpublished order), the U.S. District Court for the Middle District of Florida denied the Commission's motion for summary judgment on the issue of whether the respondent had knowingly accepted a contribution made by one person in the name of another in violation of section 441f. The respondent, Cesar Rodriguez, had acted as a messenger for the true contributor, who reimbursed others for making contributions in their own name to campaign committees specified by the true contributor. "Rodriguez obtained some of the checks made payable to the order of the campaign committees, and subsequently delivered some of the reimbursement checks from [the true contributor] to the [straw] contributors." Slip op. at 2. The Court found that Rodriguez's actions did not amount to knowing acceptance within the meaning of section 441.

⁵ As far as we have been able to determine, no court has ever interpreted the scienter requirement of section 441f as allowing the imposition of civil penalties on the basis that the Commission had shown that the respondent had knowledge of the operative facts that make up a section 441f violation. Indeed, the reported cases that address *any* of FECA's scienter requirements are few in number. It appears to be well established that when the Commission seeks to impose civil penalties on a respondent under the "knowing and willful" standard of 2 U.S.C. § 437g, it must demonstrate that the respondent acted with "knowing, conscious, and deliberate flaunting of the Act." National Right to Work Committee, Inc. v. FEC, 716 F.2d 1401, 1403 (D.C. Cir. 1981); AFL-CIO v. FEC, 628 F.2d 97, 101 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980). The few cases interpreting the lesser "knowing" standard of section 441a, which Mr. Greene is not alleged to have violated, are split. Two federal district courts have interpreted the "knowing" standard in 2 U.S.C. § 441a as allowing imposition of civil liability where the Commission had demonstrated that the respondent had knowledge of the facts rendering its conduct unlawful. FEC v. Dramesi for Congress Committee, 640 F. Supp. 985, 987 (D.N.J. 1986); FEC v. California Medical Ass'n, 502 F. Supp. 196, 203-04 (N.D. Cal. 1980). The U.S. District Court for the District of Columbia, however, has the opposite view that the "knowing" standard of section 441a requires the Commission to demonstrate that the respondent was aware of the illegal nature of his contributions. In re Federal Election Campaign Act Litigation, 474 F. Supp. 1044, 1047 n.3 (D.D.C. 1979)

In so ruling, the Court distinguished United States v. Chestnut, 533 F.2d 40 (2nd Cir. 1975) on the basis that, unlike Rodriguez, the true contributor in Chestnut was a "knowing participant in [a] scheme" to circumvent the prohibition on corporate contributions to candidates for federal office. Slip op. at 3. Accordingly, in order to satisfy the scienter requirement of section 441f, the Commission must demonstrate that a respondent is a knowing participant in a plan to circumvent FECA's regulatory scheme, i.e., that the respondent knew the law and intentionally sought to violate it.⁶

The Commission adopted the Rodriguez's interpretation of the scienter requirement of section 441f when it codified this decision in its regulations interpreting section 441f. On August 17, 1989, the Commission issued a final rule adding a new paragraph (b)(1)(iii) to 11 C.F.R. § 110.4. Section 110.4(b)(1)(iii) specifically prohibits any person from knowingly helping or assisting any person in making a contribution in the name of another. In its Explanation and Justification for this new rule, the Commission said it applied only "to those who initiate or instigate or have some significant participation in a plan or scheme to make a

⁶ Section 441f is a criminal statute, which is subject to both civil enforcement by the Commission and criminal prosecution by the Department of Justice. Section 101(f)(1) of the Federal Election Campaign Act Amendments of 1974 added a new section 614 to the U.S. Criminal Code. Section 614 made it a crime for anyone to make a contribution in the name of another. Violations of section 614 were originally punishable by a criminal fine of up to \$25,000 or imprisonment for up to one year. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101(f)(1), 88 Stat. 1263, 1268 (1974)(codified at 18 U.S.C. § 614). See also S. Conf. Rep. No. 1237, 93rd Cong., 2nd Sess. 60, reprinted in 1974 U.S. Code Cong. & Admin. News 5618, 5629. Section 112(2) of the Federal Election Campaign Act Amendments of 1976 added a new section 325 to the Federal Election Campaign Act that incorporated the provisions of 18 U.S.C. § 614 into 2 U.S.C. § 441f and made violations of section 441f subject to both criminal and civil penalties. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, 494 (1976)(codified at 2 U.S.C. § 441f). See also H.R. Conf. Rep. No. 1057, 94th Cong., 2nd Sess. 67, reprinted in 1976 U.S. Code Cong. & Admin. News 946, 982. Nothing in the legislative history of section 325 indicates that Congress sought to change the scienter requirement of section 614 when the provision was moved from the U.S. Criminal Code to FECA and made punishable by both criminal and civil penalties. When the Commission seeks to impose civil penalties for violations of those provisions of FECA that are subject to both civil and criminal enforcement, the Commission must meet the higher criminal standard and show that the respondent knew the law and intentionally violated it. K. Gross and K. Hong, *Defending Prosecutions Under FECA: Drawing the Criminal/Civil Line in White Collar Crime 1998* D-7 to D-8 (ABA-CLE 1998).

contribution in the name of another” and that this new language would not reach an individual who acts “without any knowledge of the scheme” 54 Fed. Reg. 34,098 at 34,105, col. 1 (Aug. 17, 1989), as amended by 55 Fed. Reg. 2,281, col. 2 (Jan. 23, 1990). Thus, the Commission has ratified the Rodriguez decision that a person can only knowingly violate section 441f if he or she is aware that they are participating in a plan to circumvent FECA’s regulatory scheme. Moreover, pursuant to 2 U.S.C. § 438(d), this regulation was submitted to Congress for review. Neither the Senate nor the House of Representatives disapproved the regulation. The courts have long held that Congress’ failure to disapprove a proposed FEC regulation is an indication that Congress did not look unfavorably on the Commission’s construction of FECA. FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 34 (1981).

Accordingly, in order to support his probable cause recommendation, the General Counsel must demonstrate that it is more probable than not that D. Forrest Greene knew both that (1) funds he provided to Joseph P. Waldholtz were subsequently contributed to Enid ‘94 in the name of Enid Greene, and (2) he was participating in a deliberate plan to evade FECA’s regulatory scheme. Any fair evaluation of all the evidence that has been adduced in these matters will conclude the General Counsel has failed to meet this burden, because such evidence does not exist.

III. D. FORREST GREENE DID NOT KNOWINGLY VIOLATE SECTION 441f.

A. D. Forrest Greene Was Not Aware that Funds He Provided to Joseph P. Waldholtz Were Used by Joseph P. Waldholtz to Make Contributions to Enid '94 in the Name of Enid Greene.

1. Personal Loans.

Between January 21, 1994 and August 8, 1994, Mr. Greene loaned Joseph P. Waldholtz a total of \$598,000 in nine separate transactions.^{7/} As Mr. Greene testified during his deposition -- and has already been determined by a Utah state court and admitted by Joseph P. Waldholtz -- these loans were made based solely on a series of misrepresentations by his former son-in-law about the alleged dire financial condition of his mother and the consequent financial difficulties she had created for Joseph P. Waldholtz through a variety of transactions. D. Forrest Greene Dep. at 133-34, 152, 196. Joseph P. Waldholtz normally made these requests in person, when both he and Mr. Greene were in Salt Lake City, or by telephone, from either Washington, D.C. or Salt Lake City, to Mr. Greene in San Francisco. D. Forrest Greene Dep. at 133-34, 166.

An extensive search by counsel of Mr. Greene's home in Salt Lake City failed to uncover any written requests by Joseph P. Waldholtz for money.^{8/} After Joseph P. Waldholtz fled Washington, D.C. on November 11, 1995, however, Enid Greene discovered among the belongings he left behind a computer diskette. Further investigation revealed that the diskette contained a number of password-protected documents that Joseph P. Waldholtz had created on his personal computer. One of those documents is a letter that was created on April 28, 1994 that

⁷ We do not mean to imply by focusing on the first eight months of 1994 that all of the personal loans Mr. Greene made to Joseph P. Waldholtz occurred during this period. Indeed, Joseph P. Waldholtz continued to approach Mr. Greene for personal loans throughout 1994 and well into 1995. Moreover, the transfers Mr. Greene made to Joseph P. Waldholtz in the fall of 1994 often contained both loan proceeds and payments as part of the so-called Asset Swap, making it impossible to tell precisely where one scheme ended and the next one began.

⁸ In 1995, before Joseph P. Waldholtz's abrupt disappearance from Washington, Mr. Greene retired and closed his office in San Francisco, discarding a large number of documents.

Joseph P. Waldholtz apparently intended to send to Mr. Greene. Protected from prying eyes by the password "HELP," the letter, which is addressed to Mr. Greene at his business address in San Francisco, reads, in part:

Dear Mr. Greene:

Please excuse this typed note, but I fear if I hand wrote it, it would be illegible! I wanted to give you an update on what is going on with the financial matters we have been dealing with. I have not discussed all of this with Enid because I don't want to upset her anymore than she has to be.

* * * * *

There are several large problems that I have been dealing with. Things with my mother have not been well at all. She has ransacked other accounts that I didn't know she had access to. She has put me in a very precarious financial situation again. While you have heard it before, I have taken the necessary steps to remove myself from this situation. We are going to get a guardian and I will be relieved of my day to day responsibility.

She has overdrawn two accounts in Pittsburgh that I transfer money through. The total is \$114,000. What an incredible sum. The problem is this - it involves Utah Banks now because that is where we transfer money to. While they have tried to be understanding, we are out of time. In fact, because of the American Express fiasco, I think they are very nervous and would consider legal action if I can't resolve this.

* * * * *

I have tried to get a loan, but it cannot be done in time. I don't feel that I can ask you to help again, but I really don't know where else to turn. I have never been at a lower point in my life.

* * * * *

If you are wondering why I can't access the money that was to be returned to you, it is because she [Waldholtz's mother] accessed it and spent it on jewelry and the house. The items cannot be returned, and even if they could, their value is much less than [what] she spent on them. She was really taken advantage of. But that's another matter.

* * * * *

Mr. Greene, I am so afraid of scandal, I am just a wreck. I think we need to keep this between us. I cannot cause more pain for Enid or Mrs. Greene. She has been so kind to us; our relationship is really such a positive force in my life.

No matter what your decision, please know how much I appreciate your advice, your concern, and your love.

Letter from Joseph P. Waldholtz to D. Forrest Greene (April 28, 1994)(Exhibit L).

On April 29, 1994, Mr. Greene loaned Joseph P. Waldholtz \$56,000. General Counsel's Brief at 8. The April 28, 1994 Waldholtz letter supports strongly the testimony of both D. Forrest and Enid Greene. Neither D. Forrest nor Enid Greene was aware that Joseph P. Waldholtz was transferring money that had been loaned to him by Mr. Greene into Enid '94. Moreover, Joseph P. Waldholtz's letter demonstrates that Joseph P. Waldholtz tried deliberately to hide from Enid Greene the vast extent of his borrowing from Mr. Greene. Enid Greene Dep. at page 148.

2. Asset Swap.

As noted above, between August 25, 1994 and November 14, 1994, D. Forrest Greene transferred to accounts controlled by Joseph P. Waldholtz a total of \$2,211,000. General Counsel's Brief at 8. During this same time period, Joseph P. Waldholtz made seventeen contributions totaling \$937,500 to Enid '94, which he reported to the FEC as contributions from Enid Greene. This money was provided by D. Forrest Greene to Joseph P. Waldholtz in the belief that, in exchange, Mr. Greene had been assigned the right to receive the proceeds from the sale of commercial real estate in Pennsylvania that was jointly owned by Joseph P. Waldholtz and Enid Greene.

Enid Greene went to great lengths to explain this transaction -- which, we now know, involved real estate that did not actually exist -- to the General Counsel during her deposition. Enid Greene Dep. at pages 188-198, 206-214, 224-232. The General Counsel's probable cause

recommenda-tion is based on what only can be described as a deliberate misinterpretation of this testimony. Despite her testimony that she repeatedly asked Joseph P. Waldholtz to provide documentation of the Asset Swap to her father (Enid Greene Dep. at pages 195, 207-209, 211-212, 236-237), and evidence that, in response to her requests, Joseph P. Waldholtz fabricated false documentation, the General Counsel's probable cause recommendation is based, in large part, on the premise that D. Forrest Greene never actually *received* the fabricated documentation of the Asset Swap. General Counsel's Brief at 16, 21.

Despite the best efforts of the General Counsel, however, the record in these matters shows that D. Forrest Greene did not blindly give away \$2,200,000. Instead, he was duped into providing these funds by Joseph P. Waldholtz, who concocted an elaborate ruse, using falsified documents, to convince Mr. Greene that he had indeed been assigned the right to the proceeds from the sale of the Pennsylvania property.

The so-called Asset Swap appears to have occurred during the last two weeks of August, 1994. As Enid Greene testified during her deposition, late in the summer of 1994, Joseph P. Waldholtz approached her and told her that the so-called Waldholtz Family Trust had been frozen as a result of litigation initiated by other Waldholtz relatives over the management of the trust. The freeze applied to the so-called "TWC Ready Assets" mutual fund account within the so-called Waldholtz Family Trust that Joseph P. Waldholtz had supposedly established for Enid Greene at the time of their August 8, 1993 wedding. Enid Greene believed that it was this mutual fund that was the source of all the contributions to Enid '94 that had been made in her name up to this point in the campaign.

Having manufactured a campaign funding crisis, Joseph P. Waldholtz then suggested that Enid Greene approach her father, D. Forrest Greene, for a campaign loan. Enid Greene rejected

that suggestion out of hand, telling Waldholtz that under federal election law her father could not simply lend money to the campaign; he would have to receive some sort of asset in exchange. Joseph P. Waldholtz immediately "remembered" that he had inherited a piece of commercial real estate from a relative of his grandmother's. He told Enid Greene that the real estate was in probate, but that the property was worth \$2.2 million and that he had already found a ready buyer for the property at that price. Moreover, Joseph P. Waldholtz told her that, since Pennsylvania was a community property state and the property had been inherited by him during their marriage, Enid Greene was a joint owner of the property and could contribute up to half of the value of the property -- \$1.1 million -- to her campaign.

Enid Greene suggested that an assignment of the proceeds from the sale of the real estate might be a permissible way of transferring to her father an asset in exchange for cash. She directed Joseph P. Waldholtz to check into the legality of the transaction with both the lawyers for the so-called Waldholtz Family Trust and Enid '94's FEC accountants, Huckaby & Associates. Not surprisingly, Joseph P. Waldholtz returned several days later and reported that he had checked with the "trustees" of the so-called Waldholtz Family Trust and the accountants and they both had told him that the transaction was completely legal.

In fact, what Joseph P. Waldholtz actually did was to begin preparing an elaborate ruse. Shortly after his conversation with Enid Greene, Joseph P. Waldholtz apparently sat down at his computer and drafted a letter to D. Forrest Greene. In the letter, protected from disclosure by the password Joseph P. Waldholtz claimed that his mother had run up \$200,000 in overdrafts on accounts she shared with him and pleaded for \$55,000 in cash to cover immediate expenses. Joseph P. Waldholtz promised to repay all of the outstanding loans by selling \$2 million in real estate that he claimed to own in Pennsylvania:

Dear Mr. And Mrs. Greene:

I have spent the past four hours on the phone with Pittsburgh, the attorneys, First Security, and other investigators. I made Enid a promise that I would never 'give up' or say that I should leave her for her own good. That was my anniversary present to her. Yet, once again, because of my failure as a husband, son, son-in-law, and I guess even a person, we are in a horrible position.

The money was transferred to us and ready for wire. Do you remember two weeks ago when First Security had to take money out of my account because I deposited a check of my mother's and she signed a statement that she never received it? (Which was not true: I wired her \$500 per week out of that check - so she didn't spend it all at once!) Well, it appears that all of the checks that I have deposited she has done this with. We re-invested 4 large CDS for her through this account, and in banks back in Pittsburgh. Part of the money was used to pay her incredible overdrafts, part for her to live on, and part was stolen.

The worst part is that we are in a minus position again because of my family.

* * * * *

I will return to Pittsburgh during the Labor Day weekend and sell two million dollars of real estate to cover this. I dealt with that this morning. There is a buyer; I have no choice.

Every penny you loaned us will be repaid at market rates -- just like we were borrowing from a bank. It is my obligation to you.

The problem is this: We can't wire you money today, and we are in a desperate situation because of the reversals. The total is staggering, over \$200,000.00. I really am at a loss here; I will not upset Enid any more. I have failed her as a husband. My mother is ruining her campaign's chances.

* * * * *

Again, I will close on the real estate when I go back to Pittsburgh. We will have the money that we recover from the fraud (around \$935,000), plus the two million dollars in cash from selling property.

I want that much cash because I cannot go through this anymore! I cannot put Enid or you through it.

* * * * *

I know Mr. Greene has a flight up here later today, and I have again caused a problem. I have outlined how I plan to repay this. The immediate problem is a great one. You will never know how sorry I am.

Letter from Joseph P. Waldholtz to D. Forrest Greene (August 24, 1994)(Exhibit M).

Apparently, Joseph P. Waldholtz never actually sent this letter.⁹ As was the case with the other password-protected letter to D. Forrest Greene that was recovered from Joseph P. Waldholtz's laptop computer, D. Forrest Greene has no recollection of receiving this letter and no copies were found during a search of Mr. Greene's home. Moreover, as the letter notes, Mr. Greene was scheduled to be in Salt Lake City later that same day. It appears that Joseph P. Waldholtz approached D. Forrest Greene on August 24, 1998 when he arrived in Salt Lake City and asked him for \$55,000 as the first installment of the Asset Swap. Enid Greene Dep. at 189-98. On August 25, 1994, Joseph P. Waldholtz deposited a \$55,000 personal check from D. Forrest Greene into his personal checking account. General Counsel's Brief at 8.

As noted above, Enid Greene repeatedly asked Joseph P. Waldholtz to provide documentation of the Asset Swap to her father. Enid Greene Dep. at pages 195, 207-209, 211-212, 236-237. In response to her persistent requests, Joseph P. Waldholtz approached the campaign's newly hired press secretary, Michael Levy, in late September, 1994. Joseph P. Waldholtz knew that Mr. Levy had completed two years of law school and had worked as a law clerk for a Washington, D.C. law firm. Joseph P. Waldholtz told Mr. Levy that since he was "a lawyer," Waldholtz wanted his advice on how to assign the proceeds of the sale of real estate to a third party. Joseph P. Waldholtz indicated to Mr. Levy that he owned a piece of real estate in

⁹ Incredibly, Joseph P. Waldholtz's plea for cash included a request that Mr. Greene wire \$30,000 directly to a campaign vendor, Wilson Communications. Needless to say, Mr. Greene never transferred any money to any of the Enid '94 campaign vendors, including Wilson Communications. While the letter does not provide any information about D. Forrest Greene's state of mind at the time of the Asset Swap, it certainly demonstrates the extraordinary efforts Joseph P. Waldholtz made to deceive and defraud his father-in-law out of hundreds of thousands of dollars that Joseph P. Waldholtz then knowingly, willfully and illegally funneled into the Enid '94 campaign.

Pennsylvania that he wanted to sell, but that his lawyers did not understand how Waldholtz wanted to structure the transaction. Affidavit of Michael Levy at ¶¶ 2-6 (Exhibit N).

Mr. Levy volunteered to contact an associate at his former law firm who he knew was familiar with real estate law. Mr. Levy called this associate immediately after his conversation with Joseph P. Waldholtz and left a message on the associate's voicemail describing Joseph P. Waldholtz's request and asking for some sample documents that he could use as a model. Affidavit of Michael Levy at ¶¶ 7-8 (Exhibit N). When Mr. Levy did not receive a return call from the associate, he called a partner at the same law firm and described Joseph P. Waldholtz's request, indicating that Waldholtz needed a "boilerplate" document for the assignment of proceeds from the sale of real estate. Affidavit of Michael Levy at ¶¶ 9-10 (Exhibit N).

Shortly thereafter, Mr. Levy initiated a conference call between the partner and Joseph P. Waldholtz so that Waldholtz could explain to the lawyer exactly what type of document he needed. On September 23, 1994, the partner faxed to Mr. Levy a one-page assignment of proceeds form. Mr. Levy took the fax to Joseph P. Waldholtz as soon as he received it. Affidavit of Michael Levy at ¶¶ 11-13 (Exhibit N). See also Fax from Emanuel Faust to Mike Levy (9/23/94)(Exhibit O).

On September 29, 1994, Mr. Levy was faxed another model assignment of proceeds document by the associate he had originally contacted. Mr. Levy delivered this second fax to Joseph P. Waldholtz the same day he received it. Affidavit of Michael Levy at ¶¶ 14-15 (Exhibit N). See also Fax from Jim Kelly to Michael Levy (9/29/94)(Exhibit P).

At approximately the same time that Joseph P. Waldholtz was talking to Mr. Levy about his need for a model assignment of proceeds form, he was also at work again on his personal computer, generating a memorandum from the so-called Waldholtz Family Trust to Mr. Greene.

This memorandum was saved as a password-protected document on the same computer diskette that Waldholtz had used to create the April 28th and August 24th letters to Mr. Greene discussed previously. Created on January 1, 1994 (no doubt as part of Joseph P. Waldholtz's earlier scheme to obtain fraudulent personal loans from Mr. Greene), the memorandum was revised on September 21, 1994 to read, in its entirety, as follows:

Mr. Greene, we apologize for the delay in sending the materials to you. Joe and Enid asked that we send you the assignment of the real estate and the letter from the U.S. Attorney. We apologize for the delay and the confusion.

If we can be of further assistance, please give us a call.

Thank you.

Memorandum from "The Waldholtz Family Trust" to Mr. D.F. Greene c/o East-West Co. (Exhibit Q).

The three-letter password that Joseph P. Waldholtz chose to protect this bogus "Waldholtz Family Trust" memorandum sums up his entire course of dealing with Mr. Greene: "LIE."

The unrefuted documentary evidence demonstrates that Joseph P. Waldholtz went to extraordinary lengths to deceive both D. Forrest and Enid Greene into believing that the Asset Swap was a lawful transaction. More importantly, these documents demonstrate that D. Forrest Greene was not a knowing participant in Joseph P. Waldholtz's scheme to circumvent FECA. Accordingly, a fair evaluation of all the evidence adduced in these matters can come to no other conclusion than that there is no probable cause to believe that D. Forrest Greene violated section 441f.

3. Utah Fraud Suit.

Long before the Commission decided that there was reason to believe that D. Forrest Greene had conspired with Joseph P. Waldholtz to violate section 441f, Joseph P. Waldholtz had

already conceded to a state court in Utah that he had defrauded Mr. Greene out of nearly \$4 million -- including the funds that Joseph P. Waldholtz then contributed to Enid '94 in the name of Enid Greene.

On May 1, 1996, Mr. Greene brought a civil fraud suit against Joseph P. Waldholtz in a Utah state court in an attempt to recover some of the nearly \$4 million dollars that Mr. Greene had provided to Joseph P. Waldholtz between January 21, 1994 and his abrupt departure from Washington, D.C. on November 11, 1995.

In his complaint, Mr. Greene cited many of the misrepresentations that Joseph P. Waldholtz made to induce Mr. Greene to provide him with funds. These allegations mirror Mr. Greene's deposition testimony. In his complaint, Mr. Greene alleged that during the period between January 1994 and October 1995, Joseph P. Waldholtz repeatedly approached Mr. Greene with requests for money. These requests were made either in person in Salt Lake City or by telephone from Joseph P. Waldholtz in Washington, D.C. and/or Salt Lake City to Mr. Greene in San Francisco. Complaint at ¶ 8 (Exhibit R).

Despite the fact that he had long claimed to be a beneficiary of a so-called Waldholtz Family Trust worth approximately \$325 million, which supposedly provided him with a substantial monthly income, Joseph P. Waldholtz gave several different excuses for needing money from Mr. Greene. *Id.* at ¶ 7. In January and February 1994, Joseph P. Waldholtz claimed that his biological mother, Barbara Waldholtz, had been the victim of a telemarketing scheme and had overdrawn several joint checking and other accounts she shared with Joseph P. Waldholtz. Joseph P. Waldholtz claimed that he could not use trust funds to pay the obligations incurred by his mother because she was divorced from Waldholtz's father and was therefore barred from receiving any money from the so-called Waldholtz Family Trust. *Id.* at ¶ 7(d).

Joseph P. Waldholtz later claimed that his mother had been tricked by a con man and, because of the restrictions on the so-called Waldholtz Family Trust, trust funds could not be used to assist her in clearing up substantial overdrafts on accounts she either shared with Joseph P. Waldholtz or had allegedly accessed without his knowledge or consent. Joseph P. Waldholtz claimed he would repay Mr. Greene from personal funds that would soon be available. Id. at ¶ 7(e).

Based on these and numerous other misrepresentations, lies and false statements, Mr. Greene was induced to transfer a total of \$3,987,426 from his personal accounts to accounts designated by Joseph P. Waldholtz. Id. at ¶ 5.

Joseph P. Waldholtz filed an answer with the Court on June 6, 1996. In his answer, Joseph P. Waldholtz did not deny that he had defrauded Mr. Greene out of nearly \$4 million. Instead, he invoked his rights under the Fifth Amendment and refused to answer the fraud allegations in the complaint on the basis that any statement made by him would tend to incriminate him. Answer at ¶¶ 5-10 (Exhibit S).

Of course, the prevailing rule has long been that a court may draw an adverse inference of liability when a party invokes the Fifth Amendment in a civil proceeding. Baxter v. Palmigiano, 425 U.S. 308, 318 (1976); Mid-America's Process Service v. Ellison, 767 F.2d 684, 686 (10th Cir. 1985); Hughes Tool Co. v. Meier, 489 F.Supp. 354, 374 (D. Utah 1977). Mr. Greene made just this argument in moving for summary judgment. Memorandum in Support of Motion for Summary Judgment at 4-6 (Exhibit T). The Court agreed that, by invoking his rights under the Fifth Amendment, Joseph P. Waldholtz had conceded the facts alleged in Mr. Greene's complaint and granted Mr. Greene's Motion for Summary Judgment on July 25, 1996. Order Granting Summary Judgment at 1 (Exhibit U).

Incredibly, the General Counsel showed no deference whatsoever to this prior court ruling that strikes at the heart of the General Counsel's argument that D. Forrest Greene was a knowing participant in Joseph P. Waldholtz's plan to circumvent FECA's regulatory scheme. A determination by a state court that the funds that Joseph P. Waldholtz contributed to Enid '94 in the name of Enid Greene were, in fact, obtained from D. Forrest Greene *by fraud* should preclude the Commission from concluding that D. Forrest Greene *knowingly* assisted Joseph P. Waldholtz in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

B. The General Counsel's Probable Cause Recommendation Ignores Voluminous Evidence of Joseph P. Waldholtz's Uncanny Ability to Dupe Much More Politically Astute Individuals Into Violating FECA.

The General Counsel's probable cause recommendation is based, to a very large degree, on the General Counsel's incredulity that anyone with D. Forrest Greene's financial background could have been duped by Joseph P. Waldholtz into making millions of dollars in unsecured personal loans, much of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. General Counsel's Brief at 23. D. Forrest Greene's testimony is more than credible, however, once you know that Joseph P. Waldholtz had a decade-long track record of defrauding elderly individuals similar to D. Forrest Greene out of substantial sums of money. In addition to the crimes for which he was imprisoned, Joseph P. Waldholtz, in the decade prior to his guilty plea:

- Defrauded his grandmother, an elderly Alzheimer's patient, out of at least \$400,000;
- Forged and counterfeited Government National Mortgage Association ("Ginnie Mae") securities as part of his scheme to defraud his grandmother out of hundreds of thousands of dollars;
- Committed perjury in a state court proceeding initiated by his own father to recover the funds that Joseph P. Waldholtz had stolen from his grandmother;

- Defrauded his mother out of her entire life savings -- \$96,000 -- by inducing her to cash in her pension, take out a mortgage on the home she owned free and clear, and give the money to him to "invest" for her;
- Misappropriated at least \$100,000 from his employer, Republican National Committeewoman Elsie Hillman, and was fired for using her money for expensive hotel suites, first-class airline tickets, and lavish meals while travelling to Republican Party events on her behalf and while working as the Executive Director for Pennsylvania of Bush-Quayle '92;
- Caused Mrs. Hillman to violate the Federal Election Campaign Act's prohibition on contributing more than \$25,000 in any one year (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 by failing to keep track of her political contributions, resulting in Mrs. Hillman having to pay a \$32,000 civil penalty;
- Converted contribution checks made out to the Utah Republican Party to his own use while employed as the Party's Executive Director;
- Committed bank fraud by using falsified tax returns showing more than \$250,000 in annual income from a now-known-to-be non-existent "Waldholtz Family Trust" to obtain a home mortgage from First Security Bank of Utah;
- Committed additional bank fraud violations by kiting checks between accounts Joseph P. Waldholtz maintained with Merrill Lynch, Pittsburgh National Bank, and NationsBank;
- Falsified Ms. Greene's 1994 and 1995 congressional financial disclosure statements;
- Forged Ms. Greene's endorsement on her congressional paychecks on two separate occasions and converted the proceeds to his own use;
- Committed three separate instances of tax fraud involving the tax returns Joseph P. Waldholtz filed for tax years 1992 through 1994; and
- Committed massive (more than 850) violations of the Federal Election Campaign Act and applicable FEC regulations while serving as treasurer of Enid '94 and Enid '96, as alleged in the complaint in MUR 4322.

Three of these documented misdeeds by Joseph P. Waldholtz are especially relevant, because they demonstrate his uncanny ability to manipulate individuals who were both more financially and politically sophisticated than D. Forrest Greene into unknowingly violating FECA, as well as his ability to avoid detection for multiple violations of FECA and FEC regulations.

1. Elsie Hillman.

In MUR 3929, Joseph P. Waldholtz's former employer, Republican National Committeewoman Elsie H. Hillman, agreed to pay \$32,000 in civil penalties to the Commission to resolve allegations that she committed multiple violations of the Federal Election Campaign Act during 1990, 1991, and 1992.

Joseph P. Waldholtz served as chief of staff to Mrs. Hillman (as well as Executive Director for Pennsylvania for Bush-Quayle '92) from 1988 until 1992, when he was terminated for allegedly spending more than \$100,000 of Mrs. Hillman's money on expensive hotel suites, first-class airline tickets, and lavish meals while traveling to Republican National Committee meetings and other Republican Party events around the country. Kovalski & Heath, *Waldholtz Lost Job Over Finances in 1992; Sources Say Husband of Congresswoman Was Fired by RNC Member*, Wash. Post, Nov. 17, 1995, at A3. (Exhibit V).¹⁰

As a member of the Republican National Committee and a wealthy woman, Mrs. Hillman was constantly solicited for political contributions. As her chief of staff, Joseph P. Waldholtz advised Mrs. Hillman on her political giving and handled the day-to-day task of actually conveying contribution checks to their intended recipients (Exhibit W). Joseph P. Waldholtz directed Mrs. Hillman's accountant, Hugh Joyce, to issue checks for her political causes and wrote the cover letters transmitting the checks to candidates and their campaign committees (Exhibit X). It is reasonable to assume that Joseph P. Waldholtz's duties included keeping track of the extent of Mrs. Hillman's political giving.

After Mrs. Hillman fired Joseph P. Waldholtz for abusing his expense account, she instructed her private attorney, Wendell Freeland, to conduct a review of the political

¹⁰ Mrs. Hillman, who is well known in both political and philanthropic circles, apparently chose not to press charges so that she could keep this a private matter.

contributions she and her husband, billionaire investor Henry Hillman, made during the period Joseph P. Waldholtz served as her chief of staff. Mr. Freeland soon discovered that Mrs. Hillman had exceeded the Federal Election Campaign Act's \$25,000 annual limit on individual political contributions (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 -- usually by a substantial amount. Mrs. Hillman exceeded the \$25,000 annual limit by \$16,670 in 1990, by \$10,000 in 1991, and by \$12,600 in 1992. Mrs. Hillman voluntarily disclosed these violations to the Commission and agreed to pay a \$32,000 civil penalty.

Joseph P. Waldholtz is at least partially responsible for Mrs. Hillman's violations of the Federal Election Campaign Act. More importantly, Joseph P. Waldholtz's relationship with Mrs. Hillman is eerily similar to his relationship with D. Forrest Greene: He took advantage of an elderly person who trusted him, stole their money, and used it to finance a lavish lifestyle as well as his efforts to establish for himself a reputation as a political power broker. Moreover, Joseph P. Waldholtz's tenure as Mrs. Hillman's chief of staff demonstrates that he harbored a flagrant disregard for federal election law long before he ever met D. Forrest or Enid Greene. Finally, the fact that Joseph P. Waldholtz's mishandling of Mrs. Hillman's political contributions was not uncovered until after he left her employ demonstrates his uncanny ability to flout election law while avoiding responsibility for his actions.

2. Republican Party of Utah.

Joseph P. Waldholtz's trail of politically sophisticated victims did not end with Mrs. Hillman. He was named acting executive director of the Utah Republican Party in April 1993. Within two months, he embezzled nearly \$1,500 from the Utah Republican Party by simply taking fourteen checks made payable to the Utah Republican Party that were apparently given to him at a party fund raising event and depositing them into his personal checking account.

Neither the state party chairman, Stan Parrish, nor the state party's outside counsel, Kevin Anderson, had any idea that these funds had been misappropriated. The embezzlement was not discovered during any of the state party's annual external audits. Indeed, the theft only came to light when Enid Greene retained the accounting firm of Coopers & Lybrand to perform a forensic reconstruction of the bank accounts of Enid '94 and Joseph P. Waldholtz. It was counsel for Enid Greene that informed the Utah Republican Party that it, too, had been victimized by Joseph P. Waldholtz. Wilson, *Utah GOP Leader Says Joe Took From the Party, Too*, The Salt Lake Tribune, December 10, 1995, at A19. (Exhibit Y).

3. Huckaby & Associates.

Finally, and most importantly, Joseph P. Waldholtz was able to manipulate one of the most technically sophisticated federal election law experts in the country, Stan Huckaby, a man who had served as the treasurer of the Bush/Quayle '92 presidential campaign committee, into filing more than half a dozen blatantly false reports with the FEC.

In mid-June 1994, KayLin Loveland, the assistant treasurer of Enid '94, approached Enid Greene with concerns about the accuracy of the FEC reports prepared by Joseph P. Waldholtz. Enid Greene Dep. at pages 166-167. Enid Greene's immediate reaction was to hire a nationally recognized FEC accounting firm, Huckaby & Associates, to prepare the rest of the Enid '94 FEC reports. Moreover, Enid Greene directed Huckaby & Associates to do whatever it took, without regard to cost, to ensure that Enid '94 was in full compliance with all FECA requirements:

I told [Stan Huckaby] that I wanted him to do everything that was necessary not only from this point forward, but to look at other reports to make sure everything was correct. If [the earlier FEC reports] were not [correct], to amend them. He was to spend whatever it took to make sure they are correct. I told him if you ever have a problem just call me.

Enid Greene Dep. at page 161.

Enid Greene retained highly respected professionals to ensure that Enid '94 was in complete compliance with all FECA requirements. They failed her utterly. Between July 15, 1994 and January 30, 1995, Huckaby & Associates prepared and filed seven FEC reports on behalf of Enid '94. Incredibly, Huckaby & Associates prepared these reports based solely on the word of Joseph P. Waldholtz, whose conduct they were supposed to be overseeing. Huckaby & Associates never obtained any documentation to support the information that was provided to them by Joseph P. Waldholtz. Moreover, no one from Huckaby & Associates ever even called Enid Greene during the campaign to inform her that they were having difficulty documenting the committee's contributions and expenditures. Enid Greene Dep. at 161.

Joseph P. Waldholtz was able to deceive one of the nation's outstanding experts on federal election law into preparing not one, not two, but *seven* completely fabricated FEC reports. The General Counsel was aware of this fact more than a year ago, and yet he is incredulous that D. Forrest Greene could not see through Joseph P. Waldholtz's machinations and discern the unimaginable: that his new son-in-law had taken the money that he had borrowed from D. Forrest Greene to supposedly care for his sick mother and her financial difficulties and was using it to finance his wife's congressional campaign.

The only thing incredible about this entire series of events is that the allegations against D. Forrest Greene ever made it past the reason to believe stage. Given the voluminous evidence provided to the General Counsel by counsel for D. Forrest and Enid Greene, the most minimal of investigations should have shown that there was no credible evidence to believe that D. Forrest Greene was a willing participant in Joseph P. Waldholtz's criminal scheme.

V. CONCLUSION.

The General Counsel's recommendation that the Commission find probable cause to believe that D. Forrest Greene violated 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3) is based on nothing more than the General Counsel's subjective belief that a person of D. Forrest Greene's financial sophistication could not possibly have been duped by Joseph P. Waldholtz into making millions of dollars in unsecured personal loans, much of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. However, the scienter requirement of section 441f requires that the General Counsel must demonstrate that it is more probable than not that D. Forrest Greene knew both that (1) funds he provided to Joseph P. Waldholtz were subsequently contributed to Enid '94 in the name of Enid Greene, and (2) he was participating in a deliberate plan to evade FECA's regulatory scheme. Moreover, a determination that D. Forrest Greene violated section 441f is a necessary prerequisite to any determination that he also violated sections 441a(a)(1)(A) or 441a(a)(3). If the Commission does not believe that there is probable cause to believe that D. Forrest Greene violated section 441f by making a contribution in the name of another, then the Commission may not find that there is reason to believe that he violated either of the monetary limits on contributions.

Contrary to the General Counsel's recommendation, any fair evaluation of all the evidence adduced in these matters can come to no other conclusion than that there is no probable cause to believe that D. Forrest Greene violated section 441f, and, therefore, no probable cause to believe that D. Forrest Greene violated sections 441a(a)(1)(A) or 441a(a)(3). The General Counsel simply does not believe D. Forrest Greene's repeated assertions under oath that he was unaware that Joseph P. Waldholtz was contributing funds he had obtained from D. Forrest Greene by fraud to the Enid '94 campaign. Yet nowhere in his brief does the General Counsel

discuss – much less refute – the documentary evidence discovered and provided to the General Counsel's office by counsel for D. Forrest and Enid Greene that corroborates D. Forrest Greene's testimony that he was defrauded by Joseph P. Waldholtz. As discussed in section IV.A. above, the three password-protected documents that were retrieved from Joseph P. Waldholtz's laptop computer – shielded from discovery by the passwords "HELP," and "LIE" – by themselves establish that D. Forrest Greene was a victim of Joseph P. Waldholtz, rather than a co-conspirator.

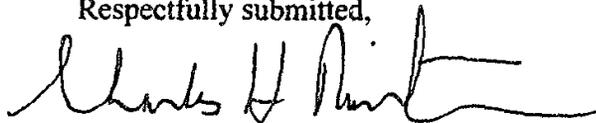
Mr. Greene is a 79-year-old veteran of World War II, who served his country, his community, and his family honorably. *Nothing* in Mr. Greene's personal or professional life could remotely suggest that, in 1994, Mr. Greene would abandon a lifetime's practice of honor and honesty and conspire with Joseph P. Waldholtz to break federal laws. Moreover, a Utah state court has already determined that Joseph P. Waldholtz victimized D. Forrest Greene. The General Counsel showed *no deference whatsoever* to the prior ruling by a Utah state court that the funds that Joseph P. Waldholtz contributed to Enid '94 in the name of Enid Greene were, in fact, obtained from D. Forrest Greene by fraud. This prior ruling should preclude the Commission from concluding that D. Forrest Greene *knowingly* assisted Joseph P. Waldholtz in making a contribution in the name of another.

Finally, the General Counsel's probable cause recommendation rests, to a very large degree, on the General Counsel's incredulity that anyone with D. Forrest Greene's financial background could have been duped by Joseph P. Waldholtz into making millions of dollars in unsecured personal loans, much of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. D. Forrest Greene's testimony is more than credible, however, *once you* know that Joseph P. Waldholtz, long before he ever met D. Forrest Greene, had a long track

record of defrauding individuals much more financially and politically sophisticated than D. Forrest Greene out of substantial sums of money. More importantly, the record shows that Joseph P. Waldholtz was able to manipulate the federal election laws to his own advantage while under the supervision of very sophisticated political operatives, including a member of the Republican National Committee, Elsie Hillman, the chairman of the Utah Republican Party, Stan Parrish, and one of the most technically sophisticated federal election law experts in the country. Stan Huckaby.

For all of the foregoing reasons, the Commission should conclude that there is no probable cause to believe that D. Forrest Greene violated 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3).

Respectfully submitted,



Charles H. Roistacher



Brett G. Kappel

Powell, Goldstein, Frazer & Murphy, LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 347-0066
Fax: (202) 624-7222
Counsel to D. Forrest Greene

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MINIMUM SECURITY



EAMON JAVERS

Joe Waldholtz, former unpaid chief of staff to his then wife, Rep. Enid Greene Waldholtz, at Allenwood Federal Prison Camp.

Joe Waldholtz in prison: slimmer, sober and penitent

By Eamon Javers

Joe Waldholtz, inmate number 20396-016, walked into the visitor's room at the Allenwood Federal Prison Camp in central Pennsylvania Monday morning to tell the tale of his fantastic rise and fall as Congress' most spectacular election law breaker.

But the first words out of his mouth were a lie, his ex-wife Enid Greene said later.

As he stepped into the interview room this week, Waldholtz told an interviewer, "Enid sure was angry when I told her I was going to talk to you."

Enid, reached by telephone at her home in Salt Lake City, said that was a lie — Joe had, in fact, told her he was not going to break his press silence. "This is vintage Joe Waldholtz," Greene said. "This shows the extent of the games he continues to play, even in prison."

Waldholtz, tanned by outdoor exercise and nearly 300 pounds slimmer than the 487 pounds he weighed at his peak, is serving a 37-month sentence for election fraud.

His daily routine consists of rising at 5:30 a.m., often followed by a morning run on the jogging trail of the prison compound, which has no fences. Then comes breakfast, which is served in Allenwood's communal cafeteria. Next, he heads to work. Each inmate has a task each day —

Waldholtz says he has worked at the complex's power plant, then as a clerk for the camp's parenting and job skills program, and now in general maintenance in his dormitory-style building, Unit C.

He also attends substance abuse counseling sessions "very, very regularly," saying, "I've spent a lot of time working on sobriety and a lot of time working on the physical side of things."

His arrest and the subsequent revelations that he had embezzled more than \$4 million from his father-in-law and used it to finance his wife's congressional campaign brought down the career of Rep. Enid Greene Waldholtz (R-Utah), who hadn't completed her first term when the scandal

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TV stations ration campaign advertising, citing high demand

By Lindsay Sobel

Due to record-breaking spending on primaries this year, the demand for political advertising time has been so high that television stations cannot — or will not — sell candidates all the time they would like to buy.

As a result, candidates are charging television stations with silencing debate, while stations insist that they are doing their best to balance the overwhelming demands of candidates with their own need to run a profitable business.

"It doesn't seem like too much to ask to make time available to candidates who want to debate important issues," said Steve McMahon, a Democratic media consultant. "Stations would rather run Pizza Hut ads than ads for candidates, because stations make more money on Pizza Hut."

Stations are required to offer reason-

able advertising time to federal candidates — but not state and local ones — and to offer equal time to all candidates in the same race. Since stations must offer candidates lower rates, commercial advertising is more profitable for the stations.

Alan Buckman, director of sales for the television station KPIX in San Francisco, was amazed at the demand for ad time for the California primaries this month. "We anticipated it to be large, but more money kept coming in and coming in," he said. "Far more than the representatives for the candidates initially told us."

"If they could have, they would have bought every ad on the station," he said. As a result of heavy demands by Democratic gubernatorial hopefuls Al Checchi and Jane Harman, "When we looked at what they wanted, we basically cut them way back," he said.

Susan Neisloss, media liaison for KCBS-

CONTINUED ON PAGE 6

Idaho delegation backs funds for rancher dad of staffer

By Jack Friedly

The Idaho congressional delegation is backing unusual legislation that would compensate private ranchers who will be displaced as the Air Force prepares a bombing range on federally owned grazing lands.

The idea of using public funds to reimburse ranchers for land they don't even own has caused environmental activists and federal land management officials alike to fear the precedent it could set.

But what also has raised eyebrows is that only one rancher is expected to benefit:

Bert Brackett, a long-time political supporter of Idaho Republicans whose daughter, Jani, is a legislative assistant here in Washington for one of the backers of the bill, Sen. Larry Craig (R-Idaho).

Craig's office said Jani Brackett has played no role in the matter. "She's kept entirely out of the loop on anything dealing with this legislation, as well it should be," said Craig Press Secretary Michael Frandsen. "I couldn't even talk to her. She didn't know anything about this."

Furthermore, supporters insist that the legislative language — authored by Sen.

CONTINUED ON PAGE 11

Senators from same state put eggs in one basket

By Mary Lynn F. Jones

Virginia Democrat Chuck Robb was wary about joining the powerful Armed Services Committee when he was first elected to the Senate in 1988.

Despite his extensive Marine background, including nine years of active duty, Robb, who joined the Foreign Relations Committee at the time, didn't ask for a seat on the committee that already included the state's senior member, former Navy secretary and then-ranking

Republican John Warner.

While Robb said he was ultimately recruited to the committee by former Panel Chairman Sam Nunn (D-Ga.) and several of the service chiefs, his initial reluctance isn't a surprise considering Senate protocol and electoral prospects. Stacking a committee with two same-state senators, who could favor their home state in committee business and pursue policy areas too narrowly focused to satisfy broader voter interests, was considered unwise.

When two senators from the same state

are on the same committee, that state is unrepresented on other committees that also affect a state's interests. Senators can especially extend their influence by taking seats on the Finance, Appropriations and Budget committees.

Now, however, the two Old Dominion senators are part of a trend in the 105th Congress; 15 sets of same-state senators serve on at least one committee together, and two pairs serve on two committees together. Nine pairs hail from different par-

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Waldholtz in prison: slimmer, sober, penitent

■ CONTINUED FROM PAGE 1
broke.

Greene said Waldholtz is a psychopath and a liar, and that his schemes to defraud others won't end when he is released from prison — which, depending on his good behavior, could come as early as December of January.

Waldholtz, dressed in a tan prison outfit and white New Balance sneakers, considers himself like any other disgraced political official who can go to prison, learn his lessons, and return to society. He plans to get an MBA degree upon his release and says he will start life anew — away from political Washington, away from Enid in Utah, and away from his angry family in Pennsylvania.

He attributes much of his problem to substance abuse that started with marijuana and painkillers and blossomed to include injecting heroin by the time he was caught.

Asked why he pretended to be the heir to a \$400 million fortune while he defrauded his new family after his marriage to Enid, Waldholtz said, "Obviously, it made me feel better about myself. I don't think it takes a rocket scientist to see that it fits with the substance abuse and weight problem."

But Enid, now living with the couple's almost-3-year-old daughter, Elizabeth, is unforgiving. "What else do you expect him to say? He has no remorse. ... he is not rehabilitated, he is not a normal person. ... I have to now live with this for the rest of my life."

Greene said she is finally happy with her life, but that she wants to go back to work soon, either as a lawyer or for a large Utah corporation. She says her future won't necessarily include politics, that she "would like to rebuild my reputation." Politics can wait. "If that opportunity arises at some point in the next 40 years, maybe I'll do it, but it's not something I need to do again."

...

Waldholtz, asked when his charade began, said, "God, I can't give you any specific on that, but it was something that was there for a long time. In politics, people like to pretend they're a lot of things that they're not, or to shift things ever so slightly. ... It's the spin, the image, a lot of people are caught up in all that."

But he now says the mirage he presented to the public was: "Stupid. Unnecessary. And very much a part of the past."

Waldholtz said his scheme to secretly defraud Enid's father of millions of dollars they would need to run a second congressional campaign in 1994 began when Enid was defeated in her first race for Congress in 1992, against Rep. Karen Shepherd (D-Utah). "Neither of us could stomach the loss. And I'm not proud of that. Not proud of that at all."

He said he knew that they would need more money than Enid could or would raise well before the 1994 election, and that's when he started his periodic calls to Enid's wealthy father, Forrest Greene, for "loans" that he then funneled into their campaign — in violation of election law.

Enid, he maintains, was unaware of his plans. "Was Enid ambitious? Yes. Misdirected? No. Enid is a supremely talented individual, one of the finest public speakers I've ever seen. Enid will definitely be back. And I'll be rooting from the sidelines."



EAMON JAVERS

Joe Waldholtz at Allenwood Prison Camp.

Ultimately, the Department of Justice agreed with Enid's argument that she had been duped by Waldholtz and cleared her of wrongdoing — albeit in a process that she now says was carried out for too long by prosecutors out to make their own reputa-

tions.

Talking about the method of his crimes, Waldholtz speaks in the passive voice, almost as if he is reluctant to admit that it was he who committed the crimes he describes. "A lot of stories were circulated

about supposed gifts, supposed trusts, supposed real estate swaps, that's all been talked to death," he said. "Stories were invented for our situation that we needed."

After losing weight during his lengthy court battle, Waldholtz has lost 125 pounds since coming to Allenwood, which is sometimes derided as "Club Fed," for its minimum security luxuries for prisoners — the greatest of which is that the complex is not fenced in. During any of his daily runs on the compound's jogging track, Waldholtz could easily slip into the woods and make a break for it. He doesn't try to escape, he said, because that will only bring him more — and harder — time.

Nested next to a private golf course and a technical college, a passerby could easily mistake Allenwood for nearby Susquehanna High School. Most of the inmates are there for non-violent drug offenses, but 21.9 percent are there for extortion, bribery or fraud. Only 1.8 percent are there for white-collar crimes, according to a fact sheet provided by the Bureau of Prisons.

Waldholtz still finds time for leisure activities that he says friends in Washington would be shocked at. His excess weight and pasty pallor gone, he says he's focused on keeping the weight off.

He says, "I run, do aerobics, lift weights. Play a mean game of bocce. I'm a very ardent supporter of the softball team. ... [This] sucks people to death because I was Mr. Indoor Person."

"I'm doing a lot of things I haven't done before," he said, "and I'm healthier for it."

Joe Waldholtz: In his own words

Joe Waldholtz sat down with *The Hill* at Allenwood Federal Prison Camp Monday to break his media silence about his crimes. He speaks with *The Hill's* Eamon Javers. Following are excerpts from the conversation.

SUBSTANCE ABUSE

Q: How long were you in rehab, and what was that process like?

A: 10 days. ... Rehab was necessary, rehab was tough, and rehab was the beginning of an opportunity that you know is carrying forward to this day.

Q: You were addicted to painkillers, and you were using regular street grade heroin?

A: You know it's funny, I still kind of cringe in talking about that. I had a problem with narcotics for years. When someone weighs 487 pounds, obviously, you're not real comfortable with yourself. And I was in politics and the narcotics seemed to help. There were times of sobriety in there, but it was like a dry drunk.

Q: When did you first start using drugs? When you were a kid? When you were already working in politics?

A: Experimenting as a kid.

Q: And what kinds of drugs did you start with?

A: Silly stuff that everyone starts with.

Q: Marijuana ...?

A: Right. Uh, but it didn't become a problem until years later. I deeply regret

my substance abuse. It makes sense to me now, the weight, the abuse of narcotics. It makes sense. And it's pretty simple to understand what was wrong. I wish I'd done that at the time.

Q: There are a lot of people who would burst out laughing to hear Joe Waldholtz talking about living life in a law-abiding fashion. You're a guy who, after you were busted for the first time for check kiting, continued to write bad checks, continued to do drugs, so that was a warning scare that didn't shock you straight. Why would two years, three years at Club Fed shock you straight?

A: Uh, I was pretty sick at the time. I'm not now. There were things I needed to deal with that I didn't.

Q: What's changed?

A: Sobriety, for one. Which is just an incredible, incredible thing. I almost consider it a gift. I don't want to sound preachy — people in Utah would accuse me of sounding Mormon, but it's just different. I really meaned up. And I just couldn't seem. ... I couldn't see a way out of it. There were times I really didn't think I was going to make it through.

THE CHARADE

Q: [Y]ou, from very early in your relationship with Enid, affected the life of a multi-millionaire, and gave everyone the impression that you were a very wealthy man, that you had access to this Waldholtz family trust. Why did you feel the need

do that?

A: Well first, the specifics like that were never discussed, at that point. Obviously, it made me feel better about myself. I don't think it takes a rocket scientist to see that that fits in with the substance abuse and the weight problem.

Q: When did you first start letting on that you were a wealthy man, wealthier than you really were?

A: God, I can't give you any specific on that but it was something that was there for a long time. In politics, people like to pretend they're a lot of things they're not, or to shift things ever so slightly.

Q: You say shift things ever so slightly in politics?

A: Yeah, it's the spin, the image, a lot of people are caught up in all that.

Q: Did it start out as, like you say, ever so slightly and then snowball?

A: Right. Stupid. Unnecessary. And very much a part of the past.

Q: You're the boy who cried wolf in this scenario. You, according to all the allegations, stole money from your grandmother, your employer in Pittsburgh, from your father-in-law, to the tune of \$4 million. You were also using illegal narcotics during the course of this whole time. Once you were caught, you continued to use the narcotics, continued to write bad checks, and steal credit cards from your own lawyers during this whole time frame. Some people say

■ CONTINUED ON PAGE 45

Joe Waldholtz: Thoughts on scandal and prison

■ CONTINUED FROM PAGE 36

that you're either sick with some kind of mental instability or that there's some malicious kind of anger. Get back at society. Why did you do it?

A: Um, again, not responding to all of those allegations, some of which are interesting, why did I do the election thing? To win.

Q: What about the \$4 million that came from Mr. Greene?

A: To win.

Q: What about the lavish lifestyle, the silk ties, the terrific suits, the great shoes.

A: Those are the things that I kind of have a problem with because I don't want

to point the finger at any others in this situation. I'll just say that at the weight that I was, clothing was hardly one of our biggest expenses for me. And I'm just going to leave it there because I have nothing negative to say about anyone. And I have read with some good humor some of the things that have been written and that's okay. That's political spin and that's fine. Army-Navy surplus stores. Clothing was not a big expense of ours, for me. That's laughable and I just won't get into anything else about that.

Q: What about the art? At the same time you're living on borrowed, if not stolen,

money, at that point from Mr. Greene, but you're buying \$25,000 pieces of art.

A: I'm not going to get involved in the tennis match back and forth of "He said, She said." I'm just going to leave that snuff where it is. I don't really. Again, I find it surprising, if not funny that of the things that were commented on in our lifestyle, it was my ties and my suits. And I'll just leave it there. No one else needs to be hurt or dragged through anything. It's just past.

CLUB FED

Q: Is this Club Fed? Is this hard time?

A: Club Fed doesn't exist. Is it hard

time? No, but Club Fed does not exist. ... It's not a gulag, but this isn't Maui, and you can't go home and get on with your family and friends, and you're not as productive as you could be. So rather than looking at the negative side of it by saying, it's Club Fed, he lost weight, isn't that great, I... a lot of people come here, and like I said earlier, this choice is made. You can either be on this negative trip or you need to figure out what you need to do and you go do it, and that's entirely up to the individual, because the system doesn't provide for that, and most people think it really shouldn't. It's up to the individual to make it or fake it. I've chosen to make it.

THE CLINTON SCANDALS:

Q: Are you keeping up with the Clinton scandals?

A: Let me just say this about our president. ... At some point, speaking as one who lived a charade, it's time for the charade to end. I take no pleasure or pride in saying that, but I find what the White House does offensive. I look forward to a change in leadership there. ... I'm in here for election fraud, so after everybody is done throwing mud at me for what I did, I really think I can actually speak about that issue. And there's just too much of it. It's just gone too far, too often. And they're very slick and very good at how they deal it, and my hat's off to them for that. But it really does hurt the country, and it certainly diminishes the office. I know, because I did the same thing.

Q: Ironically the same judge ...

A: I know. I've read. Judge (Norma Holloway) Johnson [the same judge presiding over the Clinton case] is a fair judge. I think she ...

Q: She was pretty tough on you, though.

A: She was right. I agree with what she said. ... I think it's going to be quite an interesting summer for the Clinton White House.

GREENE BRIEF

Greene says Joe won't reform

Former Rep. Enid Greene (R-Utah) did not rule out a return to politics in an interview Monday, although she called the possibility unlikely.

Almost three years after the scandal that drove her from office, Greene said her attention is fully focused on her daughter, Elizabeth, who will be 3 years old in August. "There's no question she will be hurt by this. She won't get a normal Ozzie and Harriet lifestyle, like I expected she would," Greene said. "To add to that is this whole strange and sordid episode. I want to make sure she's grounded so she doesn't wake up some day and say, 'There's something wrong with me because of who my father is.'"

As for Joe Waldholtz, Greene expects him to continue to swindle people when he gets out of jail next year. "He will find somebody else. There's no question that when you deal with him, if he wants to make you a believer, he is very convincing."

— EAMON JAVERS

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The Salt Lake Tribune

< FRONT PAGE WORLD UTAH SPORTS OPINION BUSINESS SUNDAY ARTS TRAVEL >

Sunday, June 14, 1998

Waldholtz Is Ready to Tell His Side of StoryBy TONY SEMERAD
@1998, THE SALT LAKE TRIBUNE

MONTGOMERY, Penn. -- In January 1995, Joe Waldholtz sat beside his wife, newly elected Utah Congresswoman Enid Greene Waldholtz, amid the noise and grandeur of the U.S. House of Representatives chamber in Washington.

Chills ran down his spine. Around them were the fresh faces of the 104th Congress, riding a historic Republican groundswell and ready to reform the nation. A humbled President Clinton soon would take the podium to deliver his State of the Union.

Two years later, Waldholtz watched Clinton's annual speech from a folding metal chair in federal prison, divorced, bankrupt, abandoned by family, battling drug addiction.

Found out as one of the most spectacular con men in congressional history, the brash political consultant once known for his biting wit, election insights and huge waistline now faced three years behind bars for trashing the U.S. Constitution.

Questions echoed loudly about his rise and fall. How could so many -- friends, his family, campaign aides, the Utah Republican Party, creditors, and even banks -- have been fooled?

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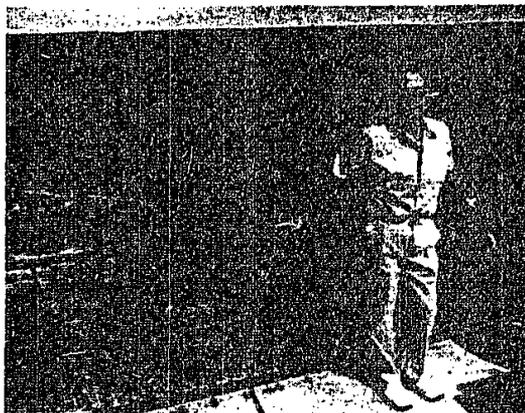
• [The Joe Waldholtz/Enid Grene Archive](#)

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More importantly, how could Enid Greene, a sharp GOP lawyer whose 1994 election victory to Utah's 2nd Congressional District was built on Joe's massive fraud, not have known of the deceit?

Last week, in a five-hour interview with *The Salt Lake Tribune*, his first with a Utah media outlet since landing in jail, Waldholtz may have raised more questions than he answered.

He illegally influenced -- some say, stole -- a federal election. Waldholtz convinced Enid's father to give him \$4 million, half of which Joe funneled into her campaign, in violation of federal law. He pilfered nearly \$1.7 million from his enfeebled grandmother and secretly mortgaged his mother's home. Waldholtz wrote hundreds of bad checks, and stole credit cards from friends, aides and even his defense lawyers to feed his lavish appetites.



Joe Waldholtz at Allenwood Federal Prison Camp near Montgomery in central Pennsylvania. (Jennifer Domenick)

Almost every word from his mouth was a lie.

Now he says there never was a plan, that he made up Utah's worst political fraud as he went along.

"There was no orchestrated agenda and that may be the hardest thing for people to believe," Waldholtz said in the visitors room at Allenwood Federal Prison Camp in central Pennsylvania.

"It was irrational. Madness. Absolute madness," he said, adding he was driven by drug and weight problems that pushed him well above 330 pounds.

"You can't be that heavy and you can't abuse narcotics that badly and not have some issues that need to be dealt with," said Waldholtz.

Looking thinner, tan, and claiming to have changed during his prison stay, the 35-year-old Pittsburgh native said he takes full responsibility for his titanic spree of political and financial corruption.

"I have a lot of amends to make for a whole lot of destruction in my past," he said. "I desperately wish that it hadn't happened like this and that so many people hadn't been hurt."

And, although he worked for months with federal prosecutors probing for evidence that might implicate his wife, then a high-profile protege of House Speaker Newt Gingrich, Joe now says bringing her down was the last thing on his mind.

"I never wanted to testify against Enid," Waldholtz said. "I wasn't going to sell Enid down the river."

Court documents indicate he may be lying -- once again.

His Pittsburgh family, seeking financial help for Joe's senile grandmother Rebecca Levenson, forced him into bankruptcy in 1996 in an attempt to find money he may have been hiding. Documents filed in Pennsylvania's Allegheny County, declaring Joe an official debtor, paint him as a willing but unbelievable witness against Enid.

"The United States Attorney's Office had intended to use the testimony of the Debtor in some type of criminal charge against his ex-wife but declines to do so upon the current recent revelation in the news media that Joseph Waldholtz was a heroin addict," read one court motion, filed by Pennsylvania bankruptcy trustee Gary L. Smith.

Federal prosecutors officially cleared Enid of wrongdoing in November 1996, though she and her attorneys have refused to release a one-page letter sent to her at the time by Assistant U.S. Attorney Craig Iscoe, stating prosecutors' views on the case.

In sworn U.S. Bankruptcy Court documents, Greene's attorneys maintain that the federal prosecutors' yearlong investigation "concluded there was no credible evidence that Ms. Greene was involved in Joseph P. Waldholtz's criminal endeavors." All of Joe's allegations to the contrary, they contend, "were absolutely false."

Enid resigned from Congress after only one term and has spent the years since then as a full-time single mother, raising the couple's daughter Elizabeth, now almost 3.

Throughout the barrage of publicity attending the Waldholtz saga, she has insisted she was completely taken in by Joe, and knew nothing of his crimes -- until it was too late. Today, she says she views Joe's plea bargaining with prosecutors as another of his masterful manipulations.

"The longer he made up stories about me, the longer he could stay in hotels, eat meals at taxpayers' expense, and avoid going to jail," she said in an interview from her Salt Lake City home.

As Joe now surfaces again, in lengthy interviews with *The Tribune* and

The Hill, a weekly publication covering Congress, Greene said she worries he will be turned into a folk hero, a kind of humorous Utah politics version of skydiving robber D.B. Cooper. "This isn't funny," she said.

Greene called his claims about his motives and the lack of a plan "classic Joe. It's a way of saying, 'It's not my fault.'"

"You can't do what he did without knowing exactly what you're doing," said the 39-year-old attorney. "Lots of people have substance-abuse problems and weight problems, but they don't do what Joe did."

Early Days: Otherwise known as Inmate No. 20395-016, Joe Waldholtz seemed nostalgic as he recounted the early days.

Joe and Enid met through the Young Republicans in spring of 1991. He was a GOP operative and senior aide to Republican National Committeewoman Elsie Hillman of Pennsylvania; she, an ambitious deputy chief of staff to ex-Utah Gov. Norm Bangerter.

Waldholtz said he was immediately attracted to Greene's intelligence, "her beautiful face, her beautiful hair." Charming and urbane, Joe decided shortly after that he wanted to marry her.

According to Joe and court documents, his pattern of financial lawbreaking was well under way as early as 1988, as he syphoned funds from his grandmother's stock account to finance his heavy personal spending.

The son of a Pittsburgh dentist, he picked up restaurant tabs, jetted around town in limousines, and wore expensive suits. He told Enid and friends he had a non-existent family trust with "more money than God."

Waldholtz moved to Utah in 1992, ostensibly to provide advice and financial help to Enid's first campaign for the Salt Lake County-centered 2nd Congressional District, against Democrat Karen Shepherd. Their romance blossomed.

The '92 campaign "was terribly run," said Waldholtz. "It's been said that the Democrats thought they were running against the Mormon kiddie show -- and they were right."

Seeds of the couple's destruction were sown with Enid's Nov. 3, 1992, election defeat, he said.

"When you see the person you love most in the world curled up in a ball on the floor of her bedroom, sobbing because she'd lost and let down her party, her state, her friends, her family, her supporters -- and you really felt she lost to someone who didn't represent Utah -- it has an effect."

In fact, he said, it turned the Greene-Shepherd rivalry into a holy war.

Specifically, Waldholtz resolved that money would be no object in Greene's next campaign. They never would be outspent again.

Joe said he especially resented that some Mormon Utahns had voted against Enid because she was not married. Even so, Waldholtz hotly denied their marriage in August 1993 was born of political expediency.

"I know people said it was a merger, not a marriage," he said. "No. We were very much in love."

But he said that their wedding -- an expensive, high-society gala at the then-Hotel Utah -- was a bizarre blend of personal ritual and political aspiration. They were married by Utah Gov. Mike Leavitt, before a roster of 870 guests drawn from the ranks of Utah elected officials.

"It was a mini-rehearsal for a state convention," Waldholtz said.

They honeymooned in Hawaii, and stiffed the hotel on the bill. There began a spate of high living and widespread debt.

Using at least 17 different credit cards, shopping at stores such as Nordstrom and Saks Fifth Avenue, records show, Waldholtz tore through purchases of jewelry, fine clothing, expensive furniture, catered meals, even bottled water for the dog, Winston.

"Winston never drank Perrier!" Waldholtz said indignantly at one point. "It was Mt. Olympus bottled water."

Enid has contended she found these expensive tastes foreign to her own wealthy but frugal upbringing, but she went along.

"That really makes my teeth on grind," Waldholtz responded. But then, he stopped short of blaming Greene. "I'm just going to take it on the chin and say, 'OK.' . . . Our lifestyle speaks for itself. It was a mess."

Meanwhile, said Waldholtz, preparations for the 1994 campaign began almost immediately. In early 1993, Joe took a job as an unpaid director of the Utah Republican Party, using it to deflect possible GOP challengers.

He had reservations about Greene being a candidate, he said, but she was adamant about running again to vanquish her past failure.

"I understand that Enid disputes that, but I distinctly recall that conversation," he said. "I'm not saying I didn't want her to run, but it was a crusade. Look at what we did. Look at how it was."

Once launched, Waldholtz said, the Enid '94 campaign lived in constant terror of a repeat, last-minute loss. On Joe's advice, she changed her hairstyle and sought to project a more gentle image.

A low-grade panic permeated the office -- made worse as Joe's trail of bounced checks became increasingly impossible to ignore. Creditors called daily, and Waldholtz put them off with ever more convoluted explanations: A checkbook was stolen. An aide screwed up. Mail was lost. A bank account was inadvertently closed.

Enid ignored or misread the warning signs because "the candidate doesn't get involved in campaign minutia," said Joe.

Ensuing months would, in fact, bring five-figure alarms. American Express sued Joe for \$50,000 in April. A \$60,000 bounced check to Salt Lake department store O.C. Tanner became public in June. Staff members started bailing out.

The paranoia grew daily, said Waldholtz, as his fear of being found out became all-consuming.

In Pittsburgh, Joe's father Harvey Waldholtz and his cousin Steve Slesinger had caught on to his theft of the grandmother's estate and pursued a lawsuit, demanding that he account for the cash. Joe stonewalled on request after request, offering his usual litany of excuses.

Privately, Waldholtz tossed back growing numbers of prescription painkillers sent to him in cigarette cartoons by friends in Pittsburgh, a habit that started with back pain but soon swung out of control. His weight swelled.

"I was numb," he said. "I was out of my mind."

Desperate for money, Waldholtz claimed his family trust was tied up in litigation and looked elsewhere.

He said he devised a transfer of cash to the campaign from Enid's millionaire father, D. Forrest Greene, in exchange for a bogus piece of Pittsburgh real estate. He convinced Enid it was legal on paper, and they approached Mr. Greene, who agreed.

The deal eventually would bring some \$1.8 million into Enid '94 coffers, and fuel an avalanche of slick TV advertising -- all in gross

violation of federal limits on campaign donations. Aware of the complex transaction, Enid would publicly call the infusion "family money."

Waldholtz likened the overkill to marshalling "more forces than it took to drop a bomb on Hiroshima."

Of the involvement of Enid's parents, Waldholtz said, "All they were trying to do was help their daughter. Mr. and Mrs. Greene never tried to hurt anyone."

As they watched the campaign go crazy, Enid '94 aides have said Waldholtz jealously isolated Greene from anyone who might tip her off to his wrongdoing -- a claim Joe denied. Rather, he countered, their marriage isolated them both.

"It was a sick, co-dependent relationship," Waldholtz said.

Why was she so gullible?

"Sometimes people believe what they want to believe and what they need to believe," said Joe, who added that Greene's apparent blindness "was all about winning. Winning. Winning."

Win, they did. Greene beat incumbent Shepherd and independent candidate Merrill Cook in November 1994, after leading that year's third most expensive House campaign victory in America.

Enid announced she was pregnant shortly after winning. Their marriage would unravel within 12 months.

With Enid distracted by her job in Congress, Waldholtz said he ran even further amok. Their millionaire lifestyle continued, now from an \$800,000 Georgetown townhouse. The angry bill collectors were legion. When the congressional office chief of staff, David Harmer, resigned, Joe took over his duties.

Invoking his wife's name, Waldholtz continued to secure cash from his father-in-law as "loans" and moved money frantically between bank accounts in Washington, Utah and Pittsburgh, hoping to stave off creditors.

Improprieties with a House credit union account led the FBI to quietly begin an investigation.

Elizabeth, their daughter, was born Aug. 31, 1995.

The Collapse: By then, the world was closing in. Press stories on their finances mounted. Badgered by Enid and her brother-in-law, Jim Parkinson, to explain the rising tide of red ink, Waldholtz finally concocted a story that board members for the family trust were flying to Washington to meet him. On Nov. 11, 1995, Joe and Parkinson headed to Washington's National Airport to meet them.

Then Waldholtz ditched Parkinson at the airport and disappeared.

"There wasn't a lot of planning," said Joe. "I was winging it."

His head filled with "fear, incredible sadness, thoughts of suicide," he hopped a train to Springfield, Mass. "because that's where the train took me." He holed up in a hotel room and watched himself on CNN every 20 minutes. His vanishing made national headlines.

"It was surreal. I felt like a hunted animal," he said. Enid filed for divorce. The feds issued a warrant for his arrest.

He moved on to Philadelphia, skipping from hotel to hotel to cover his tracks. Skulking through the lobby of the Philadelphia Marriott, he ran into attorney and friend Jeff Liebmann.

"Joe, how are you? I'm reading that Enid just filed for divorce," Waldholtz recalled Liebmann as saying.

"Can't say it's one of my best days," Joe replied.

The lawyer persuaded Joe to return to Washington, which he did two days later. After surrendering to prosecutors, he emerged from the federal courthouse to a phalanx of reporters, "their camera shutters clicking like a swarm of bugs."

He hit rock bottom six months later, when his first meeting with Enid since his disappearance touched off a deep depression. "I felt like I was dead," he said. Out on bond, Waldholtz flew home to Pittsburgh, secured a bag of heroin and started using.

Within days, he felt "real sick" and checked into a drug rehabilitation clinic. When the heroin use and continued check bouncing came to light, a federal judge revoked his bond and threw him into a Washington, D.C., jail to await sentencing.

In October 1996, out of excuses, he pleaded guilty to tax, bank and election fraud and went to prison for 37 months.

From the Ashes: Today, Waldholtz says his stay at Allenwood Federal Prison Camp near Montgomery, Pa., has given him a second chance. If his good behavior continues, he could be released to a halfway house later this summer.

Waldholtz has lost nearly 120 pounds through daily jogging and weight lifting. He is active in prison educational programs and has worked three prison jobs. Waldholtz claimed that extensive drug counseling has helped him mend and understand his life.

He said he wants to go back to school, get an MBA and find work away from politics and spin.

Greene said nobody has a greater interest in believing Waldholtz has reformed his life. "That is the quintessence of being a parent, putting the interests of your child before your own," she said. But she finds it impossible to accept.

"Nobody who has dealt professionally or personally with people like Joe gives me any hope that he can change his behavior," she said. "My family and I have been through the fires of hell. He can't hurt me anymore.

"But I worry about Elizabeth."



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	.	Docket No. CR 96-0143
	.	Docket No. CR 96-0185
vs.	.	
	.	Washington, D. C.
JOSEPH P. WALDHOLTZ,	.	November 7, 1996
	.	9:45 a.m.
Defendant	.	
	.	
.....	.	

VOLUME 1-B
PARTIAL TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	CRAIG ISCOE, AUSA U. S. Attorney's Office 555 4th Street, N.W. Washington, D. C. 20001
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For the Defendant:	A. J. KRAMER, ESQUIRE Federal Public Defender 625 Indiana Avenue, N.W. Washington, D. C. 20004
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(E X C E R P T)

Official Court Reporter:	GORDON A. SLODYKO 4806-A U. S. Courthouse Washington, D. C. 20001 (202) 273-0404
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Computer-Aided Transcription of Stenographic Notes

99-40-56

1 (EXCERPT)

2 THE DEFENDANT: Thank you, Your Honor, for allowing me
3 the opportunity to address this Court.

4 Yesterday, as I was reading a newspaper, I came across
5 an Associated Press story of a person who graduated from college
6 and cheated on an exam. And this gnawed away at her and she
7 made it public, and she said something that I think very much
8 applies to me: Once you cheat, then you have to cover it with a
9 lie. And that's precisely what I have done. She said, in that
10 process, you deceive all the people into thinking you are
11 something you are not. And that's something that I've done.
12 She ended it by saying something that a friend of mine said to
13 me, a good friend from Pittsburgh, some months ago: The truth
14 really does set you free. And I have found that to be the case
15 in the past six weeks.

16 This past year has been a nightmare for so many
17 people: my family, my friends, my former wife, and her family.
18 To them, I would like to express my deepest regret and sorrow
19 for my actions. My behavior was deplorable. And I alone am
20 responsible. I did commit crimes against the United States. It
21 is my responsibility, and my responsibility alone. These
22 actions go against everything that I was taught and everything
23 that I thought I believed in.

24 I became active in politics because I revere this
25 nation. To have violated its laws and hurt the people I love,

1 in addition to causing a scandal for the 104th Congress that I
2 cared so much about, is something that will haunt me the rest of
3 the days of my life.

4 Mr. Kramer has stated some family history that, while
5 true, does not take blame away from me. I am thankful, Your
6 Honor, for the treatment that I have received. Both diseases
7 are under control because of this treatment. It's up to me from
8 here, and I do want to stay well.

9 I want to pay whatever debt to society is appropriate
10 in the opinion of this Court. In the days that follow, I look
11 forward to having the chance to earn back the opportunities and
12 responsibilities that have always gone hand-in-hand with
13 citizenship in a free society. Having failed to be responsible,
14 I know that I must suffer the consequences of my actions. I
15 accept that honestly and wholeheartedly. Only by doing so can I
16 begin the painful, but rewarding, process of rehabilitation.

17 Thank you.

18 THE COURT: Thank you, Mr. Waldholtz. You may remain
19 there.

20 I have ruled on all of the issues that your attorney
21 raised with respect to the presentence report save the last one
22 that we discussed, and that is, whether or not there should be
23 an upward departure in your case. And I am convinced that the
24 total offense level should be adjusted upward to account for
25 your continuing criminal activity while you were on release.

1 Under 18 U. S. Code, Section 3553(b), a sentencing court may
2 impose a sentence outside the applicable guideline range if
3 there exists an aggravating or mitigating circumstance of a kind
4 or to a degree not adequately taken into consideration by the
5 Sentencing Commission. And I believe such aggravating
6 circumstances are present in your case.

7 The Court of Appeals for this Circuit has held that
8 post-offense misconduct is a proper basis for an upward
9 departure in offense level if it shows extensive criminal
10 involvement. You admitted at a September 26, 1996, hearing
11 before me that you had committed numerous offenses during the
12 four-month period of your release pending sentencing. And I
13 don't have to go through all of those things; they have been
14 gone through extensively here. But you did perpetrate fraud
15 upon your family and friends and continued this practice, or
16 your practice, of writing checks for which there were no funds
17 on deposit.

18 I do not think, however, that your case fits into the
19 enhanced penalty under Section 2J1.7, because you have not been
20 convicted of a federal crime. But because your post-release
21 conduct is not adequately taken into consideration by the
22 Sentencing Commission, I am going to impose a three offense
23 level upward departure.

24 I'm very pleased to hear what you had to say today, Mr.
25 Waldholtz. You seem to be able to capture what is not only the

1 Court's concern, but the community's concern as well, and to
2 state that you recognize your wrongdoing and that it will not
3 occur again. But I think that was one of the reasons why I
4 released you on your personal bond, and actually, I guess from
5 the day I released you, you have engaged in conduct that you
6 knew was criminal, that you knew was wrong, even if it were not
7 criminal. And you knew that you had promised me faithfully
8 right here in this courtroom that you would not commit another
9 criminal offense while you were on your release.

10 Despite your guilty pleas, Mr. Waldholtz, you
11 continued, even until this minute, to shift the blame for your
12 action. You have told the probation officer in the past that
13 you revere the Constitution. You have told that to me here
14 today. And that you are a law-abiding person. You have
15 suggested that you were corrupted by politics. I'm simply not
16 convinced by your self-serving statements that you were
17 corrupted by politics, or even that you revere the
18 Constitution. Anyone who reveres the Constitution would
19 certainly, I think, be willing to obey the laws of the country.

20 You convinced your wife, apparently -- your ex-wife,
21 and her family that you had a substantial family trust fund when
22 in fact there was no such trust fund. The bank fraud in this
23 case was a very sophisticated scheme, requiring precise timing.
24 And not only that, but it required an intimate knowledge of the
25 financial institutions you deceived. The campaign finance fraud

1 shows careful planning, as you repeatedly concealed and
2 misreported campaign contributions. Your continued deceit after
3 your guilty plea, where you would cheat even your own father,
4 demonstrates that you are a person who simply will not conform
5 your conduct to that which is required of all citizens: Obey
6 the law. Obey the laws of this country.

7 Rather than carrying out your important duties as a
8 campaign treasurer, you attempted to win that election without
9 any consideration of truth. You shamelessly spent funds in the
10 Enid Greene campaign that you knew could not be used for
11 campaign purposes. You continued on your illicit course, hiding
12 the use of these funds from the public. Had illegal funds not
13 been used in the campaign, or had your illegal actions been
14 revealed before the election, the outcome of the election may
15 well have been different. That is, of course, something none of
16 us will ever know; and, thus, we will never know the full effect
17 of your conduct.

18 But there is one thing, Mr. Waldholtz, that is certain,
19 and that is, you abused the public trust. No sentence that this
20 court has been authorized to impose is sufficient to atone for
21 your attempts to manipulate an election, for bank fraud, for
22 false statement, for failure to report campaign contributions,
23 and for assisting in filing a fraudulent tax return. The burden
24 of public disgrace that you alone have placed upon yourself and
25 your family is also insufficient.

1 Perhaps, however, the person who shall suffer most
2 because of your criminal conduct is your infant daughter. You
3 certainly have not taken a step to consider how your crimes and
4 misdeeds shall forever stain her.

5 Mr. Waldholtz, pursuant to the Sentencing Reform Act of
6 1984, it is the judgment of the Court that you, Joseph P.
7 Waldholtz, be, and you shall be, placed in the custody of the
8 U. S. Bureau of Prisons for a term of 37 months.

9 I failed it write it in, but I think under the new
10 guidelines, the minimum is 37 months.

11 MR. KRAMER: Yes.

12 THE COURT: For 37 months. This term consists of 37
13 months on Count 21 in Docket No. 96-143 and 37 months on Count
14 One in Docket No. 96-185, 12 months on Count Two in Docket No.
15 96-185, and 36 months on Count Three in Docket No. 96-185. All
16 counts shall run concurrently.

17 This is an upward departure based on your continued
18 criminal activity while you were pending sentencing and because
19 the seriousness of your offense in Docket No. 96-185 is
20 underestimated by the guideline range as there was no loss in
21 that case.

22 You shall pay restitution -- let me find that. You
23 shall pay restitution in the sum of \$10,920. Upon release from
24 imprisonment, Mr. Waldholtz, you shall be placed on supervised
25 release for a term of five years. This term consists of five

1 years on Count 21 in Docket No. 96-143, three years on Count
2 One, Docket No. 96-185, and one year each on Counts Two and
3 Three in Docket No. 96-185, all terms to run concurrently.

4 Within 72 hours of your release from custody to the
5 Bureau of Prisons, you shall report in person to the probation
6 office in the district to which you are released. While on
7 supervised release, you shall not commit another federal, state
8 or local crime; you shall comply with the standard conditions of
9 probation or supervised release as adopted by this Court; and
10 you shall comply with the following additional conditions:

11 Number one, you shall not possess a firearm or other
12 dangerous weapon for any reason. Number two, you shall not use
13 or possess an illegal drug, nor shall you associate with any
14 known drug dealers or be present where illegal drugs are used,
15 sold or distributed.

16 You shall participate in a substance abuse treatment
17 program, which program may include testing to determine if
18 illegal substances are being used, at the direction of the
19 Probation Office.

20 You shall pay restitution to the Internal Revenue
21 Service in the amount of \$10,920, at the rate to be determined
22 by the Probation Office.

23 Now, Mr. Waldholtz, I do find, after serious thought,
24 that you do not have the ability to pay a fine, the costs of
25 imprisonment or supervision, and because I have also entered

1 that restitution requirement. So, for those reasons, you will
2 not be indebted to us for a fine or the costs of imprisonment.
3 It is, however, further ordered that you must pay a special
4 assessment fee on Count 21 in Docket No. 96-143 of \$50, and \$50
5 on each Counts One and Three in Docket No. 96-185, and \$25 on
6 Count Two in Docket No. 96-185, for a total special assessment
7 fee of \$175. This assessment should be paid as soon as
8 possible, and certainly, if not paid before you complete your
9 period of incarceration, it must be paid within 60 days of your
10 release from prison.

11 I shall not make the recommendation that your attorney
12 has requested. Mr. Waldholtz, I am very familiar with the boot
13 camp, and I do not believe that it is appropriate. But I do
14 believe that what it does offer to younger, less sophisticated
15 individuals is something that you should strive for, and that
16 is, to stay off illicit drugs and to devote your fine mind --
17 you have to have a good mind to be able to do what you have
18 done, all right? To devote your fine mind to obeying the law.

19 And it is so ordered.

20 MR. KRAMER: Your Honor, in light of that, just one
21 further request. And I discussed it with Mr. Iscoe before, who
22 told me that he would not object. If Your Honor would recommend
23 Allenwood as the place of incarceration. Mr. Waldholtz has an
24 elderly father, who would like to visit him, and that would be
25 the easiest place.

1 THE COURT: I would be very happy to recommend
2 Allenwood. But understand me, that's all I can do, is
3 recommend.

4 THE DEFENDANT: I understand, Your Honor.

5 THE COURT: I cannot tell the Bureau of Prisons where
6 to imprison anyone. Even if I had recommended the boot camp,
7 that would have been all that it would have been, is a
8 recommendation. So, I certainly have no objections to
9 recommending that you be placed at an institution where your
10 father will be in a position to visit you.

11 THE DEFENDANT: Thank you.

12 MR. KRAMER: Thank you.

13 THE COURT: If there is nothing further --

14 MR. KRAMER: Your Honor, the counts of the original
15 indictment need to be dismissed.

16 THE COURT: Yes.

17 MR. ISCOE: Yes, Your Honor. At this time, the
18 Government dismisses the remaining counts of the indictment in
19 Case Number 96-143.

20 THE COURT: All right. And 185, all counts he's pled
21 to.

22 MR. ISCOE: He pled to all counts in 185.

23 THE COURT: All right. So it's so ordered.

24 MR. KRAMER: Thank you.

25 THE COURT: The best of luck to you, sir.

1 THE DEFENDANT: Thank you, Your Honor.

2 (Recessed at 11:15 a.m. and resumed at 11:25 a.m.)

3 THE COURT: We are resuming the case of United States
4 versus Joseph Waldholtz, Criminal No. 96-143 and Criminal No.
5 96-185.

6 Mr. Waldholtz, I'm sorry to have to bring you back, but
7 I failed to advise you of your right to appeal. You have an
8 absolute right to appeal your sentence in this case; you have
9 the right to appeal any other rulings that I made here contrary
10 to those which you and your attorney argued. All right? That
11 appeal must be noted within ten days of today's date.

12 I can assure you that if you wish to appeal any or all
13 issues that were ruled on contrary to your legal view, Mr.
14 Kramer will be happy to note that appeal for you and in a timely
15 fashion.

16 You also know, sir, that because I still don't know
17 what happened between you and the attorneys you had retained,
18 because I did not know what had happened there, I asked Mr.
19 Kramer, who heads our Federal Public Defender Service, to
20 represent you. And apparently we have been able to determine
21 that that was appropriate. So, if you wish to appeal, you can
22 go straight to the Court of Appeals, and you can ask them, the
23 judges up there, to appoint counsel for you in the Court of
24 Appeals.

25 So, I'm sorry I forgot to do that.

1 MR. KRAMER: I apologize for overlooking that, too,
2 Your Honor.

3 THE COURT: Yes. I really am sorry.

4 MR. KRAMER: He has been advised, but thank you very
5 much.

6 THE DEFENDANT: Yes. Thank you.

7 THE COURT: Thank you very much. And you may step back
8 now.

9 MR. ISCOE: Thank you, Your Honor.

10 THE COURT: Mr. Iscoe, I'm sorry, but while he was
11 still here, it was important to do that.

12 MR. ISCOE: I'm glad Your Honor caught it. I would
13 have realized it by the time I got back to my office, perhaps,
14 but I'm glad Your Honor thought of it sooner.

15 THE COURT: Thank you.

16 (Proceedings concluded at 11:27 a.m.)

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18

19

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21

CERTIFICATE OF REPORTER

22 I certify that the foregoing is a correct transcription from
23 the record of proceedings in the above-entitled matter.

24

25

Official Court Reporter

ORRIN G. HATCH
UTAH

ROBERT L. DIBBLEE
ADMINISTRATIVE ASSISTANT

131 Russell Senate Office Building
Telephone: (202) 224-5251
TDD (202) 224-2849

E-mail: senator_hatch@hatch.senate.gov
Website: <http://www.senate.gov/~hatch/>

United States Senate

WASHINGTON, DC 20510-4402

September 25, 1998

COMMITTEES:
JUDICIARY
FINANCE
INTELLIGENCE
INDIAN AFFAIRS
JOINT TAXATION

Ms. Enid Greene
2164 South Berkeley Street
Salt Lake City, UT 84109

Dear Enid:

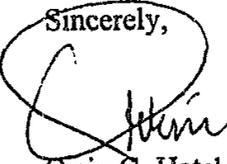
I understand that the Federal Election Commission has initiated an investigation into your 1994 campaign and your father, D. Forrest Greene. Incredibly, the press reports imply that the Commission's investigation is focused on your conduct and your father's, rather than the proven criminal actions of your former husband and 1994 campaign treasurer, Joseph P. Waldholtz.

I recall when your former husband became the subject of a nationwide manhunt in November, 1995, after he fled a FBI bank fraud investigation. As you know, shortly before his disappearance, I met with you and Mr. Waldholtz to discuss the allegations that had been leveled against him. It was apparent to me at that meeting that you still truly believed in your former husband's innocence and were completely ignorant of his various criminal schemes. I found Mr. Waldholtz's explanation of his banking problems lacking in credibility and I told him that he would go to jail if he did not straighten out the situation right away. He disappeared shortly thereafter.

Given the intense scrutiny that this case received from both the media and the U.S. Attorney for the District of Columbia, it seems to me that the Commission should be able to complete its investigation in short order. The facts of the case are well known. As you know, a former reporter for the *Deseret News*, Lee Benson, has recently published a book, *Blind Trust*, that reviews all of the facts in this case in great detail. I can attest to the accuracy of those portions of the book that are relevant to your lack of knowledge of Mr. Waldholtz's schemes.

I trust that the Commission will act appropriately to conclude its investigation as quickly as possible. If I can be of any assistance whatsoever, please do not hesitate to contact me.

Sincerely,


Orrin G. Hatch
United States Senator

OGH:rlid

P.S. Good luck! I believe in you!

(E)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding A Criminal Term

Grand Jury Sworn In On October 7, 1994

UNITED STATES OF AMERICA

v.

JOSEPH P. WALDHOLTZ,
Defendant.

Criminal No.: 96-0143

Grand Jury Original

Violations:

18 U.S.C. § 1344

(Bank Fraud)

18 U.S.C. § 2

(Aiding and Abetting)

18 U.S.C. § 982(a)(2) and

(b)(1)(B)

(Criminal Forfeiture)

INDICTMENT

FILED IN OPEN COURT

The Grand Jury Charges:

MAY - 2 1996

COUNTS ONE THROUGH TWENTY-SEVEN

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

Introduction

1. At all times material herein:

A) The defendant JOSEPH P. WALDHOLTZ was the husband of Enid Greene Waldholtz, the elected Congressional Representative of the Second Congressional District of the state of Utah. JOSEPH P. WALDHOLTZ worked full-time in Representative Waldholtz's Congressional office, but received no salary. Joseph and Enid Waldholtz were legal residents of the state of Utah, but also had a residence in the District of Columbia, where they lived while Representative Waldholtz was serving in Congress.

B) The defendant JOSEPH P. WALDHOLTZ and his wife, Enid Greene Waldholtz, maintained joint checking accounts at the Wright Patman Congressional Federal Credit Union (hereinafter sometimes referred to as "CFCU"), located in Washington, D.C., and at First Security Bank of Utah (hereinafter sometimes referred to as "FSB"), located in Salt Lake City, Utah.

C) The Congressional Federal Credit Union and First Security Bank of Utah were financial institutions as defined by Title 18 U.S.C. § 20.

The Congressional Federal Credit Union/
First Security Bank Check Kite

2. Beginning on or about January 1995 and continuing up to on or about March 3, 1995, the defendant JOSEPH P. WALDHOLTZ devised a scheme and artifice to defraud the Congressional Federal Credit Union and First Security Bank by executing a check kiting scheme whereby he made cross deposits into Account Number 106413 at CFCU and into Account Number 051-10075-51 at FSB, making it appear that there were substantial balances in both accounts. In fact, as the defendant JOSEPH P. WALDHOLTZ knew, the actual balances in the accounts were negligible or negative.

3. A standard general practice applied by financial institutions concerning deposits and access to deposited funds is as follows: When an account holder deposits a check into his account at a bank, that bank sends the actual check, by United States mail or other means, to the bank upon which the check was drawn. The bank upon which the check was drawn then determines if the person who wrote the check has sufficient funds in his account

to pay the check. If he does, the bank upon which the check was drawn pays the check by sending the money to the bank into which the check was deposited as a credit. Once the bank has received the deposited funds from the bank upon which the check was drawn, then the customer who deposited the check is permitted to use the money. There is usually a delay of several days between the time that a check is deposited and the time that the customer is given access to the funds.

4. In contrast to the general banking practices described in the proceeding paragraph, it was the practice of the CFCU and FSB, in certain circumstances, to give a customer immediate credit for his deposited check. That is, the customer would be allowed to write checks based on the deposit immediately, without waiting for the deposited check to be sent to the bank upon which it was drawn and without waiting for that bank to determine whether the account had sufficient funds to cover the amount of the check. When this was done, the bank allowed the customer the temporary use of its own money expecting the deposited check to be paid. This practice is referred to as paying a check against uncollected funds.

5. It was the policy of CFCU to pay checks drawn on uncollected funds checks deposited into the customer's account.

6. It was the policy of FSB to pay checks drawn on uncollected funds checks in cases in which a bank officer approved the payment of such checks.

7. As part of the scheme and artifice to defraud, the defendant JOSEPH P. WALDHOLTZ made numerous misrepresentations to

FSB regarding the source and availability of funds to which he claimed to have access, thereby causing FSB to pay checks based on uncollected funds. For example, JOSEPH P. WALDHOLTZ repeatedly promised large transfers of funds into his FSB account from a trust, supposedly with a value of millions of dollars, located in Pittsburgh, Pennsylvania when, in fact, as JOSEPH P. WALDHOLTZ knew, no such trust existed.

8. It was a part of the scheme and artifice to defraud that the defendant JOSEPH P. WALDHOLTZ used his knowledge of the practice of CFCU and FSB of giving him immediate credit for his deposits to carry out a check kiting scheme.

9. It was a part of the said scheme and artifice to defraud that:

A) JOSEPH P. WALDHOLTZ would write checks on his account at FSB knowing that he did not have sufficient funds to cover them;

B) JOSEPH P. WALDHOLTZ then deposited these checks at CFCU where he knew he would get immediate credit in his CFCU account;

C) As a result JOSEPH P. WALDHOLTZ'S CFCU account balances would reflect more money than was actually available;

D) JOSEPH P. WALDHOLTZ then would write checks on his CFCU accounts knowing that he did not have sufficient money to cover them, since his account balance was artificially inflated by deposits of insufficient funds checks from FSB.

10. It was a further part of the said scheme and artifice to defraud that JOSEPH P. WALDHOLTZ, through the exchange of worthless

checks back and forth between the CFCU and FSB, did artificially inflate the balances in the accounts and obtain the use of monies, funds and credits to which he was not entitled. At the height of the scheme, the defendant's accounts at CFCU and FSB showed a combined apparent positive balance of approximately \$752,000, while the two accounts in fact had a combined negative balance of approximately \$197,000.

11. During the course of this check kiting scheme, JOSEPH P. WALDHOLTZ wrote approximately \$1,445,000 worth of worthless checks drawn on his account at FSB which he deposited into his account at CFCU. Similarly, the defendant wrote approximately \$1,515,000 worth of worthless checks drawn on his account at CFCU which he deposited into his account at FSB. During the scheme, JOSEPH P. WALDHOLTZ did not any make any deposits into the accounts which reflected money legitimately available to him.

12. During the course of this check kiting scheme, the defendant wrote checks drawn on his CFCU account to parties other than FSB worth approximately \$66,000. These checks were paid by CFCU. During the course of this check kiting scheme, the defendant also wrote checks drawn on his FSB account to parties other than CFCU worth approximately \$141,000. These checks were paid by FSB. But for the defendant's scheme to defraud, CFCU and FSB would not have paid these checks.

13. On or about March 2, 1995, CFCU and FSB discovered the defendant's check kiting scheme and CFCU froze the defendant's checking account. After CFCU and FSB reviewed the defendant's

accounts and exchanged certain of the defendant's checks, the banks determined that the result was that Waldholtz's account at FSB had an overdraft of approximately \$209,000.

14. On or about the dates listed below, within the District of Columbia, the defendant JOSEPH P. WALDHOLTZ for the purpose of executing and attempting to execute the scheme and artifice to defraud both banks as set forth in paragraphs one through twelve above, did knowingly deposit, and caused to be deposited, checks into CFCU and FSB, in the amounts listed below, drawn on the Waldholtz accounts at CFCU and FSB.

<u>Count</u>	<u>Date</u>	<u>Source</u>	<u>Deposited</u>	<u>Total Value</u>
One	2/3/95	CFCU Check No. 101	FSB	\$ 10,000.00
Two	2/3/95	FSB Check No. 732	CFCU	\$ 10,000.00
Three	2/6/95	FSB Check Nos. 751, 752, 753	CFCU	\$ 30,000.00
Four	2/7/95	CFCU Check No. 102	FSB	\$ 20,000.00
Five	2/8/95	FSB Check No. 776	CFCU	\$ 25,000.00
Six	2/9/95	CFCU Check No. 103	FSB	\$ 50,000.00
Seven	2/10/95	FSB Check No. 778	CFCU	\$ 65,000.00
Eight	2/13/95	CFCU Check No. 104	FSB	\$ 65,000.00
Nine	2/14/95	FSB Check Nos. 781, 782, 783, 784	CFCU	\$ 85,000.00
Ten	2/15/95	CFCU Check No. 106	FSB	\$100,000.00
Eleven	2/16/95	CFCU Check No. 108	FSB	\$ 50,000.00
Twelve	2/16/95	FSB Check No. 793	CFCU	\$100,000.00
Thirteen	2/17/95	CFCU Check No. 110	FSB	\$ 50,000.00
Fourteen	2/21/95	CFCU Check No. 112	FSB	\$150,000.00
Fifteen	2/21/95	FSB Check No. 801	CFCU	\$100,000.00
Sixteen	2/22/95	CFCU Check No. 113	FSB	\$100,000.00
Seventeen	2/22/95	FSB Check No. 806	CFCU	\$100,000.00
Eighteen	2/23/95	FSB Check No. 808	CFCU	\$150,000.00
Nineteen	2/24/95	CFCU Check No. 114	FSB	\$150,000.00
Twenty	2/24/95	FSB Check No. 809	CFCU	\$150,000.00
Twenty-one	2/27/95	CFCU Check Nos. 116, 117	FSB	\$250,000.00
Twenty-two	2/27/95	FSB Check No. 826	CFCU	\$150,000.00
Twenty-three	2/28/95	CFCU Check Nos. 127, 128	FSB	\$200,000.00
Twenty-four	2/28/95	FSB Check No. 830	CFCU	\$150,000.00

Twenty-five	3/1/95	CFCU Check No. 120	FSB	\$250,000.00
Twenty-six	3/1/95	FSB Check No. 814	CFCU	\$150,000.00
Twenty-seven	3/2/95	FSB Check No. 832	CFCU	\$250,000.00
			TOTAL	\$2,960,000

(In violation of 18 United States Code, Sections 1344 and 2)
(Bank Fraud and Aiding and Abetting)

FORFEITURE ALLEGATION

1. The allegations of Paragraphs One through Fourteen of this indictment are realleged and by this reference are fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18 U.S.C. § 982 (a)(2).

2. As a result of the offenses alleged in Counts One through Twenty-Seven, the defendant, JOSEPH P. WALDHOLTZ shall forfeit to the United States all property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as a result of such offenses, including but not limited to:

a. \$209,000 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was property constituting, or derived from, proceeds obtained directly or indirectly as a result of the bank frauds in violation of 18 U.S.C. §§ 1344, and 982.

b. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;

- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, U.S.C. Code 982(b)(1)(B) to seek forfeiture of any other property of said defendant up to the value of the above forfeiture property.

(In violation of Title 18 United States Code, Section 982(a)(2) and (b)(1)(B)) (Criminal Forfeiture)

A TRUE BILL:

Eric H. Holder, Jr.
FOREPERSON

Eric H. Holder, Jr.
ATTORNEY OF THE UNITED STATES IN
AND FOR THE DISTRICT OF COLUMBIA



U.S. Department of Justice

United States Attorney

District of Columbia

FILE
COPY
F

Judiciary Center
555 Fourth St. N.W.
Washington, DC 20001

May 29, 1996

Pamela Bethel, Esquire
Barbara Nicastro, Esquire
Bethel & Nicastro
2021 L Street, N.W.
Suite 300
Washington, DC 20036

Re: Joseph P. Waldholtz, Cr. Case No. 96-143 (NHJ)

Dear Ms. Bethel and Ms. Nicastro:

This letter sets forth the terms and conditions of the Plea Agreement which this Office is willing to enter into with your client, Joseph P. Waldholtz, regarding the charges in the above captioned-case and other matters presently under investigation.

1. CHARGES

Mr. Waldholtz agrees to enter a plea of guilty in the United States District Court for the District of Columbia to one count of bank fraud (18 U.S.C. § 1344) and agrees to criminal forfeiture of \$14,910 (18 U.S.C. §§ 982(a)(2) and (b)(1)(8)) as charged in Count Twenty-One and in the Forfeiture Count of the Indictment returned against him in Criminal Case No. 96-143. In addition, Mr. Waldholtz agrees to plead guilty to a three-count Information charging him with one count of making a false statement (18 U.S.C. § 1001), one count of making a false report to the Federal Election Commission ("FEC") (2 U.S.C. § 437g(d) and § 441a), and one count of willfully aiding or assisting in filing a false or fraudulent tax return (26 U.S.C. § 7206(2)). The Information will be filed on a date determined by the government. Joseph Waldholtz agrees that, for the purposes of this plea, venue for all charges is properly before the United States District Court for the District of Columbia and agrees to waive any challenges to venue.

2. FACTUAL ADMISSION OF GUILT

Pursuant to Rule 11(e)(6), Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, Mr. Waldholtz agrees to state under oath that the following statement of his actions is true and accurate. The government agrees that the following facts constitute all of the relevant facts of conviction.

The charges set forth in Section 1, above, arise from the following facts:

a. Bank Fraud

1. Offense of Conviction

Mr. Waldholtz pleads guilty to Count Twenty-One of the Indictment and admits that, as part of a scheme and artifice to defraud, on or about February 27, 1995, he deposited into a checking account at the First Security Bank of Utah ("First Security") two checks, numbered 116 and 117, drawn on a checking account at the Wright Patman Congressional Federal Credit Union ("CFCU") in the total amount of \$250,000, knowing that there were not sufficient funds in the CFCU account to pay those checks and intending to create the erroneous appearance that sufficient funds were available.

2. Relevant Conduct

From late January of 1995 through early March of 1995, Joseph Waldholtz engaged in a scheme and artifice to defraud First Security and CFCU through "check kiting" between joint checking accounts that he and his wife, Enid Greene Waldholtz, had at First Security (Account No. 051-1075-51) and CFCU (Account No. 106413). He began carrying out this scheme on February 3, 1995, by depositing into the First Security account a check for \$10,000 drawn on the CFCU account and depositing into the CFCU account a check for \$10,000 drawn on the First Security account. At the time he wrote those checks and made those deposits, Joseph Waldholtz knew that there were not sufficient funds in either account to cover the amounts of the checks.

Mr. Waldholtz continued to make cross deposits into the two accounts in order to make it appear that there were substantial balances in both accounts when, in fact, the actual balances were negligible or negative. In addition, Mr. Waldholtz wrote checks on both accounts to third parties. First Security and CFCU paid those checks because Mr. Waldholtz's actions made it appear that the accounts had sufficient balances to pay the checks. Between February 3, 1995 and March 2, 1995, First Security paid checks to third parties totaling approximately \$130,000 and checks totaling approximately \$11,010 to Mr. Waldholtz. During the same time

period, CFCU paid checks to third parties totaling approximately \$62,000 and checks totaling approximately \$3,900 to Mr. Waldholtz.

In reality, there were virtually no funds in either account to pay those checks. After CFCU and FSB discovered the check kiting scheme and exchanged certain checks, the Waldholtzs' account at First Security had a negative balance or overdraft of approximately \$209,000 and the account at CFCU had no overdraft. Mr. Waldholtz covered the overdraft by depositing into the First Security account money which was provided by Enid Greene Waldholtz's father, D. Forrest Greene.

b. False Statements and False FEC Reports

Joseph Waldholtz was the treasurer of Enid Waldholtz's 1994 Congressional campaign committee, which was called "Enid '94" ("the Committee"). As treasurer, Mr. Waldholtz was responsible for preparing various FEC forms and reports regarding the Committee's receipts and disbursements and was responsible for certifying that the Committee's submissions were "to the best of [his] knowledge and belief . . . true, correct and complete."

On or about January 31, 1995, Mr. Waldholtz signed the 1994 Year End Report (FEC Form 3) for Enid '94 and signed the Report to certify that it was true, correct and complete. Mr. Waldholtz then caused the Report to be filed with the FEC. At the time that he signed the Report and caused it to be filed, Joseph Waldholtz knew that the Report contained a substantial number of false statements of material facts and omissions of material facts and that the Report was not true, correct or complete.

During calendar year 1994, Enid Waldholtz's father, D. Forrest Greene, had deposited approximately \$2,800,000 into the personal bank accounts of Joseph and Enid Waldholtz. Joseph Waldholtz knew that during calendar year 1994 almost \$1,800,000 provided by Mr. Greene was transferred from the Waldholtzs' personal accounts to Enid '94. Joseph Waldholtz also knew that neither he nor Enid Waldholtz were receiving salaries during most of 1994 and that neither he nor Enid Waldholtz had sufficient personal funds, independent of those provided by Mr. Greene, to cover the transfers to Enid '94.

Despite the fact that he knew that the funds that were transferred from the personal accounts of Joseph and Enid Waldholtz to Enid '94 had been provided by Mr. Greene, Joseph Waldholtz reported on various FEC Reports, including the 1994 Year End Report, that the transferred funds represented Enid Waldholtz's personal assets. Mr. Waldholtz made those false statements and misrepresentations because he knew that the FEC regulations that limit campaign contributions to \$1,000 per

election cycle do not apply to contributions that a candidate makes with her own funds.

Mr. Waldholtz further admits that he created "ghost contributors" to Enid '94. Mr. Waldholtz willfully reported false names and addresses of alleged contributors to the Enid '94 campaign, even though he knew that the persons did not make contributions to Enid '94.

c. Willfully Aiding or Assisting in Filing a False or Fraudulent Tax Return

Joseph and Enid Greene Waldholtz were married in August of 1993, but decided to file separate federal tax returns for the 1993 tax year. During 1993, Enid Greene Waldholtz sold shares of securities that she owned which had appreciated in value. As a result of that appreciation, Enid Greene Waldholtz incurred and had the obligation to report a long term capital gain of approximately \$39,000.

Enid Greene Waldholtz told Joseph Waldholtz that she would have to pay income tax on that capital gain and, to prevent her from having to pay the tax, Joseph Waldholtz told Enid Greene Waldholtz that he would give her stock on which he said he had incurred a long term capital loss in excess of the amount of her capital gain. Joseph Waldholtz then provided Enid Greene Waldholtz with the name of the stock that he falsely claimed to have given her and the date on which he claimed to have given the stock to her, the date that he claimed to have purchased the stock, the number of shares he claimed to have purchased, and its alleged basis.

Those figures created a phony capital loss of more than \$56,000, which Enid Greene Waldholtz reported as a long term capital loss, thereby eliminating any tax liability for Enid Greene Waldholtz for the \$39,000 capital gain. Joseph Waldholtz knew that he did not own the stock, that he had not and could not give the stock to Enid Greene Waldholtz, and that the basis figures were false. Joseph Waldholtz knew that Enid Waldholtz would use the false information in preparing her 1993 tax return and that the information would create a false capital loss.

3. ADDITIONAL CHARGES

If Mr. Waldholtz completely fulfills all of his obligations under this Agreement, the United States Attorney's Office for the District of Columbia agrees not to bring any additional criminal or civil charges against him for conduct regarding: (1) bank fraud or check kiting involving First Security Bank of Utah, the Wright Patman Congressional Federal Credit Union, Merrill Lynch,

Pittsburgh National Bank, or NationsBank; (2) forgery or uttering of financial instruments involving First Security, CFCU or NationsBank checking accounts or Congressional paychecks; and (3) forgery of "Ginny Mae" securities; provided that he provides full information about all such matters pursuant to Section 6 of this Agreement.

In addition, if Mr. Waldholtz completely fulfills all of his obligations under this Agreement, the United States Attorney's Office for the District of Columbia agrees not to bring any additional criminal charges against him for conduct regarding (1) false statements or violations related to any FEC reports or other reports filed by any campaign committee or other organization supporting the 1992 Congressional campaign of Enid Greene or the 1994 and 1996 Congressional campaigns of Enid Greene Waldholtz; and (2) tax violations arising from the federal tax returns filed by Joseph Waldholtz separately, or jointly with Enid Greene Waldholtz, for the tax years 1992 through 1994, or from the 1993 federal tax return of Enid Greene Waldholtz; provided that he provides full information about all such matters pursuant to Section 6 of this Agreement.

The United States also agrees to dismiss all remaining counts of the Indictment at the time of sentencing.

By entering this agreement, the United States Attorney does not compromise any civil liability, including but not limited to any tax liability or liability to or regarding the Federal Election Commission, which he may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this agreement. Mr. Waldholtz agrees to cooperate with employees of the Civil Division of the Internal Revenue Service ("IRS"), the Civil Division of the United States Attorney's Office, the Federal Election Commission and law enforcement agents working with those employees, in making an assessment of his civil tax and FEC liabilities. Mr. Waldholtz specifically authorizes release to the agencies and divisions specified above of information in the possession or custody of the IRS or FEC and disclosure of matters occurring before the grand jury for purposes of making those assessments.

The United States agrees that, apart from the conduct described in Section 2 of this Agreement, there is no other conduct which the government will assert as constituting "relevant conduct" as that term is used in Section 1B1.3 of the Sentencing Guidelines for the purposes of Mr. Waldholtz's sentence.

The United States further agrees not to initiate any other civil or criminal forfeiture actions against any property which it currently knows to belong to Mr. Waldholtz or for which the government currently knows that Mr. Waldholtz is a stakeholder or

potential stakeholder. The Office of the United States Attorney for the District of Columbia further states that it is not aware of any existing criminal charges against Mr. Waldholtz or of any pending investigation in which Mr. Waldholtz is a target in any other federal judicial district. The Office of the United States Attorney further agrees to bring no additional charges for any violations or potential violations of the District of Columbia Code resulting from the above described conduct.

4. POTENTIAL PENALTIES AND ASSESSMENTS

Mr. Waldholtz understands that (1) for the felony offense of bank fraud, he may be sentenced to a statutory maximum term of imprisonment of not more than 30 years and fined not more than \$1,000,000 (18 U.S.C. § 1344); (2) for the felony offense of making a false statement (18 U.S.C. § 1001), he may be sentenced to a statutory maximum of not more than five years and fined not more than \$250,000 (18 U.S.C. § 3571); (3) for the misdemeanor offense of causing a false Federal Election Commission Report to be filed he may be sentenced to a term of imprisonment of not more than one year and a fine of not more than \$25,000 or 300% of any contribution or expenditure involved in such violation (2 U.S.C. §§ 437g(d)(1)(A) and 441); and (4) for the felony offense of willfully assisting in the filing of a false tax return he may be sentenced to a term of imprisonment for not more than three years and fined not more than \$250,000 (26 U.S.C. § 7206(2)). Mr. Waldholtz also understands that he will lose claim of title to money and property in the amount of \$14,900.

In addition, upon his release from incarceration, Mr. Waldholtz understands that he may be sentenced to a term of supervised release of not more than three years (18 U.S.C. § 3583). Pursuant to 18 U.S.C. § 3043, Mr. Waldholtz is required to pay a mandatory special assessment of \$50 for each of his felony convictions and of \$25 for his misdemeanor conviction. He agrees to pay this assessment at the time of sentencing. Mr. Waldholtz also may be sentenced by the court to a term of probation of not more than five years, 18 U.S.C. § 3561, and ordered to make restitution, 18 U.S.C. § 3556. The government and Mr. Waldholtz stipulate that there was no financial loss suffered by either FSB or CFCU and, therefore, agree not to ask the Court that Mr. Waldholtz be required to make restitution for the bank fraud.

Mr. Waldholtz also understands that a sentencing guideline range for his case will be determined by the Court pursuant to the provisions of the Sentencing Reform Act of 1984, see 18 U.S.C. § 3551 et seq.

In the event the Court imposes an unlawful sentence, or imposes a sentence outside the range provided by 18 U.S.C. § 3551 et seq., the parties agree that Mr. Waldholtz retains any and all

rights he may have to appeal or otherwise seek relief from any such sentence.

Mr. Waldholtz agrees that sentencing shall not take place until the government has determined that he has fulfilled his obligations under this agreement and that there is no longer a need for his cooperation. The government agrees that it will not unreasonably delay sentencing.

5. WAIVER OF CONSTITUTIONAL RIGHTS

Mr. Waldholtz understands that by pleading guilty in this case, he will be giving up the following constitutional rights: the right to be indicted by a grand jury for charges other than those in the present indictment, the right to plead not guilty, the right to a jury trial at which he would have the opportunity to present evidence, testify in his own behalf, cross-examine witnesses, and to be represented by counsel at any such trial. Mr. Waldholtz further understands that if he chose not to testify at such a trial, that fact could not be held against him. Mr. Waldholtz would also be presumed innocent until proven guilty, and the burden to do so would be on the government, which would be required to prove his guilt beyond a reasonable doubt. If Mr. Waldholtz were found guilty, he would also have the right to appeal his conviction. Mr. Waldholtz also understands that he is waiving his right to challenge the government's evidence that the property described in Count Twenty-eight of the Indictment constitutes the proceeds of specified unlawful activity as that term is used in 18 U.S.C. § 982.

6. PROVISION OF INFORMATION

Mr. Waldholtz agrees that he will cooperate completely, candidly, and truthfully with all duly-appointed investigators and attorneys of the United States, by truthfully providing all information in his possession relating directly or indirectly to all criminal activity and related matters which concern the subject matter of this investigation and of which he has knowledge. Mr. Waldholtz must provide information pursuant to this agreement whenever, and in whatever form, the United States Attorney's Office shall reasonably request. This includes, but is not limited to, submitting to interviews at such reasonable times and places as are determined by counsel for the government, providing all documents and other tangible evidence requested of him, and providing testimony before a Grand Jury or court or other tribunal. All costs of travel and expenses arising from any request by the government to provide assistance and cooperation pursuant to this paragraph will be borne by the government and not by Mr. Waldholtz.

7. INCARCERATION PENDING SENTENCING

The United States Attorney's Office waives its right to ask that Mr. Waldholtz be detained pending sentencing. The government agrees that, based upon the information currently known to it, Mr. Waldholtz poses neither a flight risk nor a danger to himself or the community as those terms are used in 18 U.S.C. § 3142. In the event the government becomes aware of any information to the contrary, the government will promptly notify Mr. Waldholtz, through his counsel, of such facts, and the reasons the government contends such facts would support a finding either of risk of flight or danger to the community. The government agrees not to oppose Mr. Waldholtz's request to remove court imposed restrictions on his travel within the United States and to permit him to travel domestically pending sentencing.

8. RESERVATION OF ALLOCUTION

To the extent not inconsistent with the factual recitation contained herein, the United States reserves the right to allocute fully at sentencing, to inform the probation office and the court of any facts it deems relevant, to correct any factual inaccuracies or inadequacies in the presentence report, and to respond fully to any post-sentencing motions. The government agrees that it will not seek an upward departure in Mr. Waldholtz's sentence.

9. SENTENCING GUIDELINES DETERMINATIONS

The parties understand that if Mr. Waldholtz completely fulfills all of his obligations under this agreement, the United States will recommend that he receive the benefit of a 3-level reduction in the sentencing guidelines' offense level, based upon his acceptance of responsibility within the meaning of § 3E1.1 of the United States Sentencing Guidelines ("USSG").

After the government has determined that there is no longer a reasonable need for Mr. Waldholtz's cooperation, the government (through the departure committee of this Office) will determine whether the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5) have been satisfied. If the factors have been satisfied, the government agrees to file a motion on behalf of Mr. Waldholtz under U.S.S.G. §5K1.1, thus affording the sentencing judge the discretion to sentence Mr. Waldholtz below the applicable guideline ranges. Mr. Waldholtz understands that the government has sole discretion whether to file a motion on his behalf under Section 5K1.1 of the Sentencing Guidelines.

Mr. Waldholtz understands that the final determination of how the Sentencing Guidelines apply to this case will be made by the court, and that any recommendations by the parties are not binding on the court or the U.S. Probation Office. The parties

agree that the failure of the court or Probation Office to determine the sentencing range in accordance with the recommendations of his counsel or the government do not void the plea agreement, nor serve as a basis for the withdrawal of Mr. Waldholtz's guilty plea. In addition, in the event that, subsequent to this agreement, the government receives previously unknown information which is relevant to the above recommendation, the government reserves its right to modify its position regarding the recommendations. However, the government agrees that, in the event that it receives any such previously unknown information, it will promptly notify Mr. Waldholtz of the nature and source of this information in sufficient time to permit Mr. Waldholtz to respond to this information.

10. BREACH OF AGREEMENT

Mr. Waldholtz agrees that in the event he fails to comply with any of the provision of this Agreement, or refuses to answer any questions put to him, or makes any material false or misleading statements to investigators or attorneys of the United States, or makes any material false or misleading statements or commits any perjury before any grand jury or court, or commits any further crimes, this Office will have the right to characterize such conduct as a breach of this Agreement, in which case this Office's obligations under this Agreement will be void and it will have the right to prosecute Mr. Waldholtz for any and all offenses that can be charged against him in the District of Columbia, or in any other District or in any State. Any such prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against Mr. Waldholtz in accordance with this paragraph, notwithstanding the running of the statute of limitations between that date and the commencement of any such prosecutions. Mr. Waldholtz agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.

11. USE OF INFORMATION

Mr. Waldholtz understands that, except in the circumstances described in this paragraph, this Office will not use against him any statements he makes or other information he provides pursuant to this plea agreement in any civil, criminal, or administrative proceeding, other than a prosecution for perjury, giving a false statement or obstructing justice.

Mr. Waldholtz agrees that, as provided by Rule 410, Federal Rules of Evidence: (a) the government may make derivative use of and may pursue any investigative leads suggested by any information which he provides pursuant to this plea agreement; (b) in the event Mr. Waldholtz is ever a witness in any judicial

proceeding, the attorney for the government may cross-examine him concerning any statements he has made or information he has provided pursuant to this plea agreement, and evidence regarding such statements and information may also be introduced in rebuttal; and (c) in the event of breach of this Agreement as described in the preceding paragraph, any statements made or information and leads provided by Mr. Waldholtz, whether subsequent to or prior to this Agreement, may be used against him, without limitation, in any proceedings brought against Mr. Waldholtz by the United States, or in any federal, state or local prosecution. Mr. Waldholtz knowingly and voluntarily waives any rights he may have pursuant to Fed. R. Evid. 410 and Fed. R. Crim. 11(e)(6), which might otherwise prohibit the use of such information against him under the circumstances just described.

12. NO OTHER AGREEMENTS

No agreements, promises, understandings or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings or representations be made unless committed to writing and signed by Mr. Waldholtz, his counsel, and an Assistant United States Attorney for the District of Columbia.

If your client agrees to the conditions set forth in this letter, please sign the original and return it to us.

Sincerely,

ERIC H. HOLDER, JR.
United States Attorney

By: William E. Lawler, III
WILLIAM E. LAWLER, III
Assistant United States Attorney

Craig Iscoe
CRAIG ISCOE
Assistant United States Attorney

I have read this Agreement, have placed my initials on each page, and carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it. No agreements, promises, understandings or representations have been made with, to or for me other than those set forth above.

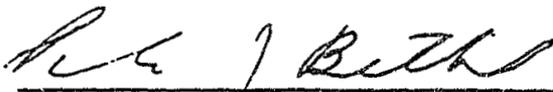
6/3/96
Date

Joseph P. Waldholtz
JOSEPH P. WALDHOLTZ

I am Joseph P. Waldholtz's attorney. I have carefully reviewed every part of this Agreement with him and have placed my initials on each page of this Agreement. It accurately and completely sets forth the entire agreement between Mr. Waldholtz and the Office of the United States Attorney for the District of Columbia.

6/3/96

Date



PAMELA J. BETHEL, ESQUIRE

6/3/96

Date



BARBARA E. NICASTRO, ESQUIRE

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6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOSEPH P. WALDHOLTZ

Criminal No. 96-0185

VIOLATION:
18 U.S.C. § 1001
(False Statements)
2 U.S.C. §§ 437g(d) &
441a
(Failure to Report
Campaign Contributions)
26 U.S.C. § 7206(2)
(Assisting in Filing
Fraudulent Tax Return)

DATE RECEIVED

WALSH, J.

INFORMATION

FILED

The United States informs the Court that:

JUN 4 1996

COUNT ONE

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

On or about January 31, 1995, in the District of Columbia and elsewhere, in a matter within the jurisdiction of the Federal Election Commission ("FEC"), JOSEPH P. WALDHOLTZ, as Treasurer of "Enid '94," a campaign committee supporting the election of his wife, Representative Enid Greene Waldholtz, did knowingly and willfully make and use a false writing and document, knowing the same to contain false, fictitious and fraudulent statements or entries, such writing and document consisting of the 1994 Year End Financial Report (FEC Form 3) for "Enid '94," signed by JOSEPH WALDHOLTZ and falsely and fraudulently certifying that the information contained in the report was true and accurate and that:

1. Enid Greene Waldholtz had contributed approximately \$1,800,000 of her personal funds to the Enid '94 campaign account

Case Related To 96-143

at First Security Bank of Utah when, in fact, JOSEPH WALDHOLTZ knew that the \$1,800,000 had not come from Enid Greene Waldholtz's personal funds but, instead, had been taken from approximately \$2,800,000 that D. Forrest Greene had provided to the personal bank accounts of JOSEPH WALDHOLTZ and Enid Waldholtz during calendar year 1994; and

2. During April of 1994, certain persons residing in Pittsburgh, Pennsylvania had contributed approximately \$60,000 to Enid '94, when, in fact, those persons had made no contributions to Enid '94.

(False Statements, in violation of Title 18 United States Code §§ 1001).

COUNT TWO

The allegations in Count One are hereby realleged and incorporated by reference and it is further alleged that on or about various dates in 1994 and 1995, including January 31, 1995, in the District of Columbia and elsewhere, JOSEPH P. WALDHOLTZ, as Treasurer of "Enid '94," filed reports with the Federal Election Commission concerning Enid '94, including the 1994 Year End Report (FEC Form 3), in which he knowingly and willfully failed to report that approximately \$1,800,000 which had been placed in the personal bank accounts of Joseph and Enid Waldholtz by D. Forrest Greene had been contributed to Enid '94 during calendar year 1994, in violation of FEC contribution limits.

(Failure to Report Campaign Contributions, in violation of 2 U.S.C. §§ 437g(d) and 441a).

COUNT THREE

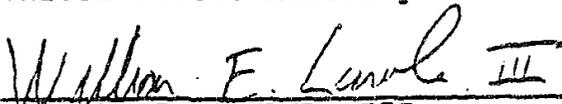
On or about April 14, 1993, JOSEPH WALDHOLTZ did willfully and knowingly aid, assist, counsel and advise Enid Greene Waldholtz in the preparation of her 1993 federal income tax return (IRS Form 1040), which she filed as a married person filing separately, by falsely telling her that he had given her shares of the M.L. Lee Acquisition Fund and falsely informing her of (1) the date on which he allegedly purchased the security, (2) the number of shares that he allegedly purchased, (3) the basis of the security on the date he allegedly purchased it, and (4) the basis of the security on the date that he allegedly sold the security after giving it to Enid Greene Waldholtz, knowing that such information was false and that the false information would be included on the 1993 Form 1040 filed by Enid Greene Waldholtz and would create a capital loss of approximately \$55,000, and that the false capital loss would completely offset an actual capital gain of approximately \$39,000 that Enid Greene Waldholtz

had to report on her 1993 tax return, and knowing further that the false capital loss would enable Enid Greene Waldholtz to avoid paying capital gains tax on the approximately \$39,000 in actual capital gains.

(Knowingly Assisting in Filing a False Tax Return, in violation of 26 U.S.C. § 7206(2)).

ERIC H. HOLDER, JR.
United States Attorney

By:


WILLIAM E. LAWLER, III
Assistant United States Attorney
D.C. Bar Number 398951
555 Fourth Street, N.W.
(202) 514-8203


CRAIG ISCOE
Assistant United States Attorney
D.C. Bar Number 252486
555 Fourth Street, N.W.
(202) 514-8316

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Johnson, G.
FILED
U.S. DISTRICT COURT
D.C. DISTRICT OF COLUMBIA
NOV 14 1996
FILED
16

UNITED STATES OF AMERICA

v.

JOSEPH P. WALDHOLTZ

Cr. Nos. 96-143-01 and
96-185-01 (NHJ)

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits its memorandum in aid of sentencing defendant Joseph P. Waldholtz. In the first section of the memorandum, the government responds to defendant's objections to the Presentence Investigation Report. In the second section, the government summarizes the facts that it believes the Court should consider in sentencing Mr. Waldholtz and recommends that the Court impose a sentence at the top of the applicable guideline range.

I. RESPONSE TO DEFENDANT'S OBJECTIONS TO PRESENTENCE REPORT

The government responds first to the objections raised by defendant that could affect the Guidelines calculations and then to defendant's other factual challenges.¹

¹On Friday evening, November 1, 1996, defendant's counsel, A.J. Kramer, courteously volunteered to telefax government counsel a copy of the Sentencing Memorandum that he intended to file on Monday, November 4, making it possible for the government to file its response on November 4 as well.

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477-403-4000

A. The Court Has a Substantial Legal Basis for Finding that Defendant Should Not Receive Credit for Acceptance of Responsibility.

Page 8, ¶ 22. The government agrees with the Presentence Report that there is a legal basis for the Court to conclude that Mr. Waldholtz's conduct since he entered his guilty plea on June 5, 1996, demonstrates that he should not receive credit for acceptance of responsibility.² As Mr. Waldholtz admitted at the hearing held on September 26, 1996, he committed a multitude of offenses in the three months following his plea. Among other things, Mr. Waldholtz acknowledged committing several financial crimes that were substantially similar to bank fraud, one of the crimes to which he pleaded guilty.

Mr. Waldholtz admitted that he had: (1) knowingly written almost \$39,000 in bad checks to his parents; (2) stolen a checkbook from his parents, made the check payable to himself in

²Section 9 of the Plea Agreement between the United States and Mr. Waldholtz provides "if Mr. Waldholtz completely fulfills all of his obligations under this agreement, the United States will recommend that he receive the benefit of a 3-level reduction in the sentencing guideline's offense level, based on acceptance of responsibility . . ." The Section also provides, however, that "the government reserves its right to modify its position regarding the recommendation" if it receives previously unknown information that is relevant to the recommendation.

The government submits that Mr. Waldholtz's commission of new crimes after entering his plea constitutes "previously unknown information" that entitles the government to exercise its right to modify its recommendation regarding whether defendant should receive credit for acceptance of responsibility. In addition, even if the if the government had not reserved that right, it would have retained the right to respond to defendant's arguments regarding the legal issues related to the impact of a defendant's post-plea criminal offenses on the Court's determination of whether the defendant has accepted responsibility for the offenses to which he pleaded guilty.

the amount of \$415, and then forged his father's signature to the check and cashed it; (3) knowingly written a bad check to an optical store; (4) fraudulently obtained and used several different credit cards intended for use by his father and opened accounts in his father's name without his father's knowledge or consent; (5) borrowed a credit card from a friend and then improperly used it; (6) stolen another credit card from the purse of the same friend and fraudulently used that card; and, (7) fraudulently rented an automobile and failed to return it, forcing the rental company to repossess the car. In addition to those offenses, Mr. Waldholtz also admitted that he had: (1) begun using heroin and (2) used his father's Drug Enforcement Administration number (his father is a dentist) to obtain Vicodin tablets.

Defendant contends that despite his commission of those offenses since pleading guilty, he should still receive credit for acceptance of responsibility. The case law and Sentencing Guidelines are to the contrary. First, it is undisputed that the sentencing judge has great discretion in determining whether a defendant has accepted responsibility. Application Note 5 to the Guidelines § 3E1.1(a) provides:

The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. For this reason, the determination of the sentencing judge is entitled to great deference on review.

An appellate court will reverse the trial court's determination only if it is "clearly erroneous" and is without foundation. See United States v. Morrison, 983 F.2d 730, 732 (6th Cir. 1993) and

United States v. Thomas, 870 F.2d 267, 270 (5th Cir. 1989).

It appears undisputed within the circuits that where, as here, the defendant engages in new criminal activity that is substantially similar to, or related to, that for which he has pleaded guilty, the sentencing court has discretion to refuse to grant a reduction for acceptance of responsibility. United States v. McDonald, 22 F.3d 139, 142-144 (7th Cir. 1994) and Morrison, supra at 733-735. The only issue that is unresolved in some circuits is whether the sentencing court may refuse to grant a reduction in instances in which the new offense is completely unrelated to the previous one. The most common circumstance in which that question is raised occurs when a defendant who has pleaded guilty to a non-drug related offense uses illegal drugs while on release pending sentencing. In McDonald, the Seventh Circuit reviewed the relevant case law on that issue and noted that,

[t]he First, Fifth and Eleventh Circuits hold that a defendant is not entitled to a reduction if he or she has used a controlled substance while on release pending sentencing. The Sixth Circuit [in Morrison] disagrees.

22 F.3d at 142, citing United States v. O'Neil, 936 F.2d 599 (1st Cir. 1991); United States v. Watkins, 911 F.2d 983 (5th Cir. 1990); and, United States v. Scroggins, 880 F.2d 1204 (11th Cir. 1989), cert. denied, 494 U.S. 1083 (1990).

The Seventh Circuit decided to follow the majority of the circuits and held that the sentencing court properly exercised its discretion when it denied credit for acceptance of responsibility to a defendant who, after pleading guilty to

aiding and abetting the counterfeiting of obligations of the United States in violation of 18 U.S.C. §§ 471 and 472, repeatedly failed to submit urine samples and tested positive for the use of marijuana. McDonald, supra at 144. Thus the Seventh Circuit joined the First, Fifth and Eleventh Circuits in holding that the sentencing court may deny credit for acceptance of responsibility to a defendant who commits any crime after pleading guilty and before being sentenced.

In the instant matter, several of Mr. Waldholtz's new offenses, all of which he has admitted, are substantially similar to one or more of the offenses to which he pleaded guilty. Writing bad checks to his parents and to an optical shop, fraudulently applying for and using credit cards in his father's name, stealing a check from his parents forging his father's signature, stealing and using a credit card belong to a friend, borrowing and improperly using a credit card, and fraudulently renting and refusing to return a rental car all constitute crimes that are substantially similar to, or related to the offense of bank fraud to which Joseph Waldholtz pleaded guilty on June 5, 1996.

Under the law of every circuit that has considered the issue, therefore, a sentencing judge would have complete discretion to deny Waldholtz credit for acceptance of responsibility because he committed new crimes that were of the same nature as one of the offenses for which he pleaded guilty. In addition, by using heroin and Vicodin, and fraudulently

obtaining Vicodin from a pharmacy, Mr. Waldholtz has engaged in new crimes that are different from the ones to which he pleaded guilty but which, under the rationale followed by the First, Fifth, Seventh and Eleventh Circuits, also demonstrate his failure to accept responsibility. The Court, therefore, has a strong basis for finding that Mr. Waldholtz has not accepted responsibility within the meaning of the Sentencing Guidelines.

B. The False Statements and Filing a False Report Involved More Than Minimal Planning and a Two Level Increase is Warranted.

Page 9, ¶ 33. Defendant's contention that the offenses of making false statements (18 U.S.C. § 1001) and filing a false Federal Election Commission report (2 U.S.C. §§ 437g(d)(1)(A) and 441) involved only minimal planning ignores the facts. Mr. Waldholtz, sometimes with the assistance of Enid Greene, obtained 26 different advances of cash totalling approximately \$4.1 million, from Enid Greene's father, Dunford Forrest Greene, during 1994 and 1995, which Mr. Waldholtz deposited into accounts in his name or joint accounts that he held with his wife. Mr. Waldholtz, over a period of many months, contributed about \$1.8 million of that amount directly to Enid Greene's 1994 Congressional campaign.³

Contrary to defendant's assertion, he did not make a single,

³Enid Greene has publicly contended that she was unaware that Waldholtz was contributing funds that could be considered loans or gifts from her father or otherwise violating FEC regulations. On October 31, 1996, the government announced that it had declined prosecution of Rep. Greene for all matters related to her 1992 and 1994 Congressional campaigns and her 1993 federal tax return.

lump sum contribution of \$1.8 million. Instead, he made more than 20 separate transfers of funds from the Waldholtz/Greene accounts to Greene's 1994 campaign committee, which was in the name "Enid '94," and failed to report the source of those funds accurately to the FEC. In addition, Mr. Waldholtz made several cash contributions to the campaign with funds provided by Mr. Greene and failed to report those contributions.⁶

Moreover, Mr. Waldholtz's improper reporting of the contributions was not limited to the 1994 Year End Report. That Report not only contained concealment and misreporting of new contributions, it also repeated and incorporated reporting violations that Mr. Waldholtz had made in the Enid '94 (1) Twelfth Day Report preceding General Election and (2) Thirtieth Day Report following General Election. Thus, the Year End Report included and repeated misrepresentations and false statements that Mr. Waldholtz had made in two previous reports that he signed and filed with the FEC.

In addition, Mr. Waldholtz filed at least six other FEC reports for 1994 that contained false information. Those reports

⁶On March 8, 1996, Rep. Greene filed a lengthy complaint with the FEC alleging that Mr. Waldholtz is guilty of 858 violations of the Federal Election Campaign Act based on his actions regarding her 1992, 1994 and 1996 campaign committees. Even if that total is substantially inflated by considering a single action to constitute as many as five violations, the complaint does document in great detail the evidence against Mr. Waldholtz for civil FEC infractions. The great majority of those alleged violations stem from Mr. Waldholtz's actions during the 1994 campaign, to which he has pleaded guilty. Regardless of the precise total of Mr. Waldholtz's FEC infractions, it is clear from the sheer number and magnitude of the offenses that they involved more than minimal planning.

include the Enid '94 (1) April 15 Quarterly Report, (2) Twelfth Day Report preceding Utah Republican Convention, (3) July 15 Quarterly Report, (4) Amendment to July 15 Quarterly Report, (5) October 15 Quarterly Report, and (6) Amendment to October 15 Quarterly Report. Mr. Waldholtz had to design and coordinate carefully his false reporting to the FEC and there can be no doubt that he engaged in more than minimal planning.

C. Mr. Waldholtz's Actions Affected the Outcome of the 1994 Congressional Election.

Page 19, ¶ 103. Although it is always impossible to state with absolute certainty whether particular actions changed the outcome of an election, it is widely accepted within the Second Congressional District of Utah that the substantial illegal and unreported contributions that Joseph Waldholtz made to Enid Greene's campaign with her father's money enabled Rep. Greene to win the election. Rep. Greene has acknowledged as much herself. During a five hour news conference that she held after it was revealed that her father's money had financed her campaign, Rep. Greene stated, "[t]here's no way to return an election. I wish there were." Salt Lake City Tribune, Dec. 17, 1995 at p. A-1 (emphasis added). She also publicly apologized to her 1994 opponents, Democrat Karen Shepherd and Independent Merrill Cook, for using tainted money and to her constituents for "creating a circus" in the campaign. Salt Lake City Tribune, Dec. 12, 1995 at p. A-1. She added, "[y]ou can't give an election back." Id. Mr. Waldholtz has also admitted to the Probation Officer that his actions enabled his then-wife to win the

election.

Perhaps not surprisingly, the candidates that Rep. Greene defeated in 1994 agree with her that the illegal contributions caused Greene to win the election. Speaking for Shepherd and the Utah Democratic Party, party executive Todd Taylor stated,

I'm not saying her [Enid Greene's] message didn't have something to do with it, but I firmly believe that it was a stolen election. To go from last place to first place in a month had to be a function of money.

Salt Lake City Tribune, Dec. 17, 1995 at p. A-1. According to the Tribune, Independent candidate Merrill Cook claims that he would have beaten Greene and Shepherd "had it not been for Enid's last minute infusion of cash." Salt Lake City Tribune, March 14, 1996 at p. B-1.

The campaign spending by Enid '94 was a key issue before the November 1994 general election, with many questioning where the campaign was getting its money. During the campaign, Greene stated she and Joseph Waldholtz had been forced by the Shepherd and Cook campaigns to make a "considerable personal investment" in the campaign." Salt Lake City Tribune, October 18, 1994 at p. A-1. Responding to inquires regarding the source of contributions to Enid '94, one of Greene's campaign representatives stated, "[i]t's family money. It's Joe and Enid's. End of story." Id. Cook, who himself is wealthy and spent nearly \$600,000 of his own money on the 1994 campaign stated shortly before the 1994 election, "I'm honest enough to say Enid has out-Merrill Cooked Merrill Cook -- by a mile." Salt Lake City Tribune, October 18, 1996 at p. A-1. Cook added that

although he had earned his money, Greene's had come from a merger of marriage. Id. Had the true source of the illegal campaign contributions been revealed before the election, the outcome of the election might have been different.

Voter polls conducted at various times before the 1994 election confirm that Greene's support began to increase at the same time that her campaign began purchasing large amounts of television advertisements. In early October of 1994, a Salt Lake City Tribune poll found that 36% of the voters planned to vote for Shepherd with Waldholtz (Greene) and Cook each drawing 26% of the vote. Salt Lake City Tribune, October 22, 1994 at p. B-1. The poll also found that Waldholtz had gained 8 points since the previous poll. Id.

On the Sunday before the Tuesday election, the Tribune reported,

Propelled by an advertising avalanche made possible by some \$2 million of mostly personal money, Republican Enid Greene Waldholtz broke her ideological logjam with Independent Merrill Cook and is in a political death grip with Democrat Karen Shepherd, a survey for The Salt Lake City Tribune of 1,436 likely voters for the 2nd Congressional District indicates.

The final week canvass of the district by Valley Research, The Tribune's independent pollster, showed Waldholtz and incumbent Shepherd dead even at 32 percent as of Saturday afternoon . . . Cook is left in third place with 21 percent of the straw vote . . .

. . . .
Shepherd had enjoyed a lead of 8 to 10 points until mid-October, according to earlier Tribune polls. Waldholtz's money began to talk via voluminous 30- and 60- second sound bites in the latter days of the race, however, and portions of Cook's followers and would-be supporters from the undecided column, most of whom have

Republican leanings, appear to have listened. Cook had 27 percent of the respondents in an Oct. 1 poll, for instance. Whatever the size of Cook's defections, Waldholtz is the beneficiary on a 2-to-1 basis over Shepherd, said Sally Christensen, manager of Valley Research of Salt Lake City.

Salt Lake City Tribune, October 22, 1994, at p. B-1.

Greene ultimately won the 1994 election with 46 percent of the vote. Shepherd received 36 percent and Cook garnered 18 percent of the vote total. Congressional Quarterly's Politics in America -- 1996, Congressional Quarterly Publications (1995), p. 1339. Greene received 18,596 more votes than Shepherd in 1994. Id. In 1992, Shepherd received 51 percent of the vote, Greene received 47 percent and an independent candidate got two percent. Congressional Quarterly's Politics in America -- 1994, Congressional Quarterly Publications (1993), p. 1549. In 1992, Shepherd received 9,431 more votes than Greene. Id.

D. Other Factual Issues

1. Whether Waldholtz's Daughter is his Dependent

Page 2. The government does not dispute Mr. Waldholtz's statement that he considers his daughter, Elizabeth, to be his dependent, but does not know whether she is a "dependent" as that term is defined by the Probation Office.

2. Dates of Marriage and House Purchase

Page 4, ¶ 6. The government agrees that Mr. Waldholtz and Rep. Greene were married on August 7, 1993 and that they purchased their home on South Benecia Drive in Salt Lake City, Utah, before they were married.

3. Whether Rep. Greene Knew Tax Information was False

Page 4, ¶ 7. Mr. Waldholtz pleaded guilty to Assisting in Filing a Fraudulent Tax Return, in violation of 26 U.S.C. § 7206(2), for providing Enid Greene false information that she used on her 1993 federal tax return. Under that section, it is not necessary for the government to establish whether the person who filed the return (Rep. Greene) knew that the information was false, as long as the person who provided the false information (Mr. Waldholtz) knew that it would be used in the return. Whether or not Rep. Greene knew that the information was false, therefore, Mr. Waldholtz is equally culpable. In this regard, it should be noted that the government has declined criminal prosecution of Rep. Greene for her actions regarding the 1993 tax return.

Accordingly, it is not necessary for the Court to make a determination on Rep. Greene's level of awareness. Consistent with Fed. R. Crim. P. 32(c)(1), the Court may simply make a determination that no finding on Rep. Greene's culpability is necessary because it will not take Rep. Greene's actions regarding the 1993 return into account when it sentences Mr. Waldholtz and that her actions will not affect the sentence.

4. Who Made Decision that Greene Would Run in 1994

Page 7, ¶ 18. The government takes no position on how the decision that Enid Green would run for Congress in 1994 was made. Again, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on this matter is

required because the Court will not take the matter into account when it sentences Mr. Waldholtz and that the disputed matter will not affect the sentence.

5. FEC Reports Filed Before Waldholtz Moved to Utah

Page 10, ¶ 54. The government agrees that FEC reports for Enid Greene's 1992 campaign that were filed before Joseph Waldholtz moved to Utah contained errors and that Waldholtz filed erroneous reports for the 1992 campaign after he moved to the state. The government takes no position on whether the false reports were filed with Greene's "full knowledge and acquiescence." Again, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on this matter is required.

6. Rep. Greene Did Not Withhold Documents Waldholtz Needed to File an Accounting of His Grandmother's Estate.

Page 13, ¶ 65. The government disputes Waldholtz's contention that he did not file an accounting of the estate of his grandmother, Rebecca Levenson, because Ms. Greene's attorneys had the requested documents and would not return them. Waldholtz made a similar claim regarding the government, and neither has merit. After Judge Kelly held Waldholtz in contempt in Pittsburgh, Waldholtz's attorney telephoned undersigned government counsel and told him that Waldholtz had told the attorney that the government had all the documents related to the Levenson estate.

Government counsel informed the attorney, and now informs the Court, that the government has never had any documents related to the estate of Rebecca Levenson. In addition, the government informs the Court that Enid Greene's attorneys have provided the government with full access to documents within Greene's possession and control and the government has no reason to believe that Greene's counsel withheld any documents from it. The government has carefully reviewed those documents and has not found any that relate to the Levenson estate.

7. Additional Personal Issues

Page 14, ¶ 66. The government takes no position on whether Mr. Waldholtz loved, or continues to love, his former wife. The government agrees with defense counsel that Rep. Greene receives financial assistance from her parents and notes that until January of 1996, she will continue to receive her Congressional salary. The government agrees with defense counsel that Rep. Greene was the one who decided to sell her home on South Benecia Drive. The government further agrees that Forrest Greene has sued Waldholtz for \$ 4.1 million and informs the Court that Mr. Greene received a default judgment against Waldholtz. The government has seen no evidence, however, that Waldholtz has the assets needed to pay the judgment.

The government submits that, as discussed above, the Court need not resolve any of the issues raised by defendant regarding this paragraph and, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on these

matters is required.

**8. The Government takes No Position
on an Upward Departure Based on Waldholtz's
Conduct While on Release.**

Page 18, ¶ 102. The government takes no position on whether an upward departure is warranted because of Mr. Waldholtz's conduct on release. The government also notes that in the final sentence of Section 8 of the plea agreement it stated that it would not seek an upward departure. There is a strong argument that the United States is no longer bound by that sentence because Section 10 of the Plea Agreement provides that the government may consider the agreement to be breached if the defendant commits new crimes after pleading guilty and before being sentenced. The United States will, however, continue to act as if it is bound by the Plea Agreement and is not requesting an upward departure.

The government has informed defendant's counsel, A. J. Kramer, of its position. Based on conversations with Mr. Kramer, undersigned counsel believes that both sides recognize that the Court may sua sponte determine that an upward departure is warranted. The Court announced that it was considering an upward departure in its letter to counsel of October 22, 1996.

**II. The Court Should Sentence Joseph Waldholtz
to the Maximum Term Permissible
Under the Applicable Guideline Range**

A. Introduction

Through his actions, Joseph Waldholtz has done more than commit three serious felonies and one misdemeanor, although that

is bad enough. As discussed above, by his illegal acts, Mr. Waldholtz stole a federal election.⁵ Mr. Waldholtz defrauded the residents of Utah's Second Congressional District and, by extension, all the citizens of the United States who are affected by the House of Representatives. The Court should sentence Mr. Waldholtz to the maximum term permitted within the applicable Guideline range.

The Presentence Report concludes that Mr. Waldholtz is at an offense level of 18, which means that the Court may sentence him to incarceration for 27 to 33 months. The government urges the Court to impose a sentence of 33 months if it determines that the Guideline range is appropriate. As discussed above, the government submits that the offense level of 18 was correctly calculated. If the Court should determine that the offense level should be reduced, however, then it should sentence the defendant to the maximum amount permitted under the new Guideline range. If the Court should grant an upward departure, the government has no recommendation on the appropriate sentence within the new Guideline range.

B. Defendant Has Demonstrated a Contempt for the Law

Joseph Waldholtz is a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions. The Court is aware of the facts behind the four crimes to which Mr. Waldholtz pleaded guilty, which are accurately set forth in the

⁵For the purposes of sentencing defendant Waldholtz it is immaterial whether the beneficiary of his actions, Enid Greene, was completely unaware of his actions or a knowing participant.

Presentence Report and Plea Agreement, and the government will not elaborate them further. Those facts, however, do not fully convey Mr. Waldholtz's persistent unwillingness -- or inability - - to tell the complete truth or to conform his conduct to the law. By committing so many additional offenses after pleading guilty, and by trying to avoid coming to Court for his revocation hearing, the defendant has demonstrated that he does not take either the judicial system or the criminal laws seriously.

The United States entered into a plea agreement with Mr. Waldholtz because it believed that the agreement, which required defendant to plead guilty to felonies in three different substantive areas and to a misdemeanor, represented a fair disposition of the charges against him. Had the government taken the case to trial, and had the jury convicted Waldholtz of all counts in the indictment, Waldholtz would have faced a prison sentence that was less than a year longer than the one he faced upon entering the plea agreement. The plea agreement did not provide Waldholtz with any special treatment but, instead, was similar to the plea agreements that the United States routinely enters with defendants who choose to plead guilty and avoid trial.

In addition, although the plea agreement provided that if Waldholtz substantially assisted in the government's investigation, the United States Attorney could recommend that he receive a downward departure pursuant to Guidelines Section 5K1.1, the government informed defense counsel that, barring some unanticipated information from Mr. Waldholtz, it was not likely

that the government would recommend a downward departure. The government was never under the illusion that Mr. Waldholtz could be trusted completely and never relied on any information that he provided unless it could be corroborated by independent evidence. The government did expect, however, that Mr. Waldholtz would show sufficient respect for the legal system, and for his own well-being, that he would refrain from committing new crimes during the three and half months between his guilty plea and his sentencing.

Government counsel were surprised that Mr. Waldholtz committed so many new offenses during a time when he should have been on his best behavior. Those actions demonstrate his utter disregard for the law and his belief that he can manipulate any person or entity to his own benefit. Mr. Waldholtz evidently also believes that he can cheat and manipulate his family and friends with impunity because they will not bring charges against him. Even though Mr. Waldholtz's efforts at manipulation are often almost completely transparent, the persistence of the efforts demonstrates a complete lack of remorse and further affirms the need to sentence him to the maximum term under the applicable Guideline range.

C. The Court Should Not Recommend Defendant for Placement in an Intensive Confinement Center ("ICC").

1. Overview of ICC Program

Intensive Confinement Centers are an outgrowth of the "Shock Incarceration Program", 18 U.S.C. § 4046, which was enacted by Congress in 1990 following extensive hearings and

discussions of state "boot camp" programs. The statute provides:

The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

18 U.S.C. § 4046(a). The statute defines the shock incarceration program as a "a highly regimented schedule" of "strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training," combined with "appropriate job training, and educational programs (including literacy programs) and drug, alcohol, and other counseling programs." (18 U.S.C. § 4046(b)(1) and (2)).

An inmate who completes the program,

shall remain in the custody of the Bureau [of Prisons] for such period (not to exceed the remainder of the prison term otherwise required by law to be served by that inmate) and under such conditions, as the Bureau deems appropriate.

18 U.S.C. § 4046(c). In practice, the Bureau has interpreted this subsection to give it authority to release inmates from custody before the expiration of their sentences and to place them in half-way houses or home confinement earlier than Bureau regulations otherwise permit. See Bureau of Prisons, Operations Memorandum 249-93.

2. An inmate in the ICC program may be released into the community a year and half earlier than normal and have his sentence reduced without additional input from the Court.

For an inmate, therefore, entry into an ICC has substantial benefits. An inmate who complete six months of "boot camp" at an ICC is immediately eligible to be placed in a half-way house and

may soon have his sentence reduced by the Bureau of Prisons without any additional input from the Court. Ordinarily, inmates are not eligible to enter a half-way house until they have served all but six months of their sentence. An inmate who enters an ICC immediately after being sentenced to 30 months of incarceration, for example, may be released to a half-way house six months later, with 24 months still remaining on his sentence. Such an inmate would enter the half-way house at least 18 months earlier than he would have had he not been placed in an ICC.

Moreover, the Bureau of Prisons has complete discretion to release the inmate from its custody entirely. If it does so, then the Bureau of Prisons is effectively reducing the inmate's sentence without any further input from the Court. The government submits that Mr. Waldholtz should not be given an opportunity to manipulate the Bureau of Prisons in that manner.

3. The ICC Program is Not Intended For 33 Year Old, College-Educated White Collar Criminals With Serious Psychological Problems.

At the Congressional hearings on the shock incarceration program, there was testimony that "most [state shock incarceration programs] are limited to persons under a certain age, no older than early twenties, in order to have young, impressionable inmates in the program." House of Representatives, Hearings before the Subcommittee on Crime of the Committee on the Judiciary; 101st Congress, Second Sess., Serial No. 149, March 21 and 29, May 24, 1990, p. 178 (emphasis

added).⁶ Certainly, the state programs after which the federal program was modeled are not intended for persons like Mr. Waldholtz who are neither in their early twenties nor impressionable.

Although there is some reason to believe that Mr. Waldholtz would benefit from a program of strict discipline and regimentation, the ICC program is not intended for persons like the defendant. Mr. Waldholtz has a college education and does not need literacy or educational training. In addition, although Mr. Waldholtz has used illegal drugs, drug usage is not a major cause of his criminal activity. Moreover, the ICC program would not provide Mr. Waldholtz with the mental health treatment that he so clearly appears to need. The psychological assessments submitted by Mr. Waldholtz's counsel do not excuse his actions or support mitigation of his sentence, but they do indicate that Mr. Waldholtz needs a more personalized and psychologically based treatment regimen than the ICC program provides.

The government recommends against permitting Mr. Waldholtz to enter the ICC program because it would substantially reduce

⁶Congress carefully examined state shock incarceration programs and considered testimony by many state prison officials, experts in behavior and correctional institution and other before enacting 18 U.S.C. § 4046. See Hearings cited above and Federal Role in Promoting and Using Special Incarceration, Hearings before the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs. Senate Hearing 101-722. United States Senate, 101st Congress, Second Sess. January 29 and March 1, 1990 ("Senate Hearings"); and Sentencing Option Act of 1989, Hearing before the Subcommittee on Criminal Justice of the Committee on the Judiciary. United States House of Representatives. 101st Congress, First Sess. Serial No. 27. September 14, 1989.

the length of his sentence. Mr. Waldholtz does not fit the profile of persons who would benefit from the program. If Mr. Waldholtz were admitted into the ICC program, he would use the program to avoid confronting his underlying psychological problems and, once again, manipulate the system -- this time to get out of prison early.

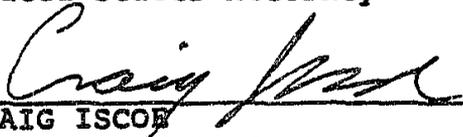
III. CONCLUSION

The Court should sentence defendant Waldholtz to the maximum sentence permitted under the applicable Guideline range and should not recommend him for placement in an Intensive Confinement Center.

Respectfully submitted,

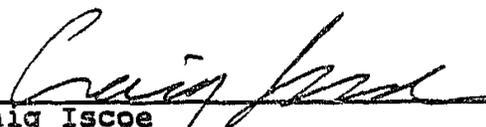
ERIC H. HOLDER, JR.
United States Attorney

By:


CRAIG ISCOE
Assistant United States Attorney
D.C. Bar Number 252486
555 Fourth Street, N.W., Room 5100
Washington, DC 20001
(202) 514-8316

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by tele-facsimile and first class mail, postage prepaid mail to counsel for Joseph Waldholtz, A. J. Kramer; Federal Public Defender, 625 Indiana Avenue, N.W.; Suite 550; Washington, D.C., 20004, this fourth day of November, 1996.



Craig Iscoe
Assistant U.S. Attorney
D.C. Bar Number 252486
555 Fourth Street, N.W., Room 5100
Washington, DC 20001
(202) 514-8316

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH WALDHOLTZ,

Defendant.

Filed
Criminal Action No. 96-143 and
96-185 (NHJ)

FILED
NOV - 7 1996
CLERK U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

99-04-304-1797

SENTENCING MEMORANDUM

The Court has received the written objections of defendant to the Presentence Report and the government's response. Having afforded counsel an opportunity for argument at a hearing held on November 7, 1996, the Court has determined that certain controverted matters are not relevant to its determination and thus will not be taken into account in, and will not affect, sentencing. See Fed. R. Crim. P. 32(c)(1) (1996). In making its sentencing decision, the Court has not considered the following matters that appear to be disputed: (1) whether Enid Greene (hereinafter "Greene") insisted on running for election in 1994; (2) whether false Federal Election Commission reports were filed with Greene's knowledge or consent; (3) whether defendant's failure to supply a Pennsylvania court with documents relating to his grandmother's estate was caused by Greene's withholding of the documents; (4) whether defendant depleted his grandmother's estate before or after his marriage to Greene; (5) whether Greene currently receives financial assistance from her parents; and (6) whether defendant once loved or continues to love Greene.

At the November 7, 1996, hearing, the parties agreed that three amendments should be

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made to the Presentence Report. Accordingly, Page 5, ¶ 7, line 2, shall read: Representative Greene stated that he falsely informed her that he had some securities, M.L. Lee Acquisition, in which he lost a considerable amount of money. Page 14, ¶ 66, line 1, shall be changed from August 2, 1993, to August 7, 1993. Page 14, ¶ 66, line 18, shall read: Because of him, she asserts she is broke, ruined, and a single parent.

The Court finds that defendant's continuing criminal conduct after his guilty pleas is incompatible with acceptance of responsibility. See U.S. SENTENCING GUIDELINES MANUAL § 3E1.1, comment, n.3 (1995); United States v. McDonald, 22 F.3d 139, 144 (7th Cir. 1994); United States v. O'Neil, 936 F.2d 599, 600 (1st Cir. 1991); United States v. Cooper, 912 F.2d 344, 346 (9th Cir. 1990); United States v. Wivell, 893 F.2d 156, 159 (8th Cir. 1990); United States v. Scroggins, 880 F.2d 1204, 1216 (11th Cir. 1989). Many of these offenses, including uttering, misappropriation of checks, and fraudulent use of a credit card, are similar to the bank fraud to which he pleaded guilty. See United States v. Morrison, 983 F.2d 730, 734 (6th Cir. 1993). By continuing to engage in criminal acts of the same nature as one of the offenses to which he pleaded guilty, defendant has demonstrated that he does not accept responsibility for the crimes in this case. The Court finds that a reduction in the offense level for acceptance of responsibility is not warranted.

The Court finds that defendant's conduct with respect to Counts I and II of the criminal information filed in criminal action 96-185 required more than minimal planning. Defendant obtained more than 26 different advances, totaling \$4.1 million, from Greene's father. He deposited these funds into one of two bank accounts: an account held in his name or a joint account held with his wife. He subsequently made 20 transfers, totaling \$1.8 million, over a

period of months to Greene's 1994 campaign committee. Defendant failed to report these and other campaign contributions in the Enid '94 Twelfth Day Report preceding the election and the Thirtieth Day Report following the general election. He subsequently incorporated the omissions and false statements in these two reports into the Year End Report. The sophistication of defendant's scheme, combined with his repeated acts over a period of time, demonstrates careful planning and execution. See U.S. SENTENCING GUIDELINES MANUAL § 1B1.1, comment, n.1(f) (1995). The Court finds that a two level enhancement for more than minimal planning is warranted. See U.S. SENTENCING GUIDELINES MANUAL § 2F1.1(b)(2)(A) (1995).

In addition, the Court has determined that the total offense level should be adjusted upward to account for defendant's continuing criminal activity while on release. Under 18 U.S.C. § 3553(b), a sentencing court may impose a sentence outside the applicable guideline range if "there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission." 18 U.S.C. § 3553(b) (1994); U.S. SENTENCING GUIDELINES MANUAL § 5K2.0 (1995). Such aggravating circumstances are present here.

The Court of Appeals for this Circuit has held that post-offense misconduct is a proper basis for an upward departure in offense level if it shows extensive criminal involvement. U.S. v. Fadayini, 28 F.3d 1236, 1242 (D.C. Cir. 1994). Defendant admitted at a September 26, 1996, hearing that he had committed numerous offenses during the four month period of his release pending sentencing. Among other things, defendant forged a prescription, misappropriated checks from his father, wrote an unauthorized check for \$415 on his father's account, wrote more than \$18,000 in checks for which there were insufficient funds, misappropriated a credit card

from his father, misappropriated a credit card from a friend, and made unauthorized purchases with the two misappropriated credit cards. In other words, after his release, defendant perpetrated fraud upon his family and friends and continued his practice of writing checks for which there were no funds on deposit. Although this case does not fit squarely into the enhanced penalty provided for under Section 2J1.7 for commission and conviction of a federal crime while on release, the underlying purpose of that section applies here: the imposition of an enhanced penalty for criminal conduct while on release. See U.S. SENTENCING GUIDELINES MANUAL § 2J1.7 (1995). Because defendant's post-release conduct is not adequately taken into consideration by the Sentencing Commission, the Court will impose a three offense level upward departure. See U.S. v. Fadayini, 28 F.3d at 1242 (finding that a three level departure was reasonable because it was the same level of departure recommended by § 2J1.7).

Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

Dated: November 7, 1996




FEC STARTS GREENE PROBE; GREEN ... 10/01/97

Salt Lake Tribune

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Keywords: UT Congressional Delegation, Political Scandals

FEC Starts Greene Probe; Greene: FEC Begins Investigation

Byline: BY DAN HARRIE THE SALT LAKE TRIBUNE

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The Federal Election Commission has launched an investigation into Enid Greene's 1994 congressional campaign, and the admitted \$1.8 million illegally funneled into her victorious election.

Three former campaign aides to the one-term Republican congresswoman from Salt Lake City confirmed to The Salt Lake Tribune that they have been interviewed by FEC investigators.

Greene, who recently moved back to Salt Lake City from Washington, D.C., said Tuesday she was aware of the probe -- and welcomed it.

"I'm talking with the FEC. We talk with them whenever they make a request," she said. "I'd like to get this resolved once and for all."

Unlike the previous FBI and Justice Department probe into the tangled cash and political intrigue of Greene and her ex-husband, Joe Waldholtz, the FEC investigation carries no threat of criminal prosecution. That earlier case ended in Waldholtz going to to prison for bank, election and tax fraud. Greene was cleared of crimes.

But millions of dollars in fines could be at stake in the FEC case.

"Knowing and willful" campaign-finance violations carry civil penalties up to double the amount involved -- in this case \$1.8 million.

The source of the cash illegally poured into Greene's victorious 1994 election was the candidate's father -- retired stock broker D. Forrest Greene. A relative, like any other individual, is allowed to contribute a maximum of \$3,000 per election cycle.

Throughout the 1994 campaign and for most of 1995, Greene maintained the money legally went into the campaign from the sale of a money-market account that belonged to her. A candidate is allowed to spend unlimited amounts of personal wealth on elections.

Finally, in a marathon five-hour December 1995 tell-all news conference, she acknowledged the money came from her father. And she claimed Joe -- posing as a millionaire whose funds were temporarily tied up -- tricked her father into loaning him \$4 million. About half of that went into the campaign.

FEC spokesman Ian Stirton said he could neither confirm nor deny the long-awaited probe because of confidentiality restrictions.

But representatives from the FEC's office of general counsel recently have contacted at least three former campaign workers in connection with the ongoing probe.

Former Greene campaign manager and one-time congressional aide David Harmer said he was interviewed for about four hours on consecutive days just two weeks ago.

Another ex-campaign manager, Kaylin Loveland, was questioned about a month ago, and former Greene political consultant Peter Valcarce was interviewed in mid-August.

None of the three would talk about specific issues covered, citing confidentiality provisions. They did say the interviews were wide-ranging, and that many questions covered familiar territory, reminiscent of the earlier Justice Department case, which included an intensive grand jury investigation.

Greene pointed out the FEC investigation may be connected to the complaint she filed in March 1996 accusing former husband and one-time campaign treasurer Waldholtz of 858 violations of election law.

Stirton confirmed that complaint still is open. But he refused to comment on whether the FEC has initiated its own probe to look at a wider cast of potential wrongdoers, including Greene or her father.

However, there are indications the investigation is a new one and not limited to allegations and issues raised in Greene's complaint.

Loveland said she had been questioned in connection with that matter much earlier. She said she felt free to talk about that because she was listed as a party, along with Waldholtz.

But Loveland declined to discuss the more recent interview session -- except to confirm that it occurred.

"It was just an interview with the FEC and I can't really tell you what the subject of it was," she said, adding she was following the instructions of agency officials.

Greene said she did not know how the investigation is "structured" and whether it includes or is separate from the complaint she filed in early 1996.

The only thing certain, she added, was that "they're looking at the 1994 campaign."

Greene also ran for Congress in 1992, but narrowly lost to Democrat Karen Shepherd, who Greene then returned to defeat two years later. There have been questions about the financing of that campaign because Greene used proceeds from the sale of a house to her parents, although county records indicate the transaction was not finalized until after the election.

The former congresswoman, who is exploring "a variety" of employment options in Utah, said she is confident the current probe will end as did the first one -- laying all culpability at the feet of Waldholtz.

"The Justice Department after a year's extensive investigation discovered it all went back to Joe. I'm sure the FEC will find the same thing," Greene said

She said there "shouldn't be any risk" of fines against her or her father.

"There have been cases where there have been rogue treasurers who have used the campaigns for their own purposes and in each of those instances, the treasurer has been fined but the candidate and the campaign have not been," she said.

Waldholtz already faces a \$4 million civil judgment in 3rd District Court for lying to D. Forrest Greene to obtain loans from him. Waldholtz, who remains in federal prison and is purportedly broke, has paid just \$20,000 against that year-old debt.

Greene said her ex-husband's ability to pay any judgment or FEC fines is beside the point. "What he did needs to be acknowledged," she said.

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Utah State Bar

Office of Attorney Discipline
645 South 200 East, Suite 205 • Salt Lake City, Utah 84111-3334
Telephone: (801) 531-9110 • FAX: (801) 531-9912 • WATS: 1-800-698-9077
E-mail: oad@utahbar.org

- Stephen R. Cochell
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Deputy Chief Disciplinary Counsel
- Kate A. Toomey
Assistant Disciplinary Counsel
- Charles A. Gruber
Assistant Disciplinary Counsel
- Mark Y. Hirata
Assistant Disciplinary Counsel

October 8, 1997

Enid Greene
1456 Penrose Drive
Salt Lake City, UT 84103

Re: Notice of Investigation

Dear Ms. Greene:

This letter is intended to serve as notice that this office has opened a file concerning the Federal Election Commission's investigation of your 1994 congressional campaign. At such time as the FEC makes a finding in this matter, the Bar may activate its own investigation, and in that event, a formal statement will be requested of you. No formal statement is required pending the conclusion of the FEC's investigation.

Please call me if you have any questions about this matter.

Sincerely,

Kate A. Toomey

Kate A. Toomey
Assistant Disciplinary Counsel

KAT/sak

Mr. D. Forrest Greene
D. F. Greene and Company
235 Montgomery Street
San Francisco, CA 94104

Dear Mr. Greene:

Please excuse this typed note, but I fear if I hand wrote it, it would be illegible! I wanted to give you an update on what is going on with the financial matters we have been dealing with. I have not discussed all of this with Enid because I don't want to upset her anymore than she has to be. The days have been very hard on her - they are so long and the people are demanding, as always. There is good news, though! Things are going very well for the campaign. Enid will clear convention and become the Republican nominee on May 7th.

There are several large problems that I have been dealing with. Things with my mother have not been well at all. She has ransacked other accounts that I didn't know she had access to. She has put me in a very precarious financial situation again. While you have heard it before, I have taken the necessary steps to remove myself from this situation. We are going to get a guardian and I will be relieved of day to day responsibility.

She has overdrawn two accounts in Pittsburgh that I transfer money through. The total is about \$114,000. What an incredible sum. The problem is this - it involves Utah Banks now because that is where we transfer the money to. While they have tried to be understanding, we are out of time. In fact, because of the American Express fiasco, I think they are very nervous and would consider legal action if I can't resolve this.

Mr. Greene, I have never felt like a bigger failure in my life. I have tried, as a good son should, to help my mother. Her life hasn't been easy - this illness isn't her fault. It has been my duty to deal with this, and ordinarily this wouldn't be a problem. As you know, my family is in an uproar. My grandmother is failing, and there is going to be legal action over her will. I cannot stop that. But, I cannot access those funds, either.

I have tried to get a loan, but it cannot be done in time. I don't feel that I can ask you to help again, but I really don't know where else to turn. I have never been at a lower point in my life. Enid has all that she can deal with - her job is so hard. I haven't talked with Mrs. Greene because she hasn't felt well, and she is dealing with her own problems, and I know she is very concerned about her health.

If you are wondering why can't I access the money that was to be returned to you, it is because she accessed it and spent it on jewelry and the house. The items cannot be returned, and even if they could, their value is much less than she spent on them. She was really taken advantage of. But that's another matter.

Mr. Greene, I would pay you any interest rate, sign any legal document, give you a mortgage on our home, or whatever you wanted, if you could help us. I say us, because this will

bring her campaign and all of her dreams down. I fell as if I am ruining her life, and her chances for success. I realize what I am asking, yet I have tried for weeks to come up with alternatives. I have none. The loan will not make it in time.

If you can help, I would like to sign a legal document detailing the interest rate, terms of repayment, etc.

Mr. Greene, I am so afraid of scandal, I am just a wreck. I think we need to keep this between us. I cannot cause more pain for Enid or Mrs. Greene. She has been so kind to us; our relationship is really such a positive force in my life.

No matter what your decision, please know how much I appreciate your advice, your concern, and your love.

M

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Descriptive Type:

Creation Date: 2:29:21 PM

Revision Date: 8/24/94 12:58PM

Author:

Typist:

Subject:

Account:

Keywords:

Abstract:

2025 RELEASE UNDER E.O. 14176

Mr. and Mrs. D. Forrest Greene
1456 Penrose Drive
Salt Lake City, UT 84103

Dear Mr. and Mrs. Greene:

I have spent the past four hours on the phone with Pittsburgh, the attorneys. First Security, and other investigators. I made Enid a promise that I would never "give up" or say that I should leave her for her own good. That was my anniversary present to her. Yet, once again, because of my failure as a husband, son, son-in-law, and I guess even a person, we are in a horrible position.

The money was transferred to us and ready for wire. Do you remember two weeks ago when First Security had to take money out of my account because I deposited a check of my mother's and she signed a statement that she never received it? (Which was not true; I wired her \$500 per week out of that check -- so she didn't spend it all at once!) Well, it appears that all of the checks that I have deposited she has done this with. We re-invested 4 large CDS for her through this account, and in banks back in Pittsburgh. Part of the money was used to pay her incredible overdrafts, part for her to live on, and part was stolen.

The worst part is that we are in a minus position again because of my family.

I would not and could not tell Enid this today, as they are filming. We couldn't cancel it even if we wanted to. I had money in the account to pay for the production today. It's gone, with the check reversals.

I know we have said to you the last two times that it is over, and it hasn't been. I am sorry for that. I feel this entire episode is taking place because I am being punished for something. I had to do something to deserve this. Enid and you have not. And yet, because I am being punished, and am married to your daughter, we had to involve you.

I will return to Pittsburgh during the Labor Day weekend and sell two million dollars of real estate to cover this. I dealt with that this morning. There is a buyer; I have no choice.

Every penny you loaned us will be repaid at market rates -- just like we were borrowing from a bank. It is my obligation to you.

The problem is this: We can't wire you money today, and we are in a desperate situation because of the reversals. The total is staggering, over \$200,000.00. I really am at a loss here; I will not upset Enid any more. I have failed her as a husband. My mother is ruining her campaign's chances.

The immediate needs are this:

1. Our media consultant is expecting a wire today*for \$30,000.00 to cover the work they are

doing today and tomorrow. We cannot cancel it; Enid's campaign will be over if it isn't paid promptly. It would be a big scandal; there are film crews doing this and everyone talks.

2. Because Enid and I were putting in personal money for other campaign things, we were paying about \$25,000.00 in other bills.

3. The other money needs to be returned to First Security before I can sell the property at home. As usual, the needs are immediate and I cannot meet the obligation in time. I don't have a firm total because they are still tabulating it all. There were many checks that I handled for her. It is somewhere around \$200,000.

I want you to know that I have offered to leave Enid to stop hurting her and both of you. Whatever I did to cause this ruin and heartache, I am not aware of, but things like this don't happen without some cause!

If you still want me in the family after all that has happened, we can talk about you and Enid becoming more active with the trust and charitable responsibilities that I have. At this point in my life, after all that has happened, I have no desire to participate in these matters. My family's money has become such a negative in my life I wish we never had it and I weren't involved. It is only because my grandmother wanted me to do this that I have done so. I always tried to fulfill her wishes.

This money has been a source of great aggravation; Enid and I have shed too many tears over it. I have lost all confidence in myself as a person, husband, son and son-in-law. We have come to you so many times I am literally sickened. I used to be a person who helped people; now I am a leech.

My plan to repay you stands. It is just set back two weeks. Again. As for our current fiasco, if you could help, you will save the campaign. Enid never should have run this year. She is the right person for Utah with the wrong husband. I am the problem, not Enid. If you can't help, I understand completely. I have put everyone through enough.

I would have delivered this letter in person, and called you both, but campaign activities today prevent me from doing so. I feel that this, too, is a cowardly thing to do and yet I have responsibility here, and need to protect Enid from further harm. I will be in and out of the office and can be reached there.

I am including the wire information, not on the assumption or presumption that you will help, but if you do, you will need the information and I might not be available because of the filming day and the campaign has me everywhere anyway today.

1. Wilson Communications
First Union Bank of Virginia
Acct # 200 000 514 586 1
ABA# 051 400 549

They are owed \$30,000.

2. Joseph P. Waldholtz
First Security Bank

Acct#
ABA# 124 0000 12

This is the account that is overdrawn because of my mother. They still don't have a total figure (I just called as I was typing this) but they need at least \$25,000 now.

Quite an incredible sum, and that isn't the end of it. The total is over \$200,000.

Again, I will close on the real estate when I go back to Pittsburgh. We will have the money that we recover from the fraud (around \$935,000), plus the two million dollars in cash from selling property.

I want that much cash because I cannot go through this anymore! I cannot put Enid or you through it.

First Security would prefer that it all be settled by the close of business Friday. We are in a desperate and dangerous position; I accept all of the blame. We have covered what we can. The bank has about had it with me.

I would again offer to leave Enid but I promised her not to. If you think that I should, I think we should talk about that this weekend. I never have loved any woman in my life other than my wife; The pain that I am causing is too unbearable to live with. She deserves better. She really does. In my wildest dreams, I never imagined that this could happen to us. I am supposed to protect her and I have failed.

Well, I guess I will close now. I am sorry for wrecking your day, for imposing on you - emotionally and financially, and for letting everyone down. You are good people. you have always been there for us, and you don't deserve this.

I have to fight every impulse in my body not to be on the next flight out of here so Enid can remake her life. Enid has begged me not to do that. I have prayed for the answer to why is this happening. It hasn't come. Maybe I don't deserve even that. I don't know.

I know Mr. Greene has a flight up here later today, and I have again caused a problem. I have outlined how I plan to repay this. The immediate problem is a great one. You will never know how sorry I am.

W

BEFORE THE FEDERAL ELECTION COMMISSION

In re the Matter of)
D. Forrest Greene) MURs 4322 and 4650
)

AFFIDAVIT OF MICHAEL LEVY

Before me the undersigned authority appeared, Michael Levy, who upon his oath deposes and states as follows:

1. Affiant Michael Levy has personal knowledge of the facts set forth in this Affidavit.

2. I joined the staff of Enid '94 as press secretary on Labor Day, 1994.

3. Shortly after I joined the campaign, I was approached by the campaign treasurer, Joseph P. Waldholtz.

4. Mr. Waldholtz knew that I had completed two years of law school and had worked in the Washington, D.C. office of Dickstein, Shapiro & Morin.

5. Mr. Waldholtz indicated that since I was a "lawyer," he wanted my advice on how to assign the proceeds of the sale of real estate to a third party.

6. Mr. Waldholtz indicated that he owned a piece of real estate in Pennsylvania that he wanted to sell, but that his lawyers did not understand how Mr. Waldholtz wanted to structure the transaction.

7. I volunteered to contact a friend of mine named Jim Kelly, an associate in the Washington, D.C. office of Dickstein, Shapiro & Morin, who I knew was familiar with real estate law.

8. I then called Mr. Kelly and left a message on his voice mail describing Mr. Waldholtz's request and asking Mr. Kelly for some sample documents that Mr. Waldholtz could use as a model.

9. When I did not hear back from Mr. Kelly, I called Emanuel Faust, a partner at Dickstein, Shapiro & Morin, described Mr. Waldholtz's request, and asked if Mr. Faust could provide some sample documents for Mr. Waldholtz.

10. When I spoke to Mr. Faust, I told him that Mr. Waldholtz needed a "boilerplate" document for the assignment of proceeds from the sale of real estate.

11. Shortly thereafter, I initiated a conference call between Mr. Faust, Mr. Waldholtz and myself so that Mr. Waldholtz could describe to Mr. Faust exactly what type of document he needed.

12. On September 23, 1994, Mr. Faust faxed to me a one-page assignment of proceeds form.

13. I took the fax directly to Mr. Waldholtz as soon as I received it.

14. On September 29, 1994, Jim Kelly faxed to me another model assignment of proceeds document with a note apologizing for the delay and asking me to call if I had any questions.

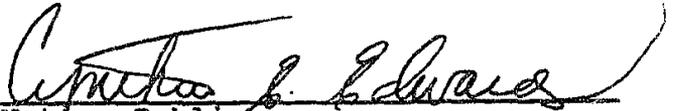
15. I delivered this second fax to Mr. Waldholtz the same day I received it.

FURTHER AFFIANT SAYETH NOT



Michael Levy

SUBSCRIBED AND SWORN TO before me this 24th day of July, 1997


Notary Public

My Commission Expires:

~~Carlton E. Edwards~~
Notary Public, District of Columbia
My Commission Expires June 14, 1998

ROUTING & REQUEST

Please... To: MIKE LEVY

Read _____

Handle 801/328-1996

Approve _____

And...

Forward From: EMANUEL FAUST

Return _____

Keep or Toss _____

Review with Me Date: 9/23/94



ASSIGNMENT OF PROCEEDS

_____, the "Seller", as seller pursuant to the [real property sales contract dated _____] (the "Agreement") hereby sells, conveys, assigns and transfers to [recipient] and its successors and assigns all of the right, title and interest of the Seller in and to the proceeds from the transfer of real property contemplated by the Agreement (the "Proceeds").

The Seller hereby constitutes and appoints _____, its successors and assigns, the Seller's true and lawful attorney-in-fact, with full power of substitution, in the Seller's name and stead, but on behalf of and for the benefit of _____, its successors and assigns, to demand and receive the Proceeds transferred hereunder and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute in the Seller's name, or otherwise, at the expense and for the benefit of _____, its successors and assigns, any and all proceedings at law, in equity or otherwise, which _____, its successors or assigns, may deem proper for the collection of the Proceeds transferred hereunder or for the collection and enforcement of any claim or right of any kind hereby conveyed, transferred, assigned and delivered.

The foregoing assignment is without recourse, representation or warranty.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed and its corporate seal to be affixed.

Date:

(Seller)

By _____
Name:
Title:

DICKSTEIN, SHAPIRO & MORIN, L.L.P.

3101 L Street, N.W.

Washington, DC 20037-1526

Telephone: (202) 785-9700

Facsimile: (202) 857-0689

Stamp: Sent by _____

(P)

Joe: FY

FACSIMILE TRANSMISSION COVER SHEET

DATE: September 29, 1994

RECIPIENT NAME: Michael Levy

COMPANY: _____

FAX: 800-328-1996

TELEPHONE: 801-328-1994

NUMBER OF PAGES (including Cover Sheet): 5

This transmission is intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution or duplication of this transmission by anyone other than the intended addressee or its designated agent is strictly prohibited. If your receipt of this transmission is in error, please notify this firm immediately by collect call to (202) 861-9100, and send the original transmission to us by return mail at the above address.

FROM: Jim Kelly

TELEPHONE: 202-861-9179 OUR REF: _____

CLIENT: 29990 900 YOUR REF: _____

MESSAGE:

M.L. → Sorry for the delay. Given we
will call with any questions.
Thanks to you soon. (R)

If you experience any transmission difficulty, contact our Facsimile Dept. (202) 861-9100.

COVENANT NOT TO ENCUMBER AND
ASSIGNMENT OF PROCEEDS

KNOW ALL MEN BY THESE PRESENTS, that for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned,

(whether one or more hereinafter referred to as the "Undersigned"), hereby warrants and represents to

(the "Lender"), and does agree with the Lender as follows:

1. The Undersigned is now seized in fee simple of the land and improvements known as
as the same are duly dedicated, platted and recorded in
of the land records of
(the "Property").
2. The Undersigned has executed and delivered two (2) Deed of Trust Promissory Notes dated April 15, 1986, one (1) in the original principal amount of Five Million Eight Hundred Sixty-two Thousand Eight Hundred Forty Dollars (\$5,862,840.00) or so much thereof as shall be advanced (together with all extensions, renewals and modifications thereof, or substitutions therefor, "Note A"), and the other in the original principal amount of Eight Million Three Hundred Thirty-seven Thousand One Hundred Sixty Dollars (\$8,337,160.00) or so much thereof as shall be advanced (together with all extensions, renewals and modifications thereof, or substitutions therefor, "Note B").

09/29/1994 12:12 8013281996
SEP 29 '94 11:54 FROM D S AND M

ENID 94

PAGE 03
PAGE.003

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6. This Covenant and Assignment shall constitute an assignment and pledge of the Net Proceeds of the sale or refinancing of the Property to the extent of the outstanding balance of the Notes from time to time, and a negative pledge against any and all further liens and encumbrances against the Property, in the form of a security interest which is hereby granted to the Lender, and the Lender shall have any rights and remedies provided herein, as well as all rights and remedies granted to secured parties pursuant to the Uniform Commercial Code; it being understood and agreed that in the event of any default hereunder or under the Notes, the Lender shall have the right to pursue whatever legal and/or equitable remedies the Lender deems necessary or appropriate to enforce the terms and intent of this Covenant and Assignment.

7. At the request of the Lender, the Undersigned agrees to execute such further documents as the Lender may reasonably require to cause a lien or encumbrance in favor of the Lender to be recorded against the interest of the Undersigned in and to the Property. If a lien or encumbrance is so recorded, the Lender agrees that the same shall be released (at no expense to the Lender) upon payment of the Net Proceeds to the Lender in accordance with this Covenant and Assignment or upon full payment and satisfaction of the Notes.

8. This Covenant and Assignment shall be governed by the laws of the District of Columbia, shall be jointly and severally binding upon the Undersigned and its personal

Q

Descriptive Name: Memo - Traditional style

Descriptive Type: forrest.mem

Creation Date: 1/19/94 11:20:09 AM

Revision Date: 9/21/94 2:42PM

Author: KENNETH

Typist: KENNETH

Subject:

Account:

Keywords:

Abstract:

Password: "LIE"

0101 10240 66

Memorandum

To: Mr. D. F. Greene c/o East-West Co.
CC: Mr. and Mrs. Joseph P. Waldholtz
From: The Waldholtz Family Trust
Date: September 21, 1994 [computer file date]
Subject: Assignment Letter and US Attorney Information

Mr. Greene, we apologize for the delay in sending the materials to you. Joe and Enid asked that we send you the assignment of the real estate and the letter from the U.S. Attorney. We apologize for the delay and the confusion.

If we can be of further assistance, please give us a call.

Thank you.

(P)

HOLME ROBERTS & OWEN LLC
Brent V. Manning #2075
111 East Broadway, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 521-5800

Attorneys for Plaintiff, D. Forrest Greene

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

D. FORREST GREENE,)	
)	
Plaintiff,	)	COMPLAINT
)	
v.)	
)	
JOSEPH P. WALDHOLTZ,)	
)	
Defendant.)	
	)	Civil No. 960903017 cv

D. Forrest Greene, for his cause of action against defendant Joseph P. Waldholtz, alleges as follows:

1. Plaintiff is a resident of Salt Lake County, State of Utah.
2. Defendant Joseph P. Waldholtz ("Waldholtz") is a resident of Pennsylvania presently confined in jail in Allegheny County, Pennsylvania.
3. Venue in this district is appropriate since plaintiff is a resident of Salt Lake County and all or part of this cause of action arose in this County.
4. This Court has jurisdiction over defendant pursuant to Utah Code Ann. § 78-27-24 because defendant was a resident of the State of Utah at the time this cause of action arose.

Defendant conducted business in the State of Utah from which this cause of action arose and defendant caused injury to plaintiff in Utah in part during the time plaintiff was a resident of Utah.

5. Beginning on January 21, 1994 and continuing through October 12, 1995, plaintiff loaned to defendant, or paid obligations of the defendant at defendant's request, amounts totaling \$3,987,426.00 (the "Loan Amount"). A summary of the checks and wire transfers from plaintiff to, or for the benefit of Waldholtz, is attached hereto as Exhibit "A." Documents evidencing each transfer are attached hereto as Exhibit "B."

6. At the time the plaintiff loaned money to, or paid obligations for the benefit of defendant, defendant was married to plaintiff's daughter and occupied a position of trust and confidence with plaintiff giving rise to fiduciary duties by defendant to plaintiff.

7. Defendant exploited his close family relationship, his position of trust and confidence and breached his fiduciary duty to plaintiff by inducing him to advance the Loan Amount to defendant based upon, but not limited to, the following material misrepresentations, all of which were false when made:

- a. That he was the beneficiary of a Waldholtz Family Trust which had a value of approximately \$325 million (with substantial monthly income for his benefit).
- b. That the money from the Waldholtz Family Trust was temporarily unavailable to Waldholtz but that he would shortly repay all borrowed funds with money from the Waldholtz Family Trust.

- 99 "04304" 1022
- c. That, at approximately the time of Waldholtz's marriage to Mr. Greene's daughter, Enid Greene, (August 1993), he had given Enid Greene a gift of approximately \$5 million;
 - d. That his mother had been the victim of a "telemarketing scheme" which caused her to "overspend" or overdraft one or more of her accounts. Money was not available from the Waldholtz Family Trust to rectify this because it was "tied up" and that the money borrowed in January and February 1994 would be used to discharge these obligations;
 - e. That his mother had been duped by a con-man who was then in jail and that this too could not be rectified with the Waldholtz Family Trust money because it was "tied up" and that the amount borrowed would be used to discharge these obligations.

8. Waldholtz made the above misrepresentations repeatedly during the period from January 1994 through October 1995. These misrepresentations were made in person in Salt Lake City and by telephone from the defendant in Washington, D.C. and/or Salt Lake City to the plaintiff in San Francisco, California.

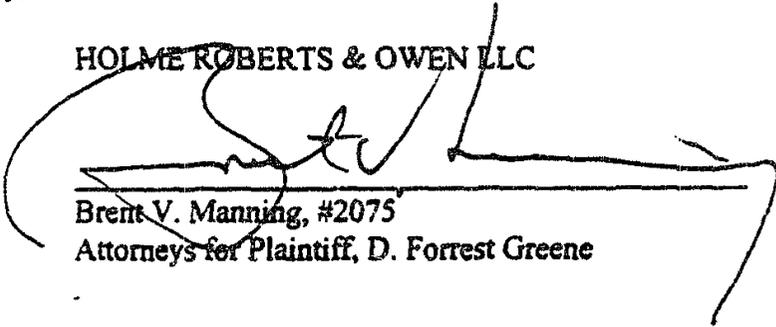
9. Plaintiff relied on the truthfulness of the foregoing representations when he loaned defendant the Loan Amount. Had plaintiff known that the foregoing representations were false, that Waldholtz did not intend to use the money for the purpose stated and that Waldholtz had no ability to repay the money plaintiff loaned to him, plaintiff would never have loaned any money Waldholtz.

10. As a result of Waldholtz's fraudulent misrepresentations and breach of fiduciary duty plaintiff has been damaged in the amount of \$3,987,426.00.

WHEREFORE, plaintiff prays that judgment be entered in favor of plaintiff and against defendant Waldholtz in the amount of \$3,987,426.00 plus his costs herein.

DATED this 15th day of May, 1996.

HOLME ROBERTS & OWEN LLC



Brent V. Manning, #2075
Attorneys for Plaintiff, D. Forrest Greene

Plaintiff's Address:

D. Forrest Greene
1456 E. Penrose Drive
Salt Lake City, UT 84103

EXHIBIT "A"
FUNDS TRANSFERRED TO
JOSEPH P. WALDHOLTZ FROM D. FORREST GREENE

Date of Check or Wire	Personal Check or Wire Transfer	Source Account	Amount	Deposited to (account)	Date of Deposit
01/21/94	WT	Smith Barney	\$60,000.00		01/21/94
02/01/94	PC	Nuveen	24,000.00		02/04/94
04/29/94	PC	Nuveen	56,000.00		05/04/94
05/09/94	PC	Nuveen	60,000.00		05/11/94
05/16/94	PC	Nuveen	75,000.00		05/17/94
06/21/94	WT	Wells Fargo	80,000.00		06/21/94
07/07/94	WT	Wells Fargo	150,000.00		07/07/94
07/07/94	WT	Wells Fargo	10,000.00		07/07/94
08/08/94	WT	Wells Fargo	83,000.00		08/08/94
08/25/94	PC	Wells Fargo	55,000.00		08/25/94
09/02/94	WT	Wells Fargo	187,000.00		09/02/94
09/12/94	PC	Wells Fargo	150,000.00		09/14/94
09/19/94	WT	Wells Fargo	381,000.00		09/19/94
10/18/94	WT	East/West Securities	336,000.00		10/18/94
10/21/94	WT	East/West Securities	400,000.00		10/21/94
10/28/94	WT	East/West Securities	350,000.00		10/28/94
11/08/94	WT	East/West Securities	69,000.00		11/08/94
11/14/94	WT	East/West Securities	200,000.00		11/14/94
01/09/95	WT	East/West Securities	275,000.00		01/09/95
04/11/95	WT	East/West Securities	408,000.00		04/11/95
07/18/95	WT	East/West Securities	13,000.00		07/18/95
08/15/95	WT	East/West Securities	250,000.00		08/15/95
08/15/95	WT	East/West Securities	7,426.00		08/15/95
10/12/95	WT	East/West Securities	308,000.00		10/12/95
TOTAL			\$3,987,426.00		

*Joint Account of Joseph P. and Enid Waldholtz

January 21, 1994

Smith Barney Shearson, Inc.
One Sansome Street, 29th Floor
San Francisco, CA 94104

To Whom It May Concern:

You are hereby authorized to wire funds for the amount of
\$60,000 from my [REDACTED] Dunford F. Greene
made payable to the following:

PITTSBURG NATIONAL CORP.
ABA # [REDACTED]
FAO Joseph Waldholtz
Account # [REDACTED]

Thank you for your prompt attention to this matter.

Sincerely,



Dunford F. Greene



F001153

EXHIBIT "B"

1 Sansome St.
29th. Floor
S.F. Ca. 94104

SMITH BARNEY SHEARSON
PRINCIPAL

Dunford F Greene
235 Montgomery St
San Francisco CA 94104-2902

01/21/94

As you have instructed, we have completed a Federal Fund Money Transfer in the amount of \$60,000.00

From: Your Account [REDACTED]

To: Pnc Bank, N.A.

For the benefit of [REDACTED] Joseph Waldholtz

The transfer agent has confirmed that this transfer was executed as a Federal Funds transaction with paid ref number 0121B1Q0001C002498.

Additional comments transmitted with the Money Transfer were: "3rd Party Fed Fund Transfer."

Your account has been charged \$25.00 for the above transaction.

If any of the above information is not in accordance with your instructions, please contact the manager of your Branch immediately.

Sincerely,



Richard L. Ecklund
First Vice President
Credit/Audit Control

F001152

6281 463 40 66

DUNFORD & GREENE
 [REDACTED]
 NUVEEN 2022
 02-01-94
 FIRST SECURITY BANK
 PAY TO THE ORDER OF Joe Joseph Whittaker & Co. Inc. \$2,000
 No. 0771006709
Two Thousand & 00/100 DOLLARS
 NUVEEN
 CA TAX-FREE FUND, INC.
 PAYABLE THROUGH
 UNITED MISSOURI BANK
 WARSAW, MISSOURI
 [Signature]
 [REDACTED]

DUNFORD & GREENE
 [REDACTED] *kw*
 NUVEEN 2027
 04-29-94
 FIRST SECURITY BANK
 PAY TO THE ORDER OF Joe Joseph Whittaker & Co. Inc. \$55,000
 No. 0771006709
Fifty Six Thousand & 00/100 DOLLARS
 NUVEEN
 CA TAX-FREE FUND, INC.
 PAYABLE THROUGH
 UNITED MISSOURI BANK
 WARSAW, MISSOURI
 [Signature]
 [REDACTED]

DUNFORD & GREENE
 [REDACTED]
 NUVEEN 2029
 05-09-94
 PAY TO THE ORDER OF Joe Joseph Whittaker & Co. Inc. \$6,000
Six Thousand & 00/100 DOLLARS
 NUVEEN
 CA TAX-FREE FUND, INC.
 PAYABLE THROUGH
 UNITED MISSOURI BANK
 WARSAW, MISSOURI
 [Signature]
 [REDACTED]

DUNFORD & GREENE
 [REDACTED]
 NUVEEN 2030
 05-16-94
 PAY TO THE ORDER OF Joe Joseph Whittaker & Co. Inc. \$7,000
Seventy Five Thousand & 00/100 DOLLARS
 NUVEEN
 CA TAX-FREE FUND, INC.
 PAYABLE THROUGH
 UNITED MISSOURI BANK
 WARSAW, MISSOURI
 [Signature]
 [REDACTED]

REGISTERED TO THE ACCOUNT OF
FIRST SECURITY BANK
1111 1111 1111
1111-01

NY 02 03
101000000

FB 02 04
101000000

FB 02 02
101000000

NY 04 03
101000000

NY 04 04
101000000

Deposit Only
First Security Bank
First Security Bank
FOR DEPOSIT ONLY
NO OTHER BANKING SERVICES
FIRST SECURITY BANK
1111 1111 1111

NY 06 11
101000000

NY 06 11
101000000

NY 05 08

0023
43379
FIRST SECURITY OF ILL.
260 N. CHARLES LANE, CHICAGO, ILL. 60610
40502764
First Security Bank

NY 06 19
101000000

NY 06 19
101000000

NY 17 09

0015
06582
FIRST SECURITY OF ILL.
260 N. CHARLES LANE, CHICAGO, ILL. 60610
41216465

6281 462 40 66

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE

TRANSFER FEE AMOUNT: \$ 30 (U.S. Dollars)

TRANSFER FROM ACCOUNT NUMBER:

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:

00, 80, 00, 00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 06 21 94 (MONTH DAY YEAR)

For Bank Use Only:

Wires in Process Account Funded by: []

- A Customer paid with cash
B Customer paid with check
C Customer paid through account other than checking.
Other Account: [] (i.e. CD or loan account)

TRANSFER FROM ACCOUNT:

Name: D. Forrest Greene
Address: [Redacted]
City/State: [Redacted]

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:

FOREIGN CURRENCY NAME: []
FOREIGN CURRENCY AMOUNT: []
U.S. DOLLAR EQUIVALENT: []
For Bank Use Only:
RATE: []
REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT:
CONTRACT NUMBER: []
FK TRADER CONTACT: []

BENEFICIARY INFORMATION:

Beneficiary Name: Enid S Walholtz
Beneficiary Account Number: [Redacted]

BENEFICIARY BANK INFORMATION:

Beneficiary Bank ABA or Bank Identifier Code: 1st Security Bank of Utah
Beneficiary Bank Name: 1st Security Bank of Utah
ABA #: [Redacted]
City: 79 So. Main St, Salt Lake City, Utah
Country: 84111

ADDITIONAL OPTIONAL INFORMATION:

Special information for Beneficiary: []
Special information for Beneficiary Bank: []

My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request.

Customer's Signature: X [Signature] Date: 06/21/94

Bank Originator's Signature: [Signature] TAM ID OF Line Date: F001145

Func: INV ED RECEIVE
Key: GP19940707ME-0000-000420-00

01-400-1999 13:47:1

0707LIQWEI4A001795 07071650 FTIL N 07071650 000420
124000012 121000248 1000 06939 150,000.00

L FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAH SALT LAKE CITY UT BNF=JQSER
M P WALHOLTZ/AC-0511007551

Source:FEDWI MT:100 Session: Senders Reference:06932
Date:07/07/94 Time:14:52 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:07/07/94 Cur:USD Amount: 150,000.00

Sender : M :WEEASA Order Cust:50D :
A/C://EW121000248 Code: A/C: Code:
WELLS FARGO BANK D FORREST GREENE FIRST SEC SLC

Order Bank:52 :
A/C:// Code:
Advice: By: Info:

Order Bank:56 :
A/C:// Code:
A/C:// Code:
A/C:// Code:

Beneficiary ID :JQWAWJ Code:USDDDA01
JOSEPH P. WALDHOLTZ Advice: By: Info:
Bank:
Bank to Bank Information:??

JOSEPH P. WALDHOLTZ
Details of Charges:71:BEN
Charge/fee :USD 11.00 By:BEN

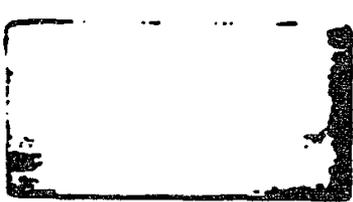
Account Advice:
Type Code: 1000
Prod Code: CTR
Tag Code:
Fee Code: FC

WELLS FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAH SALT LAKE CITY UT BNF=JQSER
M P WALHOLTZ/AC-0511007551

Debits		Credits	
124000012	Code:USDNOST01	A/C://	Code:USDDDA01
121000248	150,000.00	07/07/94	Amt:USD 149,989.00
1000	Code:	JOSEPH P. WALDHOLTZ	Code:USDPANL01
1000	Amt:	07/07/94	Amt:USD 11.00
		Fee/ChargesUSD	
A/C:	Code:	A/C:	Code:

Status: Completed FC modified BRK field modified
Server Output : SNGSRV Date: 94/07/07 Time: 15:08:45
Info:HOSTSER: 199407070631
Approve Receive : TH Date: 94/07/07 Time: 15:08:38
Qualify Receive : PD Date: 94/07/07 Time: 14:55:11
Repair Queue : FEDSRV Date: 94/07/07 Time: 14:52:33
Reply : FEDSRV Date: 94/07/07 Time: 14:52:33

99.04.394.1833



12-1-1994

WELLS FARGO BANK ANNUAL PAYROLL SERVICE BLDG 1 ADVISE

WELLS FARGO BANK
IN FAVOR OF SECURITY PLAN
ACCOUNT # 1234567890
1234567890

IN FAVOR OF SECURITY PLAN
ACCOUNT # 1234567890
1234567890

WELLS FARGO BANK

07/01/94

FUNDS TRANSFER
ADVICE

WELLS FARGO BANK

WELLS FARGO BANK
FEE \$10.00



FOO1114

41314634066


WELLS FARGO BANK 2383

 07-07-94
 MA'CO'N' LORNON \$10,000
 Ten Thousand Dollars
 A. FORDNEY CHASE
 225 MONTGOMERY ST.
 SAN FRANCISCO, CA 94102



Fund: INU FED RECEIVE 01-00-1995 15:10:
Key: GP19940808ME-0000-000247-00

080811RWEI4A000972 08081359 FTIL N 08081359 000247
14000012 121000248 1000 03751 82,000.00
WELL FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=1ST SECURITY BANK OF UTAH 79 SO. MAIN ST. SALT LAKE
CITY UTUSA BNF=JOSEPH P. WALDHOLTZ/AC-0511007551 BFI=SORT CODE: 124000012

Source:FEEMI MT:100 Session: Senders Reference:03751
Date:08/08/94 Time:12:01 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:08/08/94 Cur:USD Amount: 82,000.00

Order : M :WEEFASA Order Cust:500 :
A/C://EW121000248 Code: A/C: Code:
WELL FARGO BANK D FORREST GREENE FIRST SEC SLC

SAN FRANCISCO, CA Order Bank:52 :
Bank Corr :53 : A/C:// Code:
Cnd/Rev BK: A :FEBUUS55 Advice: By: Info:

FIRST SECURITY BANK OF UTAH A/C: Code:
SALT LAKE CITY, UT A/C: Code:
BBK Corr : A/C: Code:

Inter Bank:56 : A/C: Code:
Acct With :57 : A/C: Code:
Beneficiary ID :IOWAJO A/C: Code:USDDDA01
JOSEPH P. WALDHOLTZ Advice: By: Info:
Bank:

Bank to Bank Information:52:
SORT CODE: 124000012
Charge/fee :USD 11.00 By:BE

Details of Charges:71:REN
Payment Type:FED RECEIVE
Debit Advice:
Type Code: 1000
Fund Code: CTF
Cnd Dept:
Fee Code: FC

WELL FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=1ST SECURITY BANK OF UTAH 79 SO. MAIN ST. SALT LAKE
CITY UTUSA BNF=JOSEPH P. WALDHOLTZ/AC-0511007551 BFI=SORT CODE: 124000012

Debits Credits
A/C:0310310010 Code:UCDNOST01 A/C: Code:USDDDA01
08/08/94 Amt:USD 82,000.00 08/09/94 Amt:USD 82,999.00
DUE TO/DUE FROM FED NOSTRO JOSEPH P. WALDHOLTZ
A/C: Code: Code:USDPANLO
Amt: - 08/08/94 Amt:USD 11.00
Fee/ChargesUSD
A/C: Code: A/C: Code:

Status: Completed FC modified BBK field modified
Server Output : SNGSRV Date: 94/08/08 Time: 12:48:26
Info:HOSTSEQ: 199409080525
Approve Receive : TH Date: 94/08/08 Time: 12:48:22
Qualify Receive : RD Date: 94/08/08 Time: 12:15:22
Repair Queue : SEDSPV Date: 94/08/08 Time: 12:01:17
Entry : SNGSRV Date: 94/08/08 Time: 12:01:17

FOR DEPOSIT TO THE ACCOUNT OF

JOSEPH P. WALDMELTZ AND
ESTER GRUBER WALDMELTZ

DATE: 10/25 1954

CASH	
SAVINGS	
STOCKS	
BONDS	
OTHER	
TOTAL	

THIS CHECK WILL BE PAID TO THE ORDER OF THE ABOVE NAMED PARTY

Pay to the order of
 Cash
 Check
 Other

8339531

WELLS FARGO BANK

Pay to the order of *Joseph P. Waldmeltz for Ester Gruber Waldmeltz*

Five Thousand

10/25/54

J. Waldmeltz

2317067066

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE TRANSFER FEE AMOUNT: \$ 50 (U.S. Dollars)

TRANSFER FROM ACCOUNT:

Name: D Forrest Greene
Address: [Redacted]
City/State/Zip: [Redacted]

TRANSFER FROM ACCOUNT NUMBER:

[Redacted] - [Redacted]

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:

[] [] [] , 187 , 000 . 00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 09 / 02 / 94
MONTH DAY YEAR

Branch must hold valid account date entered if date other than today.

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:

FOREIGN CURRENCY NAME: []
FOREIGN CURRENCY AMOUNT: [] [] [] [] [] [] [] [] [] []
U.S. DOLLAR EQUIVALENT: [] [] [] [] [] [] [] [] [] []
For Bank Use Only:
RATE: [] . [] [] [] [] [] []
REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT:
CONTRACT NUMBER: [] FX TRADER CONTACT: []

For Bank Use Only:

Wires in Process Account Funded by:
A Customer paid with cash
B Customer paid with check
C Customer paid through account other than checking, savings, MRA or WDDA.
Other Account: []
(i.e. CD or IRAP account)

BENEFICIARY INFORMATION:

Beneficiary Name: Joseph P Waldholtz & Enid G. Waldholtz
City/Account Number: [Redacted]

BENEFICIARY BANK INFORMATION:

Beneficiary Bank ABA or Bank Identifier Code: 1ST Security Bank of Utah
Beneficiary Bank Name: 1ST Security Bank of Utah
ABA #: [Redacted]
City: 79 So. Main St. Salt Lake City, Utah 84111
Country: USA

ADDITIONAL OPTIONAL INFORMATION:

Social Information for Beneficiary: []
Social Information for Beneficiary Bank: []

My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request. Wells Fargo Bank is authorized to rely on the information on this Request in making the requested funds transfer.

Customer's Signature: X D Forrest Greene Date: 09/01/94

Bank Originator's Signature: [Signature]
TAM ID or Line Desc: F001142

Func: INV ED RECEIVE
Key: GPI9940902MF-0000-000198-00

22-NOV-1995 10:50:30

0902L1QWEI4A000512 09021256 FTIL N 09021256 000198

000012 121000248 1000 02642 187,000.00

WELL FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAH 79 SO. MAIN STREET SALT LAKE CITY UT BNF=JOSEPH P WALDHOLTZ ENID G WALDHOLTZ/AC-0511007551

Source:FEDWI MI:100 Session: Senders Reference:02642
Date:09/02/94 Time:10:57 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:09/02/94 Cur:USD Amount: 187,000.00

Sender : M : WEFASA Order Cust:50D :
A/C://FW121000248 Code: A/C: Code:
WELLS FARGO BANK D FORREST GREENE FIRST SEC SLC
SAN FRANCISCO, CA

Send Corr :53 : Order Bank:52 :
Snd/Rcv Bk: A :FSBUUS55 A/C://FW: Code:
FIRST SECURITY BANK OF UTAH Advice: By: Info:

SALT LAKE CITY, UT
BBK Corr : : A/C: Code:
Inter Bank:56 : A/C: Code:
Acct With :57 : A/C: Code:

Beneficiary :M :JOWAJO A/C:0: Code:USDDDA01
JOSEPH P. WALDHOLTZ Advice: By: Info:
Bank:
Bank to Bank Information:72:

Details Of Payment:70:
JOSEPH P WALDHOLTZ ENID G WALDHOLTZ

Details of Charges:71:BEN
Payment Type:FED RECEIVE Charge/fee :USD 11.00 By:BEN

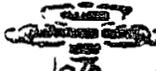
Debit Advice:
Type Code: 1000
Prod Code: CTR
Org Dept:
Fee Code: FC

WELL FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAH 79 SO. MAIN STREET SALT LAKE CITY UT BNF=JOSEPH P WALDHOLTZ ENID G WALDHOLTZ/AC-0511007551

Debits Credits
A/C:0310310310 Code:USDNOST01 A/C: Code:USDDDA01
09/02/94 Amt:USD 187,000.00 09/02/94 Amt:USD 186,989.00
DUE TO/DUE FROM FED NOSTRO JOSEPH P. WALDHOLTZ
A/C: Code: A/C: Code:USDPANL01
/ / Amt: 09/02/94 Amt:USD 11.00
Fee/ChargesUSD
A/C: Code: A/C: Code:

Status: Completed FC modified BBK field modified
Server Output : SNSERV Date: 94/09/02 Time: 11:05:02
Info:HOSTSEQ: 199409020357
Approve Receive : RD Date: 94/09/02 Time: 11:04:56
Qualify Receive : TH Date: 94/09/02 Time: 11:00:18
pair Queue : FEDSRV Date: 94/09/02 Time: 10:57:09
Entry : FEDSRV Date: 94/09/02 Time: 10:57:09




SWELLS FARGO BANK
2421

SAN FRANCISCO MAIN OFFICE 40 CALIFORNIA ST. SAN FRANCISCO, CA 94104

PAY TO THE ORDER OF Joseph Williams \$150.00

One Hundred Fifty Dollars & 00/100 DOLLARS

D. FORREST GREENE
 235 MONTGOMERY ST.
 SAN FRANCISCO, CA 94104

MEMO Disbursement

11/85 *09/12* *94*



F001140

Order No. 105-10-66



deposit only
Josephine M. ...
Spitzer, ...

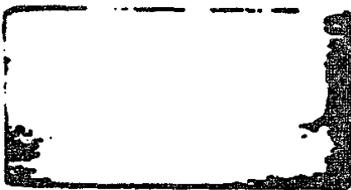
09/13/94 01200000124
FIRST SECURITY OF UTAH
800 N. CHARLES LIBERTY BLDG. S.C.

NO. 51 015

SE 04 14
120000001

09/13/94

012000001
B



F001141

4487 763 70 65

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE

TRANSFER FEE AMOUNT: \$ 30⁰⁰ (U.S. Dollars)

TRANSFER FROM ACCOUNT NUMBER:

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:

000, 381, 000.00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 09 / 19 / 94

Branch must hold until wired date unless otherwise stated

For Bank Use Only:

Wires in Process Account Funded by:

- A Customer paid with cash
B Customer paid with check
C Customer paid through account other than checking, savings, MIRA or WDDA. Other Account

TRANSFER FROM ACCOUNT:

Name: D. Forrest Greene
Address: [Redacted]
City/State/Zip: [Redacted]

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:

FOREIGN CURRENCY NAME:
FOREIGN CURRENCY AMOUNT:
U.S. DOLLAR EQUIVALENT:
For Beneficiary Only:
RATE:
REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT:
CONTRACT NUMBER:
FX TRADER CONTACT:

BENEFICIARY INFORMATION:

Beneficiary Name: Joseph P. Waldhottz & Eric A. Waldhottz
Primary Account Number: [Redacted]

BENEFICIARY BANK INFORMATION:

Beneficiary Bank ABA or Bank Identifier Code:
Beneficiary Bank Name: 1st Security Bank of Utah
ABA #: [Redacted]
City: 79 So. Main St, Salt Lake City, Utah
Country: USA

ADDITIONAL OPTIONAL INFORMATION:

Special information for Beneficiary:
Special information for Beneficiary Bank:

My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request.

Customer's signature: [Signature] Date: 09/19/94

Bank Originator's Signature: [Signature]

TAM ID: F001139
OF
Line Date:

Func: INV
Key: GP19940919ME-0000-000382-00

22-NOV-1994 10:32:23

0919L1QWFI4A001384 09191536 FTIL N 09191536 000382
124000012 121000248 1000 05564 381,000.00
W FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAH SALT LAKE CITY UT BNF=JOSEPH
H P.WALDHOLZ ENID G.WALDHOLZ/AC-0511007551

Source:FEDWI MT:100 Session: Senders Reference:05564
Date:09/19/94 Time:13:37 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:09/19/94 Cur:USD Amount: 381,000.00

Sender : M :WEEASA Order Cust:500 :
A/C://FW121000248 Code: A/C: Code:
WELLS FARGO BANK D FORREST GREENE FIRST SEC SLC
SAN FRANCISCO,CA

Send Corr :53 : Order Bank:52 :
A/C:// [REDACTED] Code:
Send/Rcv Bk: A :FSBUUSS5 A/C:// [REDACTED] Code:
FIRST SECURITY BANK OF UTAH Advice: [REDACTED] By: Info:

SALT LAKE CITY,UT
BBK Corr : : A/C: Code:
Enter Bank:56 : A/C: Code:
Acct With :57 : A/C: Code:
Beneficiary :M :JOWAJO A/C:// [REDACTED] Code:USDDDA01
JOSEPH P. WALDHOLZ Advice: By: Info:
Bank:

Details Of Payment:70: Bank to Bank Information:72:
ENID G WALDHOLZ

Details of Charges:71:BEN
Payment Type:FED RECEIVE Charge/fee :USD 11.00 By:BEN

Default Advice:
Type Code: 1000
Prod Code: CIR
Org Dept:
Fee Code: FC

WELL FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAH SALT LAKE CITY UT BNF=JOSEPH
H P.WALDHOLZ ENID G.WALDHOLZ/AC-0511007551

Debits		Credits	
A/C:0310310310	Code:USDNOST01	A/C:// [REDACTED]	Code:USDDDA01
09/19/94 Amt:USD	381,000.00	09/19/94 Amt:USD	380,989.00
DUE TO/DUE FROM FED NOSTRO		JOSEPH P. WALDHOLZ	
A/C: / / Amt:	Code:	A/C:// [REDACTED]	Code:USDPANL01
		09/19/94 Amt:USD	11.00
		Fee/ChargesUSD	

A/C: Code: A/C: Code:

Status: Completed FC modified BBK field modified
Server Output : SNSERV Date: 94/09/19 Time: 13:40:54
Info:HOSTSEQ: 199409190690
Approve Receive : TH Date: 94/09/19 Time: 13:40:49
Qualify Receive : TKC Date: 94/09/19 Time: 13:39:46
Repair Queue : FEDSRV Date: 94/09/19 Time: 13:37:01
Entry : FEDSRV Date: 94/09/19 Time: 13:37:01

Func: INV

FED RECEIVE

22-NOV-1995 12:04:2

Key: GP19941018MF-0000-000381-00

NEED FULL BNF IN DETAILS

USTY : 18-Oct-94 01:52 PM :

10185108153C003907 10181535 FT1B N 10181535 000361
124000012 021000018 1000 FIJ9410181255200 336,000.00

BK OF NYC /ORG=DEFORREST GREENE
FST SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR F
J9410181255200

Source:FEDWI MI:100 Session: Senders Reference:FIJ9410181255200
Date:10/18/94 Time:13:35 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:10/18/94 Cur:USD Amount: 336,000.00

Sender : M :MEYONE Order Cust:50B :
A/C://FW021000018 Code: A/C: Code:
BANK OF NEW YORK DEFORREST GREENEFST SEC BK UT SLC
NEW YORK

Send Corr :53 : Order Bank:57 :
Snd/Rcv Bk: A :ESBUUS55 A/C:// Code:
FIRST SECURITY BANK OF UTAH Advice: By: Info:
SALT LAKE CITY,UT

BK Corr : : A/C: Code:
Inter Bank:56 : A/C: Code:
Acct With :57 : A/C: Code:
Beneficiary :M :JOWAJO A/C: Code:USDDDA01
JOSEPH P. WALDHOLTZ Advice: By: Info:
Bank:

Details Of Payment:70: Bank to Bank Information:72:
JOSEPH AND ENID WALDHOLTZ X - OUR FIJ9410181255200

Details of Charges:71:BEN
Payment Type:FED RECEIVE Charge/fee :USD 11.00 By:BEN

Debit Advice:
Type Code: 1000
Prod Code: CTR
Org Dept:
Fee Code: FC

BK OF NYC /ORG=DEFORREST GREENE
FST SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR F
J9410181255200

Debits		Credits	
A/C:0310310310	Code:USDNOST01	A/C: [REDACTED]	Code:USDDDA01
10/18/94 Amt:USD	336,000.00	10/18/94 Amt:USD	335,989.00
DUE TO/DUE FROM FED NOSTRO		JOSEPH P. WALDHOLTZ	
A/C:	Code:	A/C: [REDACTED]	Code:USDPANL01
/ / Amt:		10/18/94 Amt:USD	11.00
		Fee/ChargesUSD	

A/C: Code: A/C: Code:

Status: Completed FC modified
Server Output : SNSERV Date: 94/10/18 Time: 14:41:40
Info:HOSTSER: 199410180776
Approve Receive : RD Date: 94/10/18 Time: 14:41:34



EAST/WEST SECURITIES CO.
 120 Montgomery St., Suite 993
 San Francisco, CA 94104
 (415) 397-3400
 FAX (415) 397-8073

From the Desk of: Leslie U. Harris
 Managing Partner



file

Greene

*I authorize the
 transfer of #3364
 to my daughter
 (Erin L. Walcholz) &
 son-in-law
 (Joseph P. Walcholz)
 from all the
 notes above.*

*Joseph P. Greene
 10/18/94*

415.397.3400

F001138



EAST WEST SECURITIES CO.
 20 Montgomery St., Suite 993
 San Francisco, CA 94104
 (415) 397-3400
 FAX (415) 397-8073

From the Desk of: Leslie U. Harris
 Managing Partner

10/21/94

East West Securities

Please, take from
 my a/c # [REDACTED]
 \$40000 to wire the
 amount to Federal
 Security Bank of Utah,
 ABA # 12400012
 79 S. Main Street
 Salt Lake City, Utah
 to the credit of
 Joseph F. Westlake &
 Trust for Westlake
 a/c # [REDACTED]

Sincerely,
 [Signature]

[REDACTED]

file



23204
 EAST/WEST SECURITIES CO. *file*
 120 Montgomery St., Suite 993
 San Francisco, CA 94104
 (415) 397-3400
 FAX (415) 397-8073

10/28/94

From the Desk of: Leslie U. Harris
 Managing Partner

East/West Securities Co.

I authorize the
 transfer of \$500,000.00
 from my a/c # [redacted]
 to Robert P. Warkate
 & Teri L. Warkate at
 1ST Security Bank of Utah
 a/c # [redacted]

D. Grant Jones

F001136

23204
file

11-08-94

To East/West Securities Co.

Please treat This as your
authority to take 59K
(69,000) from my a/c #
[REDACTED] and send

These funds to the credit
of Joseph & Eril Waldholtz
a/c # [REDACTED] at
First Security Bank of Utah
ASA # [REDACTED]

Thank you
D Forest Green

0107 105 10 66

Func: INU FED RECEIVE
Key: GP19941108ME-0000-000389-00

22-000-1875 13:33:3

PER HOGAN
TROY : 08-Nov-94 01:50 PM :

1108108153C004042 11081541 FTIB N 11081541 000389
124000012 021000018 1000 FTJ9411086375500 69,000.00
BK OF NYC /ORG=DEORREST GREENE
EST SEC BK UT SLC /CTR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007581//BBI=- OUR F
J9411086375500

Source:FEDWI MI:100 Session: Senders Reference:FTJ9411086375500
Date:11/08/94 Time:13:44 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:11/08/94 Cur:USD Amount: 69,000.00

Sender : M :NEYONE Order Cust:500 :
A/C://FW021000018 Code: A/C: Code:
BANK OF NEW YORK DEORREST GREENEEST SEC BK UT SLC
NEW YORK

Send Corr :53 : Order Bank:52 :
Snd/Rev BK: A :FSBUUS55 A/C:// Code:
FIRST SECURITY BANK OF UTAH Advice: By: Info:

SALT LAKE CITY,UT
BBK Corr : : A/C: Code:
Inter Bank:56 : A/C: Code:
Acct With :57 : A/C: Code:
Beneficiary :G :1111111111 A/C: Code:
ZZZZ Advice: By: Info:
Bank:

Details Of Payment:70: Bank to Bank Information:72:
JOSEPH AND ENID WALDHOLTZ

Details of Charges:71:BEN Charge/fee :USD 11.00 By:BEN
Payment Type:FED RECEIVE

Debit Advice:
Type Code: 1000
Prod Code: CTR
Org Dept:
Fee Code: FC

BK OF NYC /ORG=DEORREST GREENE
EST SEC BK UT SLC /CTR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007581//BBI=- OUR F
J9411086375500

Debits		Credits	
A/C:0310310310	Code:USDNOST01	A/C: [REDACTED]	Code:USDSUSP01
11/08/94 Amt:USD	69,000.00	11/08/94 Amt:USD	68,989.00
DUE TO/DUE FROM FED NOSTRO		ZZZZ	
A/C: / / Amt:	Code:	A/C: [REDACTED]	Code:USDPANL01
		11/08/94 Amt:USD	11.00
		Fee/ChargesUSD	
A/C:	Code:	A/C:	Code:

Status: Completed FC modified BNE field modified
Server Output : SNSERV Date: 94/11/08 Time: 13:51:16
Info:NOSTSEQ: 199411080712
Approve Receive : RD Date: 94/11/08 Time: 13:51:12



EAST WEST SECURITIES CO.

120 Montgomery St., Suite 993

San Francisco, CA 94104

(415) 397-3400

FAX (415) 397-8073

file

From the

[Redacted]

11-14-94

To East West
Securities Co.

Please wire
\$200,000 to Joseph P.
Waldholtz to Eric
P. Waldholtz 1st
Security Bank of Utah
Salt Lake City, Utah
ABA # [Redacted]
The Waldholtz's do
at 1st Security
Bank of Utah at [Redacted]

Sincerely
D. [Redacted]

F001134

0577 453 70 60

Func: INU ED RECEIVE
Key: GP19941114MF-0000-000502-00

22-NOV-1994 13:24:19

BNE
:RUSTY : 14-Nov-94 02:08 PM :

1114B1Q8153C006213 11141601 FTIB N 11141601 000502
124000012 021000018 1000 FTJ9411141257100 200,000.00

BK OF NYC /ORG=DEORREST GREENE
FST SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR FT
J9411141257100

Source:FEDWI MT:100 Session: Senders Reference:FTJ9411141257100
Date:11/14/94 Time:14:04 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:11/14/94 Cur:USD Amount: 200,000.00
Order Cust:50D :

Sender : M :NEONE
A/C://FW021000018 Code: A/C: Code:
BANK OF NEW YORK DEORREST GREENEFST SEC BK UT SLC
NEW YORK

Send Corr :53 : Order Bank:53 :
Snd/Rev Bk: A :FSBUSS5 A/C://E [REDACTED] 2 Code:
FIRST SECURITY BANK OF UTAH Advice: By: Info:

SALT LAKE CITY,UT
BBK Corr : : A/C: Code:
Inter Bank:56 : A/C: Code:
Acct With :57 : A/C: Code:
Beneficiary :M :JOWAJO A/C:0 [REDACTED] Code:USDDDA01
JOSEPH P. WALDHOLTZ Advice: By: Info:
Bank:

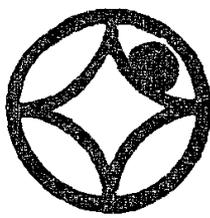
Details Of Payment:70: Bank to Bank Information:72:
JOSEPH AND ENID WALDHOLTZ JOSEPH AND ENID WALDHOLTZ
Details of Charges:71:BEN
Payment Type:FED RECEIVE Charge/fee :USD 11.00 By:BEN
Debit Advice:

Type Code: 1000
Prod Code: CIR
Org Dept:
Fee Code: FC

BK OF NYC /ORG=DEORREST GREENE
FST SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR FT
J9411141257100

Debits Credits
A/C:0310310310 Code:USDNOST01 A/C:0 [REDACTED] Code:USDDDA01
11/14/94 Amt:USD 200,000.00 11/14/94 Amt:USD 199,989.00
DUE TO/DUE FROM FED NOSTRO JOSEPH P. WALDHOLTZ
A/C: Code: A/C:0 [REDACTED] Code:USDPANL01
/ / Amt: 11/14/94 Amt:USD 11.00
Fee/ChargesUSD
A/C: Code: A/C: Code:

Status: Completed FC modified
Server Output : SNSERV Date: 94/11/14 Time: 14:26:30
Info:HOSTSER: 199411141023
Approve Receive : JEC Date: 94/11/14 Time: 14:26:25



EAST/WEST SECURITIES CO.

Suite 993
120 Montgomery St.
San Francisco, CA 94104
(415) 397-3400
FAX (415) 397-8073

file

Member
National Association of Securities Dealers
Securities Investor Protection Corporation

To: East/West Securities Co. 1/9/95
RE: [REDACTED]

Please wire \$275,000 to:

1st Security Bank of Utah
Salt Lake City UT

ABA # [REDACTED]

Acct # [REDACTED]

Joseph P. Waldholtz &
Enid G. Waldholtz

D. Forrest Greene
D. Forrest Greene

F001133

2-2-75
file
4/11/75
This letter will authorize the
wire transfer of \$408,000.⁰⁰ to:

1st Security Bank of Utah
Salt Lake City UT

ABA # [REDACTED]

For final credit to:

Joseph P. Waldholtz & Enid G. Waldholtz

Acct# [REDACTED]

Sincerely,

D. Forrest Greene

D. Forrest Greene

Acct# [REDACTED]

Func: INU FED RECEIVE 24-NOV-1995 10:41:3
Key: GP19950411ME-0000-000425-00

0411B108153C003919 04111330 FT1B N 04111330 000425
124000012 021000018 1000 FTJ9504110908700 408,000.00
JK OF NYC /ORG=DFORREST GREENE
FST SEC BK UT SLC /CTR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR F
J9504110908700

Source: FEDWI HT:100 Session: Senders Reference: FTJ9504110908700
Date: 04/11/95 Time: 13:30 Seq: Customer Reference:
Priority: N Del Mon: Unit: System Reference:
Value: 04/11/95 Cur: USD Amount: 408,000.00

Sender : M : NEYONE Order Cust: 50D :
A/C: //EW021000018 Code: A/C: Code:
BANK OF NEW YORK DFORREST GREENEFST SEC BK UT SLC
NEW YORK

Send Corr : 53 : Order Bank: 52 :
Snd/Rev Bk: A : FSBUSSS A/C: // [REDACTED] Code:
FIRST SECURITY BANK OF UTAH Advice: [REDACTED] By: Info:
SALT LAKE CITY, UT

RBK Corr : : A/C: Code:
Inter Bank: 56 : A/C: Code:
Acct With : 57 : A/C: Code:
Beneficiary : M : JOWAJO A/C: [REDACTED] Code: USDDDA01
JOSEPH P. WALDHOLTZ Advice: [REDACTED] By: Info:
Bank:

Details Of Payment: 70: Bank to Bank Information: 72:
- OUR FTJ9504110908700

Details of Charges: 71: BEN Charge/fee : USD 12.00 By: BEN
Payment Type: FED RECEIVE
Debit Advice:
Type Code: 1000
Prod Code: CTR
Org Dept:
Fee Code: EC

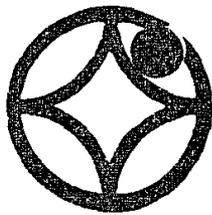
BK OF NYC /ORG=DFORREST GREENE
FST SEC BK UT SLC /CTR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR F
J9504110908700

Debits		Credits	
A/C: 0310310310	Code: USDNOST01	A/C: 0 [REDACTED]	Code: USDDDA01
04/11/95 Amt: USD	408,000.00	04/11/95 Amt: USD	407,988.00
DUE TO/DUE FROM FED NOSTRO		JOSEPH P. WALDHOLTZ	
A/C: / /	Amt:	A/C: [REDACTED]	Code: USDPANLO1
		04/11/95 Amt: USD	12.00
		Fee/Charges USD	
A/C:	Code:	A/C:	Code:

Status: Completed FC modified
Server Output : SNSERV Date: 95/04/11 Time: 13:36:04
Info: HOSTSEQ: 199504110786
Approve Receive : TJH Date: 95/04/11 Time: 13:35:54
Approve Receive : FEDSRV Date: 95/04/11 Time: 13:30:06
Entry : FEDSRV Date: 95/04/11 Time: 13:30:06

Output 1 ER/910 Status: Completed Date: 95/04/11 Time: 13:36:05

5504110908700



EAST/WEST SECURITIES CO.

Suite 993

120 Montgomery St.
San Francisco, CA 94104

(415) 397-3400

FAX (415) 397-8073

Member:

National Association of Securities Dealers
Securities Investor Protection Corporation

File

To East/West Securities

7/18/95

Wire \$13,000 from my account to:

Riggs Nat'l Bank

Washington DC

ABA #

For credit to Acct #

Antique Contemporary Leasing

Sincerely,
D. Forrest Greene

D. Forrest Greene

Acct #

F001131

To: East/West Securities Co.
and U.S. Clearing Corp.

Acct # [REDACTED] file

Please wire money as follows:

Wire \$250,000.00 to:

Nations Bank
Washington DC

ABA [REDACTED]

For credit to

Acct # [REDACTED]

Joseph P. or Enid Waldholtz

and wire \$7426.00 to:

Ocean City Home Savings & Loan
Ocean City NJ

ABA # [REDACTED]

For credit to:

Acct # [REDACTED]

Grace Realty Co.

F001130

x D. Forrest Greene
D. Forrest Greene

23200
file
Oct. 12, 1995

East/West Securities Co

Wire \$ 308,000 from
my account to -

First Security Bank of Utah
Salt Lake City, Utah

ABA # [REDACTED]

To credit to -

Joseph P. Waldholtz (Waldholtz)
Eric J. Waldholtz (Waldholtz)

a/c# [REDACTED]

Sincerely
D. Grant Green
a/c# [REDACTED]

S

Gregory G. Skordas (3865)
WATKISS DUNNING & WATKISS, P.C.
Broadway Centre, Suite 800
111 East Broadway
Salt Lake City, Utah 84111-2304
Telephone: (801) 530-1500
Facsimile: (801) 530-1520
Attorneys for Defendant

**In The Third Judicial District Court
Salt Lake County, State Of Utah**

<p>D. FORREST GREENE, Plaintiff, v. JOSEPH P. WALDHOLTZ, Defendant.</p>	<p>ANSWER Civil No. 960903017CV Judge Anne M. Stirba</p>
---	---

The Defendant, Joseph P. Waldholtz, by and through his attorney Gregory G. Skordas and pursuant to Rule 12 of Utah Rules of Civil Procedure hereby responds to the Plaintiff's Complaint on file herein and alleges as follows:

1. Defendant states that he is without knowledge sufficient to admit or deny the allegations contained in paragraph 1 of the Plaintiff's Complaint, and therefore denies the same.
2. Defendant states that he is presently residing in Pennsylvania but denies the remaining allegations contained in paragraph 2 of Plaintiff's Complaint.
3. Defendant denies the allegations contained in paragraph 3 of Plaintiff's Complaint.
4. Defendant denies the allegations contained in paragraph 4 of Plaintiff's Complaint.

5. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

6. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

7. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

8. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him

regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

9. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

10. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

FIRST AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the person of the Defendant. The acts complained of herein did not occur in the jurisdiction of this Court.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to join an indispensable party, to wit Enid Greene.

WHEREFORE, having fully answered Plaintiff's Complaint on file herein Defendant respectfully requests that the same be dismissed with prejudice and that he receive his costs for defending this action.

DATED this 6 day of June, 1996.

WATKISS DUNNING & WATKISS, P.C.



Gregory G. Skordas

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 1996, I hand delivered a true and correct copy of the foregoing ANSWER, to the following:

Brent V. Manning
Holme Roberts & Owen
111 East Broadway, Suite 1100
Salt Lake City, UT 84111

Christa Fred
Watkiss Dunning & Watkiss, P.C.

(T)

FILED

JUN 27 8 11 50

THIRD JUDICIAL DISTRICT COURT

BY _____
DEPUTY CLERK

HOLME ROBERTS & OWEN LLC
Brent V. Manning #2075
111 East Broadway, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 521-5800

Attorneys for Plaintiff, D. Forrest Greene

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

<hr/>		
D. FORREST GREENE,)	
)	
Plaintiff,)	
)	
v.	)	MEMORANDUM
	)	IN SUPPORT OF
	)	MOTION FOR
	)	SUMMARY JUDGMENT
JOSEPH P. WALDHOLTZ,)	
)	
Defendant.	)	Civil No. 960903017
)	
	)	Judge Anne M. Stirba
<hr/>		

Pursuant to Rule 4-501(2)(a), plaintiff D. Forrest Greene submits the following Memorandum in Support of his Motion for Summary Judgment. Plaintiff respectfully requests that the Court enter Summary Judgment in his favor because there is no genuine issue of material fact and plaintiff is entitled to judgment as a matter of law.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff is presently a resident of Salt Lake County, State of Utah. Affidavit of D. Forrest Greene ("Greene Affidavit") ¶ 1.

2. Defendant Joseph P. Waldholtz ("Waldholtz") was a resident of Pennsylvania at the time the Complaint was filed. See Answer ¶ 2.

3. Venue in this district is appropriate since plaintiff is a resident of Salt Lake County and all or part of this cause of action arose in this County.

4. This Court has jurisdiction over defendant pursuant to Utah Code Ann. § 78-27-24 (1995) because defendant was a resident of the State of Utah at the time this cause of action arose. Defendant conducted business in the State of Utah from which this cause of action arose and defendant caused injury to plaintiff in Utah in part during the time plaintiff was a resident of Utah.

5. Beginning on January 21, 1994 and continuing through October 12, 1995, plaintiff loaned to defendant, or paid obligations of the defendant at defendant's request, amounts totaling \$3,987,426.00 (the "Loan Amount"). A summary of the checks and wire transfers from plaintiff to, or for the benefit of Waldholtz, is attached to the Complaint as Exhibit "A." Documents evidencing each transfer are attached to the Complaint as Exhibit "B." Greene Affidavit ¶ 2-8.

6. At the time the plaintiff loaned money to, or paid obligations for the benefit of defendant, defendant was married to plaintiff's daughter and occupied a position of trust and confidence with plaintiff giving rise to fiduciary duties by defendant to plaintiff. Greene Affidavit ¶ 9.

7. Defendant exploited his close family relationship, his position of trust and confidence and breached his fiduciary duty to plaintiff by inducing him to advance the Loan Amount to

defendant based upon, but not limited to, the following material misrepresentations, all of which were false when made:

- a. That he was the beneficiary of a Waldholtz Family Trust which had a value of approximately \$325 million (with substantial monthly income for his benefit).
- b. That the money from the Waldholtz Family Trust was temporarily unavailable to Waldholtz but that he would shortly repay all borrowed funds with money he would receive from the Waldholtz Family Trust.
- c. That his mother had been the victim of a "telemarketing scheme" which caused her to "overspend" or overdraft one or more of her accounts. Money was not available from the Waldholtz Family Trust to rectify this because it was "tied up" and due to his parents' divorce, his mother was barred from receiving trust funds. The money borrowed in January and February 1994 would be used to discharge these obligations;
- d. That his mother had been duped by a con-man who was then in jail and that for the same reasons this too could not then be rectified with the Waldholtz Family Trust money and that the amount borrowed would be used to discharge these obligations.

Greene Affidavit ¶¶ 10-12.

8. In addition, at approximately the time of Waldholtz's marriage to Mr. Greene's daughter, Enid Greene, (August 1993), Mr. Waldholtz purported to have given Enid Greene a gift of approximately \$5 million which gift in fact had not occurred. Greene Affidavit ¶¶ 11-12.

9. Waldholtz made the above misrepresentations repeatedly during the period from January 1994 through October 12, 1995. These misrepresentations were made in person in Salt Lake City and by telephone from the defendant in Washington, D.C. and/or Salt Lake City to the plaintiff.

10. Plaintiff relied on the truthfulness of the foregoing representations when he loaned defendant the Loan Amount. Had plaintiff known that the foregoing representations were false, that Waldholtz did not intend to use the money for the purpose stated and that Waldholtz had no ability to repay the money plaintiff loaned to him, plaintiff would never have loaned any money to Waldholtz. Greene Affidavit ¶ 12.

11. As a result of Waldholtz's fraudulent misrepresentations and breach of fiduciary duty plaintiff has been damaged in the amount of \$3,987,426.00. Greene Affidavit ¶ 8, 12.

12. Waldholtz has refused to respond to allegations of fraud and breach of fiduciary duty, instead asserting his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah. Answer ¶¶ 5-10.

INTRODUCTION

Defendant abused his fiduciary relationship as plaintiff's former son-in-law and fraudulently induced plaintiff D. Forrest Greene to advance him \$3,987,426.00 from January 21, 1994 through October 12, 1995. Mr. Greene trusted defendant and materially relied on defendant's misrepresentation of the purpose of the loans and his ability to repay them. Defendant does not deny these allegations, but refuses to respond, claiming his rights under the Fifth Amendment of the United States Constitution on the ground that any statement made by him regarding this matter may tend to

incriminate him in the criminal proceedings and investigations presently pending against him. His refusal, however, does not preclude this Court from considering the clear evidence of defendant's misrepresentation and fraud. Defendant's refusal to respond gives rise to an adverse inference of liability. The Court should grant plaintiff an order of summary judgment based on the adverse inference from defendant's refusal to respond and the uncontested evidence of fraudulent misrepresentation and breach of fiduciary duty.

ARGUMENT

I. This Court has Proper Jurisdiction Over the Defendant

Defendant's answer contests jurisdiction, however, this Court has jurisdiction under the Utah Long Arm Statute. The Utah Code provides broad jurisdiction "to ensure maximum protection to citizens of this state," "deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states." Utah Code Ann. § 78-27-22 (1992). Utah courts have jurisdiction over claims arising from "the transaction of any business within this state" or "the causing of any injury within this state whether tortious or by breach of warranty." Utah Code Ann. § 78-27-24(1), (3) (1995). Each of these provisions authorizes jurisdiction over the defendant.

Defendant transacted business within Utah from which this cause of action arose. From January 21, 1994 through October 12, 1995, defendant visited the plaintiff in Salt Lake City and made phone calls to the plaintiff in San Francisco from Salt Lake City. During these calls and visits, he committed the fraudulent misrepresentations listed in "Statement of Undisputed Material Facts" ¶ 7 to induce the plaintiff to advance him the Loan Amount. Greene Affidavit ¶¶ 10-11.

Defendant also tortiously caused injury in this state. The defendant fraudulently misrepresented the facts listed in "Statement of Undisputed Material Facts" ¶ 7 to the plaintiff in Salt Lake in person. Greene Affidavit ¶¶ 10-12. Since January 1, 1995 plaintiff has been a resident of Salt Lake City, Greene Affidavit ¶ 1, and has been tortiously damaged by defendant's fraudulent misrepresentations and breach of fiduciary duty in the amount of \$3,987,426.00. See Greene

Affidavit ¶¶ 2, 8. Telephone calls initiated by an out-of-state defendant and causing tortious injury in this state alone have been found to be sufficient basis for jurisdiction and meet the requirements of due process. See Berrett v. Life Ins. Co. of the Southwest, 623 F.Supp. 946, 948-51 (D. Utah 1985). Here, the defendant not only committed fraudulent misrepresentation and breach of fiduciary duty in person in Utah, but also while he lived in or visited Utah. Clearly, Utah courts have sufficient basis for jurisdiction over the defendant.

Venue in this district is also appropriate because all or part of this cause of action arose in this County, as described above, and because plaintiff is a resident of Salt Lake County. Green Affidavit ¶ 1; see Utah Code Ann. § 78-13-7 (1992). The Utah Code provides that venue is appropriate "in the county in which the cause of action arises" or, "[i]f none of the defendants resides in this state, such action may be commenced and tried in any county which the plaintiff may designate in his complaint." Utah Code Ann. § 78-13-7 (1992). As defendant was a resident of Pennsylvania at the time the Complaint was filed, "Statement of Undisputed Material Facts" ¶ 2, venue is appropriate in Salt Lake both because all or part of the events giving rise to the cause of action happened in Salt Lake County and because plaintiff designated Salt Lake County in his Complaint. Complaint ¶ 3; see Utah Code Ann. § 78-13-7 (1992).

II. Defendant Committed Fraudulent Misrepresentation and Breached his Fiduciary Duty in Obtaining Advances from Plaintiff

The facts establishing defendant's fraudulent misrepresentation and breach of fiduciary duty in obtaining \$3,987,426.00 from plaintiff are uncontested. See "Statement of Undisputed Material Facts" ¶¶ 5-12. As there is no genuine issue of material fact, summary judgment should be ordered

where plaintiff is entitled to judgment as a matter of law. Utah R. Civ. P. 56. Based on these undisputed facts, plaintiff is entitled to judgment as a matter of law on defendant's breach of fiduciary duty and fraud.

Defendant's fiduciary duty arose from the relationship of trust he enjoyed with plaintiff as plaintiff's son-in-law at the time of the misrepresentation and fraud. The Utah Supreme Court has explained that a fiduciary or confidential relationship may be created "by circumstances where equity will imply a higher duty in a relationship because the trusting party has been induced to relax the care and vigilance he would ordinarily exercise." Hal Taylor Associates v. Unionamerica, Inc., 657 P.2d 743, 749 (Utah 1982); see also First Security Bank, N.A. v. Banberry Development Corp., 786 P.2d 1326, 1333 (Utah 1990). In loaning money to his trusted son-in-law, the plaintiff did not exercise the care and vigilance he would have in making a loan to a stranger. See Greene Affidavit ¶¶ 9, 12. Defendant took advantage of plaintiff's trust and confidence, their family relationship, and plaintiff's ignorance of defendant's financial affairs in inducing plaintiff to make advances based on material misrepresentations. See Greene Affidavit ¶¶ 9-12. Defendant thus abused plaintiff's trust and confidence and breached his fiduciary duty.

In addition to breaching his fiduciary duty, the defendant committed fraud. The Utah Supreme Court has set forth nine elements of fraud:

- (1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other part to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and

was thereby induced to act (9) to that party's injury and damages. (citations omitted)

Educators Mut. Ins. Ass'n v. Allied Property and Casualty Ins. Co., 890 P.2d 1029, 1032 (Utah 1995).

Defendant made the false representations concerning the material facts listed in "Statement of Undisputed Material Facts" ¶¶ 5-12 with a knowledge of their falsity in order to induce plaintiff to advance him money and pay off his obligations. See Greene Affidavit ¶¶ 10-11. Plaintiff, acting in ignorance of the falsity of the claims, materially and detrimentally relied on the defendant's misrepresentations and advanced him an amount not less than \$3,987,426.00. See Greene Affidavit ¶¶ 2, 8, 12. Defendant's conduct thus meets all the required elements of fraud and breach of fiduciary duty.

III. The Court Should Draw an Adverse Inference from Defendant's Refusal to Testify and Enter Summary Judgment in Favor of Plaintiff and Against Defendant

Rather than respond to plaintiff's allegations of fraud and breach of fiduciary duty, defendant has invoked his rights under the Fifth Amendment to the United States Constitution and refused to respond to Mr. Greene's substantive allegations. The Court should draw an adverse inference from defendant's refusal to testify. Although defendant has a right to invoke the Fifth Amendment and refuse to respond on the grounds that his statement may tend to incriminate him in criminal proceedings and investigations presently pending against him, such refusal entitles this Court to draw an adverse inference from his refusal to testify.

In Baxter v. Palmigiano, 425 U.S. 308 (1976), a prison inmate refused to testify in a prison disciplinary proceeding. The inmate's refusal, together with other evidence, led to punitive sanctions

by the prison's Disciplinary Board. On appeal, the Supreme Court upheld "the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." 425 U.S. at 318.

Thus, although defendant in this civil case can claim the Fifth Amendment and refuse to deny his acts of misrepresentation and breach of fiduciary duty, he cannot escape the adverse inference of liability that his refusal entails.¹

The Utah federal district court clearly explained the principle of adverse inference in Hughes Tool Co. v. Meier, 489 F.Supp. 354 (D. Utah 1977). In Meier, the defendant invoked the Fifth Amendment to justify his refusal to provide a court-ordered accounting. The court granted a final judgment against the defendant, holding:

The adverse inference that may be drawn under these circumstances, from [defendant's] failure to answer, strengthens the probative value of plaintiff's evidence, without putting words in defendant's mouth in violation of his Fifth Amendment rights.

489 F.Supp. at 374. The court further explained that to deny a final judgment in such a case would "produce entirely unacceptable results, in that a plaintiff in a civil matter could be deprived of his right to a judgment whenever a defendant invoked the Fifth Amendment privilege in an action where he has the burden to answer." 489 F.Supp. at 375.

¹The Tenth Circuit has described the effect of adverse inference in this way: "The individual petitioners unquestionably may assert a Fifth Amendment privilege in this civil case and refuse to reveal information properly subject to the privilege, in which event they may have to accept certain bad consequences that flow from that action." Mid-America's Process Service v. Ellison, 767 F.2d 684, 686 (10th Cir. 1985) (citations omitted).

The Utah Supreme Court has held that an adverse inference from defendant's invocation of the Fifth Amendment, along with other evidence, is sufficient basis to grant summary judgment. In Gerard v. Young, 432 P.2d 343 (Utah 1967), summary judgment was awarded to the plaintiff when the defendant originally denied the allegations of illegal gambling but then claimed the Fifth Amendment and refused to answer in a deposition. The Supreme Court has cited Gerard for the proposition that

where, on a motion for summary judgment, a plaintiff establishes through independent, uncontroverted evidence that he is entitled to summary judgment, a defendant cannot avoid a summary judgment by claiming the privilege against self-incrimination.

First Federal Savings & Loan Association v. Schamanek, 684 P.2d 1257, 1268 (Utah 1984).

Here, plaintiff has provided uncontroverted evidence of defendant's repeated misrepresentations and breaches of fiduciary duty. This evidence is strengthened by the adverse inference of liability from defendant's refusal to answer. Based on the undisputed evidence, this Court should, as a matter of law, vindicate plaintiff's right to a judgment and grant summary judgment for the plaintiff.

IV. Enid Greene Is Not an Indispensable Party

Defendant alleges that plaintiff's Complaint failed to join Enid Greene as an indispensable party, but Ms. Greene is neither necessary nor indispensable to this action. See Answer, 3d Affirmative Defense; Utah R. Civ. P. 19. Determining indispensability under Rule 19 requires a two-step process: first assessing whether the party is necessary under 19(a) and then considering the question of indispensability raised in 19(b). See Utah R. Civ. P. 19; Landes v. Capital City Bank, 795 P.2d 1127, 1130 (Utah 1990).

Rule 19(a) provides two general factors for determining whether a party is necessary:

(1) if in [the party's] absence complete relief cannot be accorded among those already parties, or (2) [the party] claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Utah R. Civ. P. 19. The Utah Supreme Court summarized Rule 19(a) in defining a necessary party as "one whose presence is required for a full and fair determination of his rights as well as of the rights of the other parties to the suit." Cowen and Co. v. Atlas Stock Transfer Co., 695 P.2d 109, 114 (Utah 1984) (citations omitted).

In this action for defendant's fraud and breach of fiduciary duty, the interest of Ms. Greene is not implicated, nor is her presence necessary to determine the rights of plaintiff and defendant. Plaintiff can obtain complete relief for defendant's fraud and breach of duty from defendant without joining Ms. Greene. Ms. Greene's absence will not prejudice her nor any of the parties to the action.²

As Ms. Greene is not a necessary party, further analysis is unnecessary. "Only if we first find the [third party] to be a necessary party can we properly proceed to the 19(b) question of indispensability." Landes v. Capital City Bank, 795 P.2d 1127, 1130 (Utah 1990). Defendant's

²Defendant's allegation that Ms. Greene is an indispensable party is completely baffling. Plaintiff is here alleging defendant's tortious acts. Even if Ms. Greene were a joint tortfeasor, she would only be a permissive party, not a necessary one. See Fed. R. Civ. P. 19 advisory committee's note; Jean F. Rydstrom, Annotation, Who Must Be Joined in Action as Person "Needed for Just Adjudication" Under Rule 19(a), Federal Rules of Civil Procedure 22 A.L.R. Fed. 765, 836-37 § 17 (1975).

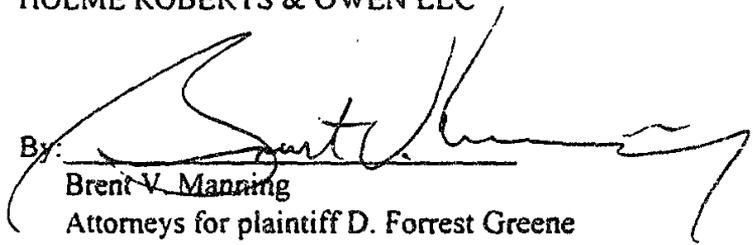
allegation that Ms. Greene is an indispensable party is without merit, as she is not even a necessary party to the action.

CONCLUSION

This Court has proper jurisdiction over the defendant through his transaction of business and creation of tortious injury in Utah. Defendant committed breach of fiduciary duty and fraud in inducing plaintiff, his father-in-law, to advance him \$3,987,426.00. Defendant's failure to deny these allegations and invocation of the Fifth Amendment give rise to an adverse inference of his liability. Based on the evidence of fraud and breach of fiduciary duty combined with this adverse inference, plaintiff respectfully requests that the Court enter an order of Summary Judgment in favor of plaintiff.

DATED this 27th day of June, 1996.

HOLME ROBERTS & OWEN LLC

By: 

Brent V. Manning

Attorneys for plaintiff D. Forrest Greene

HOLME ROBERTS & OWEN LLC
Brent V. Manning #2075
111 East Broadway, Suite 1100
Salt Lake City, Utah 84111
Telephone: 521-5800

FILED
199 JUN 27 AM 11 30
THIRD JUDICIAL DISTRICT COURT
BY _____
DEPUTY CLERK



Attorneys for Plaintiff, D. Forrest Greene

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

D. FORREST GREENE,)	
)	
Plaintiff,	)	AFFIDAVIT OF
	)	D. FORREST GREENE
v.)	
)	
JOSEPH P. WALDHOLTZ,)	
	)	Civil No. 960903017
Defendant.)	
	)	Judge Anne M. Stirba

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, D. Forrest Greene, of legal age, having been duly sworn, and having personal knowledge of the facts asserted herein, certify and state as follows:

1. I am now a resident of Salt Lake County, State of Utah.
2. From January 21, 1994 through October 12, 1995, I made loans to

Joseph P. Waldholtz and paid his obligations at his request through checks and wire transfers

in the total amount of not less than \$3,987,426.00, as summarized in Complaint Exhibit "A." Complaint Exhibit "A" is an accurate summary of my advances to or for the benefit of Waldholtz, with the exception that the transfer on 7/7/94 of \$10,000.00 to Malcolm Shannon was through a personal check, not a wire transfer as listed.

3. True and correct copies of checks and documents authorizing or evidencing wire transfers I made to Joseph P. Waldholtz or for his benefit are compiled in Complaint Exhibit "B."

4. I authenticate the handwriting and/or signature as mine in the following documents in Complaint Exhibit "B": control numbers F001153, F001146, F001145, F001144, F001143, F001142, F001140, F001139, F001138, F001137, F001136, F001135, F001134, F001133, F001132, F001131, F001130, and F001129 and the checks dated 7/7/94 (Wells Fargo Bank, \$10,000) and 8/25/94 (Wells Fargo Bank, \$55,000).

5. I authenticate the following wire transfer forms, contained in Complaint Exhibit "B," as authentic business records which I received from the indicated brokerage confirming or authorizing the transfer of funds: control numbers F001152, F001144, F001143, F001142, F001139.

6. The wire transfer invoice records reflect charges to my account in the amounts indicated on the record: these invoices are included in Complaint Exhibit "B" immediately following documents with control numbers F001144 (invoice dated 7/7/94), F001143 (invoice dated 8/8/94), F001142 (invoice dated 9/2/94), F001139 (invoices dated

9/19/94 and 10/18/94), F001135 (invoice dated 11/8/94), F001134 (invoice dated 11/14/94), F001133 (invoice dated 1/9/95), and F001132 (invoice dated 4/11/95).

7. Funds were removed from my accounts pursuant to the following requests for wire transfers, copied in Complaint Exhibit "B": control numbers F001153, F001145, F001144, F001143, F001142, F001139, F001138, F001137, F001136, F001135, F001134, F001133, F001132, F001131, F001130, and F001129.

8. As a result of and as reflected by the checks, authorizations, invoices, and requests identified in ¶¶ 4-7, a total of \$3,987,426.00 was transferred from my accounts to accounts designated by defendant Joseph P. Waldholtz.

9. During this period from January 21, 1994 through October 12, 1995, Joseph P. Waldholtz was married to my daughter, Enid Greene, and I trusted him as a member of the family.

10. From January 1994 through October 12, 1995, Joseph P. Waldholtz repeatedly called me from Washington, D.C. and/or Salt Lake City, and visited me in Salt Lake City. During these calls and visits he persuaded me to loan him money and pay his obligations based on the following misrepresentations, among others:

a. That he was the beneficiary of a Waldholtz Family Trust worth approximately \$325 million and that he received a substantial monthly income from this trust.

b. That he was temporarily unable to have access to funds from the Waldholtz Family Trust due to litigation with other family members.

c. That he would soon repay all of the money he borrowed from me with funds he would receive from the Waldholtz Family Trust.

d. That he would use the money he borrowed in January and February 1994 to assist his mother, who overspent one of her accounts as a victim of a telemarketing scheme, and that the Waldholtz Family Trust could not be used to help his mother because it was tied up and as a result of his parents' divorce, his mother was barred from receiving trust funds. The money borrowed in January and February 1994 would be used to discharge these obligations.

e. That he would use the money he borrowed to help his mother when she was tricked by a convicted con-man, because for the above reasons the Waldholtz Family Trust could not be used to assist her.

11. In addition, I learned either from Joe Waldholtz or from my daughter Enid that Joe Waldholtz had purportedly given her a gift of approximately \$5 million, approximately at the time of their marriage.

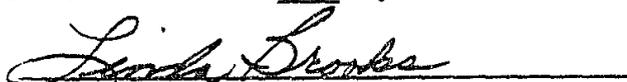
12. None of the claims listed in paragraphs 10 and 11 were true at the time they were communicated to me. I trusted Joe Waldholtz and did not know that he was lying to me and to my daughter during that period. Had it not been for the close family relationship we then enjoyed, I would not have relied on Waldholtz's statements, without

outside verification. If I had known that Joseph P. Waldholtz was lying about these claims, about why he wanted the money, or about his ability to repay the loans, I would not have advanced the money I did.

Executed this 26th day of June, 1996, at Salt Lake City, Utah.


D. Forrest Greene

SUBSCRIBED AND SWORN TO before me this 26th day of June, 1996.


Notary Public
Residing at:

My Commission Expires:
Sept. 5, 1999



(U)

JUDGEMENT

FILED DISTRICT COURT
Third Judicial District

JUL 25 1996

By [Signature]
SALT LAKE COUNTY
District Court

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

D. FORREST GREENE,
Plaintiff,

v.

JOSEPH P. WALDHOLTZ,
Defendant.

PROPOSED ORDER GRANTING
SUMMARY JUDGMENT IN FAVOR
OF PLAINTIFF AND AGAINST
DEFENDANT

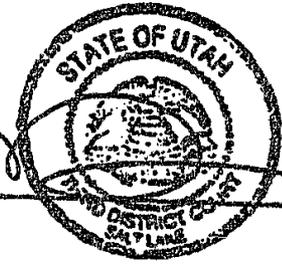
Civil No. 960903017
Judge Anne M. Stirba

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This matter came before the Court on plaintiff's Motion for Summary Judgment which was filed and served by hand delivery on June 27, 1996. Defendant Joseph P. Waldholtz failed to file any opposition to said Motion. The Court, after having reviewed the pleadings, plaintiff's Motion and supporting Affidavit, hereby enters its Order granting summary judgment in favor of plaintiff and against defendant in the amount of \$3,987,426.00, plus plaintiff's costs of suit herein.

DATED this 25th day of July, 1996.

[Signature]
Honorable Anne M. Stirba
Judge, Third District Court



00700796 19.09 FAX 8015219639

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered the foregoing Proposed Order Granting Summary Judgment in Favor of Plaintiff and Against Defendant, this 18th day of July, 1996, to:

Gregory G. Skordas
WATKISS DUNNING & WATKISS, P.C.
Broadway Centre, Suite 800
111 East Broadway
Salt Lake City, UT 84111

Paul Johnson



Waidholtz Lost Job Over Finances in '92

Sources Say Husband of Congresswoman Was Fired by RNC Member

By Sergio F. Kovalevich
and Thomas Finath
Washington Post Staff Writers

Joseph Waidholtz, the missing husband of Rep. Enid Waidholtz (R-Utah), was fired as a personal aide to Republican National Committee chairman Elsie H. Hillman in 1992 over a dispute concerning more than \$100,000 of Hillman's own money that he allegedly spent to finance a lavish lifestyle, including gifts to his wife-to-be, according to sources close to the situation.

Meanwhile, a former campaign aide said yesterday that Enid Waidholtz was contacted by staff members about financial irregularities during her 1994 bid for Congress, but that she acted only after the aides sought outside help from some Republican leaders.

"For Enid to say she had no knowledge is disingenuous at best," said Steve Taggart, who left the campaign over the financial discrepancies. "She was warned there was a substantial [Federal Election Commission] problem."

Former campaign workers said their paychecks and those of paid consultants routinely bounced and they had to complain to Joseph Waidholtz, who was treasurer, to get their money.

The Waidholtz money mess, which came to national attention this week, has been a long-running saga in Utah and appears to have chipped away at the congresswoman's once formidable political support. Endless news stories—on topics ranging from unpaid credit card and jewelry bills to mysterious admissions of cash loans for political campaigns—have tried the patience of GOP leaders. There is now a federal investigation into her and her husband's finances and an arrest warrant has been issued for Joseph Waidholtz, who disappeared last Saturday from National Airport. His account to the couple's joint bank accounts has been cut off in recent days and on Tuesday the congresswoman filed for divorce.

"A lot of people are at the end," said Rita Behrman, executive director of the Utah Republican Party. "The only thing that can possibly save her is that people who even worked for her had no idea the problem was this deep."

Behrman and others said Waidholtz must make a credible explanation if she is going to salvage her once shining political career. "Everyone is holding their breath awaiting her explanation," Behrman said, but she added, "I don't know too many

people who are putting money on her horse."

Federal investigators also want to know the source of \$1.8 million in campaign money that paid for the last-minute advertising blitz that propelled Enid Waidholtz into office. Justice Department sources said she has told them her husband claimed the funds came from a legal sweep of assets, in which he gave Enid Waidholtz's father a \$5 million trust fund that contained mostly real estate holdings in exchange for money. Joseph Waidholtz's father, however, has said that no such trust fund existed.

In a statement issued by Enid Waidholtz yesterday, she said she "truly believed" the money she had contributed to her campaign was in compliance with the law. "My belief was based on misrepresentations

"A lot of people are at the end. The only thing that can possibly save [Rep. Enid Waidholtz] is that people who even worked for her had no idea the problem was this deep."

— Rita Behrman,
Utah Republican Party

made to me by Joe Waidholtz regarding the family trust, the gift he gave me when we married, and our supposed joint ownership of property in Pennsylvania," the statement said.

Joseph Waidholtz, 32, is also the subject of a grand jury investigation into an alleged check-writing scheme in which he wrote checks for \$228,000 more than his account held. It is still unclear how much, if anything, the congresswoman knew about her husband's dubious financial dealings.

An attorney representing Joseph Waidholtz's father said in an interview yesterday that in 1993 relatives discovered that the younger Waidholtz had taken out a loan of about \$100,000 from a Pittsburgh bank by using the home of his wealthy grandmother as collateral. The attorney, Bruce S. Gelman, and the family suspect that Joseph Waidholtz may have

secured additional loans by putting up as collateral a number of other properties that he does not own.

"The grandmother doesn't need the loan because she has her estate and is old and suffering from Alzheimer's [disease]," Gelman said. The estate's guardians, Joseph Waidholtz's father and a cousin, have grown concerned about more than \$600,000 that the grandmother gave Joseph Waidholtz to invest over the past 10 years. He has repeatedly refused to give an accounting of the funds.

A source said yesterday that during his three years as a personal aide to Hillman, one of Pennsylvania's most influential Republicans and the wife of billionaire investor Henry L. Hillman, Joseph Waidholtz allegedly spent more than \$100,000 of her money on expensive hotel suites, first-class airplane tickets and lavish meals, as well as provisions for his wife-to-be, Enid, including flowers and other gifts.

A spokeswoman for the congresswoman did not return calls seeking comment.

Most of the expenses were run up while Joseph Waidholtz was attending to Republican National Committee meetings and other GOP events around the country. Given his ownership of some of Hillman's finances, he was able to conceal the spending from her, the source said.

"It was a question that basically occurred over the last two years he was with her; by the end there was no longer any trust or confidence there," said one of the sources, who refused to be identified. "The construction work of her finances and concealed the spending. He just abused the power given."

It was unclear, however, how Hillman discovered the alleged financial impropriety and why she apparently did not take any action beyond firing Waidholtz.

In a prepared statement yesterday, Hillman said of the overall financial saga, "I believe that the Waidholtz matter is within the Waidholtz family and the appearance of an ongoing normal investigation makes it inappropriate for any comment." A Hillman aide, John Denny, said that he was not authorized to issue any further statements.

In Pittsburgh yesterday, Joseph Waidholtz's family held a news conference calling on him to come home. Steven Slesinger, his cousin and one of the guardians of their grandmother's estate, said, "If you can hear me out there, Joe, please come on back. We miss you."

W

MEMORANDUM

TO: Elsie Hillman
FROM: Joe Waldholtz
DATE: April 25, 1991
RE: Thom Smith

I contributed \$300 to the Committee to Elect Thom Smith. He would like some advice from you!

JPW:mm

A:\ELSIE2.MEM

(X)

MEMORANDUM

TO: Hugh Joyce
FROM: Joe Waldholtz
DATE: April 11, 1991
RE: Westin Wm. Penn Hotel

Mrs. Hillman owes \$1,807.70. She bought a gift certificate for someone, several lunches (room service and the Terrace Room), and had one event. You can forward the check to me and I will take care of it. Thanks.

It should be made payable to Westin Wm. Hotel.

JPW:mm

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Citation Search Result Rank(R) 4 of 5
12/10/95 SLTR A19
12/10/95 Salt Lake Trib. A19
1995 WL 10920838
(Publication page references are not available for this document.)

The Salt Lake Tribune
Copyright 1995

Sunday, December 10, 1995

Nation-World

Utah GOP Leader Says Joe Took From the Party, Too
Anne Wilson THE SALT LAKE TRIBUNE

On the eve of Enid Waldholtz's tell-all appearance in Salt Lake City, Utah Republican party officials announced they, too, are victims of the congresswoman's husband, Joe Waldholtz.

Party leaders alleged Saturday that Joe cashed \$1,465 in checks, written to the party by donors in June 1993, and deposited them in his personal bank account.

Party chairman Stan Parrish said he only learned of the alleged theft Friday afternoon after being told of the checks by one of Enid's Washington, D.C., lawyers.

The lawyer, Brett Kappel, works for the law firm that hired the Eddie Mahe Co., a political consulting firm that is coordinating damage control for the congresswoman.

Enid is scheduled to make a public appearance Monday in Salt Lake City to give Utahns a "full accounting" of the tangled family finances that have prompted federal investigations of her personal and campaign finances.

Parrish said he decided to share the new information about Joe just two days before Enid's public accounting because it was his duty.

"Rather than have this come up in an investigation, I have a responsibility to make this public," Parrish said.

Added Dave Hansen, who was executive director of the party before Joe became acting director in April 1993: "People who donate need to be reassured that the Republican Party does account for the money that comes in."

Attempts to contact Kappel and his partner, Charles Roistacher, on Saturday were unsuccessful. Joe's attorney, Harvey Sernovitz, of Philadelphia, did not return a message left at his home.



12/10/95 SLTR A19
(Publication page references are not available for this document.)

Attorney Kevin Anderson, who Parrish called the party's legal counsel, said he did not know whether Enid's attorneys had notified Utah law-enforcement authorities of the alleged theft. He said he planned to report the missing money on Monday. The party may also sue Joe civilly, he said.

Joe was acting executive director of the party until summer 1993, when he left to join Enid's campaign for Congress. Party secretary Pam Hendricksen said there was no indication Joe had money problems at the time party leaders voted to make him acting director.

"The people who were there knew him because he'd been around as a volunteer," Hendricksen said.

Parrish said the 14 checks ranged in amount from \$30 to \$350, and were likely collected for a social event, such as a dinner.

The contributions did not show up in an annual external audit of party finances, which means the checks never made it to party headquarters, Parrish said.

The money would not have been missed because donors are not given receipts at social functions. And revenues raised by fund-raisers do not always match expenses because some people who attend do not pay.

"If one of our employees stole one of these checks . . . you'd never know," said Parrish, who acknowledged that party leaders may have been too trusting in the past.

"There's always an element of trust. So now we have a new dimension to this fund-raising social event. Maybe we need to rely less on trust and more on fiscal control," he said.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Tim Kelly/The Salt Lake Tribune GOP leader Stan Parrish says at a news conference Saturday that Joe Waldholtz took checks made out to the Utah GOP. He said he found out about the checks through Enid's lawyers.

---- INDEX REFERENCES ----

KEY WORDS: UT CONGRESSIONAL DELEGATION; SCANDALS; POLITICS-POLITICIANS

Word Count: 505
12/10/95 SLTR A19
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MURs 4322 and 4650
Enid '94 and Enid Greene, as Treasurer)
Enid '96 and Enid Greene, as Treasurer)

**BRIEF OF RESPONDENTS
ENID '94, ENID '96, AND ENID GREENE, AS TREASURER,
IN OPPOSITION TO
THE OFFICE OF GENERAL COUNSEL'S
PROBABLE CAUSE RECOMMENDATION**

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
1100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Charles H. Roistacher
Brett G. Kappel
POWELL, GOLDSTEIN, FRAZER & MURPHY LLP
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
Phone: (202) 347-0066
Fax: (202) 624-7222

Counsel to Enid '94 and Enid Greene, as Treasurer
Counsel to Enid '96 and Enid Greene, as Treasurer

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MURs 4322 and 4650
Enid '94 and Enid Greene, as Treasurer)
Enid '96 and Enid Greene, as Treasurer)

**BRIEF OF RESPONDENTS
ENID '94, ENID '96, AND ENID GREENE, AS TREASURER,
IN OPPOSITION TO
THE OFFICE OF GENERAL COUNSEL'S
PROBABLE CAUSE RECOMMENDATION**

I. INTRODUCTION.

On July 20, 1998, the General Counsel recommended that the Federal Election Commission (hereinafter "FEC" or "the Commission") find probable cause to believe that Enid '94 and Enid '96 (hereinafter "the Enid committees"), and Enid Greene, as treasurer, violated 2 U.S.C. § 434(b) by failing to report numerous contributions and for filing inaccurate reports; 2 U.S.C. § 441a(f), by knowingly accepting contributions in violation of the limitations imposed by section 441a; 2 U.S.C. § 441f, by accepting contributions in the name of another; and 11 C.F.R. § 110.4(c)(2), by failing to return cash contributions in excess of \$100. In addition, the General Counsel recommended that the Commission find probable cause to believe that Enid '94, and Enid Greene, as treasurer, violated 2 U.S.C. § 441b(a), by accepting a corporate contribution from Keystone Productions, Inc.

Counsel for the Enid committees and Enid Greene, as treasurer, respectfully submit this brief in opposition to the General Counsel's probable cause recommendation. Counsel for the Enid committees and Enid Greene, as treasurer, also represent Enid Greene, in her individual capacity, as well as her father, D. Forrest Greene. We are simultaneously submitting briefs in

opposition to the General Counsel's probable cause recommendation with regard to those individuals.

The short response to the allegations against the Enid committees is that all of the purported violations were committed by Joseph P. Waldholtz, without Enid Greene's knowledge, during the time that he was the treasurer of Enid '94 and Enid '96. As a result, Joseph P. Waldholtz alone is solely and personally responsible for these acts. The Enid committees, and Enid Greene, as the current treasurer, should bear no responsibility for the rogue actions of Joseph P. Waldholtz, who used the Enid committees as a tool in his various criminal schemes.

The General Counsel's recommendation that the Commission hold the Enid committees and Enid Greene, as treasurer, responsible for the actions of a rogue treasurer is contrary to a long line of FEC precedent. Moreover, as a matter of law, the Enid committees and Enid Greene, as treasurer, cannot be held liable for the actions of Joseph P. Waldholtz. Fundamental fairness dictates that the Commission reject the General Counsel's recommendation at the outset.

II. BACKGROUND AND PROCEDURAL HISTORY.

Enid Greene represented the Second District of Utah in the U.S. House of Representatives during the 104th Congress. Enid Greene's principal campaign committee in the 1994 congressional election was named Enid '94. Enid '96 was established to be Enid Greene's principal campaign committee in the 1996 congressional election, but on March 5, 1996, Representative Greene announced that she would not run for re-election.

Joseph P. Waldholtz -- Enid Greene's former husband and D. Forrest Greene's former son-in-law -- served as the treasurer of Enid '94 from its inception on December 21, 1993 until November 14, 1995, when Enid Greene removed him from that position. Similarly, Joseph P. Waldholtz served as treasurer of Enid '96 from its inception on July 31, 1995 until November 14,

1995, when Enid Greene removed him from the position. Accordingly, Joseph P. Waldholtz was the treasurer of the Enid committees at all times relevant to the above-referenced MURs.

A. The Criminal Investigation.

On Saturday, November 11, 1995, Enid Greene's world fell apart when Joseph P. Waldholtz, her husband and treasurer of her campaigns, fled Washington, D.C. while under investigation for bank fraud by the U.S. Attorney's Office for the District of Columbia, the FBI, and a federal grand jury (hereinafter "the government" or "the government's investigation").¹⁷ Over the ensuing weekend, Enid Greene was shocked to discover evidence among Joseph P. Waldholtz's papers that he had defrauded her and had embezzled a substantial amount of money from both of the Enid committees. On November 14, 1995, Ms. Greene notified the Commission that she had removed Joseph P. Waldholtz as treasurer of the Enid committees and had initiated an audit of the committees' records. Ms. Greene retained forensic accounting specialists with the national accounting firm of Coopers & Lybrand, LLP, and directed them to reconstruct completely the campaign records of Enid '94 and Enid '96.

The forensic accountants from Coopers & Lybrand, working with a team of attorneys from Powell, Goldstein, Frazer & Murphy, LLP, spent more than six months reconstructing the Enid committees' records, which had been devastated by the criminal actions of Joseph P. Waldholtz. Then, at a cost of well over \$150,000, the Committees filed corrected FEC reports for both Enid '94 and Enid '96 covering *all* of calendar years 1994 and 1995. These amended reports revealed that Joseph P. Waldholtz had committed multiple violations of the Federal

¹⁷ The General Counsel's Brief incorrectly states that the federal criminal investigators began their inquiry into Enid '94 based on questions raised in Utah regarding the amount of money that Enid Greene was reported to have contributed to her campaign. General Counsel's Brief at 4. In fact, to our knowledge, the investigation was not broadened to include potential election law violations until Ms. Greene and the Enid committees uncovered evidence that Joseph P. Waldholtz had falsified records and had embezzled a substantial amount of money from both Enid '94 and Enid '96 and brought that evidence to the attention of the FEC and the U.S. Attorney.

Election Campaign Act (hereinafter "FECA") and FEC regulations during his tenure as treasurer of the Enid committees. The filing of these amended reports apparently triggered the Commission's initiation of MUR 4650. Enid Greene personally assumed the position of treasurer of the Enid committees on January 26, 1996.

On March 8, 1996, Enid Greene, as treasurer of the Enid committees, filed with the Commission the complaint against Joseph P. Waldholtz that initiated MUR 4322. Along with the complaint, the Committees provided extensive and compelling evidence that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz committed *well in excess of 850 violations* of FECA and applicable FEC regulations.

Also on March 8, 1996, on the same day that the materials were filed with the FEC, Enid Greene and the Enid committees provided the U.S. Attorney for the District of Columbia with a copy of the complaint in MUR 4322. By that point in time, D. Forrest Greene, Enid Greene and the Enid committees had already been cooperating for more than four months with an investigation by the U.S. Attorney's Office into the criminal activities of Joseph P. Waldholtz. Enid Greene voluntarily provided the government with reams of documents abandoned by Joseph P. Waldholtz when he fled Washington, D.C. Ms. Greene also gave the government free access to the two homes, one in Salt Lake City, Utah and the other in Washington, D.C., that she shared with Joseph P. Waldholtz.

As a result of the extensive cooperation of Enid Greene, within one month of the disappearance of Joseph P. Waldholtz, the government had substantial evidence to support the allegations that Joseph P. Waldholtz had defrauded both the Wright Patman Congressional Federal Credit Union and First Security Bank of Utah by kiting checks between the two financial institutions. Indictment at 1-7 (Exhibit A); Plea Agreement at 2-3 (Exhibit B).

Moreover, while cooperating with the investigation of the bank fraud allegations, Enid Greene discovered and turned over to the government substantial and compelling evidence that Joseph P. Waldholtz had also committed a truly astounding number of other federal and state crimes. In the decade leading up to his flight from prosecution, Joseph P. Waldholtz:

- Defrauded his grandmother, Rebecca Levenson, an elderly Alzheimer's patient, out of at least \$400,000;²
- Forged and counterfeited Government National Mortgage Association ("Ginnie Mae") securities as part of his scheme to defraud his grandmother out of hundreds of thousands of dollars;
- Committed perjury in a state court proceeding initiated by his own father to recover the funds that Joseph P. Waldholtz had stolen from his grandmother;
- Defrauded his mother, Barbara Waldholtz, out of her entire life savings -- \$96,000 -- by inducing her to cash in her pension, take out a mortgage on the home she owned free and clear, and give the money to him to "invest" for her;³
- Misappropriated at least \$100,000 from his employer, Republican National Committeewoman Elsie Hillman, and was fired for using her money for expensive hotel suites, first-class airline tickets, and lavish meals while travelling to Republican Party events on her behalf and while working as the Executive Director of Pennsylvania for Bush-Quayle '92;
- Caused Elsie Hillman to violate the Federal Election Campaign Act's prohibition on contributing more than \$25,000 in any one year (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 by failing to keep track of her political contributions, resulting in Mrs. Hillman having to pay a \$32,000 civil penalty;
- Converted contribution checks made out to the Utah Republican Party to his own use while employed as the Party's Executive Director;
- Committed bank fraud by using falsified tax returns showing more than \$250,000 in annual income from a now-known-to-be non-existent "Waldholtz Family Trust" to obtain a home mortgage from First Security Bank of Utah;

2/ The crimes involving Rebecca Levenson are especially important to the resolution of these matters, because Joseph P. Waldholtz used a portion of the money that he embezzled from the Enid committees to cover up his prior crimes against his grandmother. See infra at 29-30.

3/ The crimes involving Barbara Waldholtz are also important to the resolution of these matters, because Joseph P. Waldholtz used a portion of the money that he embezzled from the Enid committees to cover up his prior crimes against his mother. See infra at 29-30.

- Committed additional bank fraud violations by kiting checks between accounts Joseph P. Waldholtz maintained with Merrill Lynch, Pittsburgh National Bank, and NationsBank;
- Falsified Ms. Greene's 1994 and 1995 congressional financial disclosure statements;
- Forged Ms. Greene's endorsement on her congressional paychecks on two separate occasions and converted the proceeds to his own use;
- Committed three separate instances of tax fraud involving the tax returns Joseph P. Waldholtz filed for tax years 1992 through 1994; and
- Committed massive (more than 850) violations of the Federal Election Campaign Act and applicable FEC regulations while serving as treasurer of Enid '94 and Enid '96, as alleged in the complaint in MUR 4322

Enid Greene, through her counsel, turned over most of this documentary evidence to the government by the end of 1995. During the six months it took the government to evaluate and corroborate the evidence provided by Enid Greene of Joseph P. Waldholtz's criminal activities, both D. Forrest Greene and Enid Greene continued to cooperate with the government's investigation. By early 1996, however, it was evident that, with so much compelling evidence of Joseph P. Waldholtz's guilt already in hand, the principal focus of the government's investigation had somehow turned to D. Forrest and Enid Greene, including Enid Greene in her position as treasurer of the Enid committees. In particular, the government seemed intent on trying to prove that both D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to funnel funds belonging to D. Forrest Greene into Enid Greene's 1994 congressional election campaign, in violation of 2 U.S.C. § 441f.

There was no truth to this theory, and both D. Forrest and Enid Greene continued to cooperate with the government. Both D. Forrest and Enid Greene submitted voluntarily to numerous interviews with agents of the government. In addition, both D. Forrest and Enid Greene gave government agents complete and open access to their homes and offices. Both D. Forrest and Enid Greene voluntarily complied with document requests related to Enid '94,

turning over more than 10,000 pages of documents. Enid Greene voluntarily testified before a federal grand jury investigating these transactions on three separate occasions. D. Forrest Greene also voluntarily appeared before the same grand jury.

After nearly five months of exhaustively investigating the financial transactions between D. Forrest Greene, Enid Greene and Joseph P. Waldholtz, the government failed to find any *credible* evidence that D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to violate 2 U.S.C § 441f. On May 2, 1996 -- seven months after Joseph P. Waldholtz fled Washington, D.C. -- the grand jury returned a twenty-seven-count indictment against Joseph P. Waldholtz for bank fraud concerning his massive check kiting scheme. Indictment at 1-7 (Exhibit A). The grand jury took no action against either D. Forrest, Enid Greene or the Enid committees.

On June 5, 1996, Joseph P. Waldholtz pleaded guilty to a three-count information alleging, *inter alia*, that, as treasurer of Enid '94, he had knowingly and willfully filed a report with the FEC in which he falsely and fraudulently certified that Enid Greene had contributed approximately \$1,800,000 of her personal funds to Enid '94 when, in fact, Joseph P. Waldholtz knew that the \$1,800,000 had not come from Ms. Greene's personal funds but, instead, had been taken from funds that Joseph P. Waldholtz, by various schemes and devices, obtained from Mr. Greene.^{4/} Information at 1-2 (Exhibit C); Plea Agreement at 3-4 (Exhibit B). Based on extensive false representations made by Joseph P. Waldholtz both before and during their

^{4/} Joseph P. Waldholtz also pleaded guilty to one count of a twenty-seven-count indictment for bank fraud (18 U.S.C. § 1344) for carrying out a \$3 million check-kiting scheme using a joint checking account he shared with Ms. Greene at the Wright Patman Congressional Federal Credit Union. Indictment at 1-8 (Exhibit A); Plea Agreement at 1-3 (Exhibit B). Joseph P. Waldholtz also pleaded guilty to the remaining count in the information, willfully aiding in the filing of a false tax return (26 U.S.C. § 7206(2)) for knowingly providing Ms. Greene with false information regarding the value of stock he had supposedly given to her, knowing that she would incorporate that false information on her 1993 tax return. Information at 3 (Exhibit C); Plea Agreement at 4 (Exhibit B).

marriage, Ms. Greene believed that the funds being contributed to her campaign were legally hers, lawfully contributed to her campaign in accordance with 11 C.F.R. § 110.11.

As part of his plea agreement, Joseph P. Waldholtz agreed to "cooperate" with the U.S. Attorney's investigation of Ms. Greene's 1994 congressional election campaign. This investigation was aimed primarily at discovering whether there was any *credible* evidence that D. Forrest and/or Enid Greene had conspired with Joseph P. Waldholtz to violate 2 U.S.C. § 441f. Plea Agreement at 7 (Exhibit B). In exchange for this guilty plea and pledge of cooperation, the U.S. Attorney agreed not to prosecute Joseph P. Waldholtz for a myriad of other crimes -- including additional charges of bank fraud, tax fraud, forgery, uttering, and numerous FECA violations he committed while he served as treasurer of the Enid committees. Plea Agreement at 4-6 (Exhibit B). No criminal charges were filed against either *D. Forrest Greene* or Enid Greene, and in fact, the U.S. Attorney's Office issued a declination letter after reviewing the "evidence" presented by Joseph P. Waldholtz.

On November 7, 1996, U.S. District Court Judge Norma Holloway Johnson sentenced Joseph P. Waldholtz to thirty-seven (37) months in federal prison for one count of bank fraud (18 U.S.C. § 1344), one count of making a false statement to the Commission (18 U.S.C. § 1001), one count of making a false report to the Commission (2 U.S.C. §§ 437g(d) and 441(a)), and one count of willfully assisting in the filing of a false tax return (26 U.S.C. § 7206(2)). In its sentencing memorandum, the U.S. Attorney's Office called Joseph P. Waldholtz, "a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions." Government's Memorandum In Aid Of Sentencing at 16 (Exhibit D). Judge Johnson not only agreed, but also sentenced Joseph P. Waldholtz to three additional months in federal prison over and above the sentence sought by the government. Sentencing Memorandum at 3 (Exhibit E).

B. Procedural History of FEC Investigation.

As mentioned above, Ms. Greene personally assumed the position of treasurer of the Enid committees on January 26, 1996. On March 8, 1996, Enid Greene, as treasurer of the Enid committees, filed with the Commission the complaint against Joseph P. Waldholtz that initiated MUR 4322. Along with the complaint, the Committees provided extensive and compelling evidence that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz committed *well in excess of 850 violations* of FECA and applicable FEC regulations.

One of the central allegations in the complaint was that Joseph P. Waldholtz embezzled nearly \$100,000 from the Enid committees in violation of 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. Complaint at ¶¶ 7, 44-55. Even though this complaint is the basis for MUR 4322, the General Counsel's brief conveniently omits any mention of the massive embezzlement that Joseph P. Waldholtz perpetrated against the Enid committees. Any analysis by the Commission regarding the responsibility of the Enid committees and its current treasurer must take into account the criminal activities of Joseph P. Waldholtz, the former treasurer. Joseph P. Waldholtz's embezzlement from the Enid committees took many different forms, all of which were detailed in the complaint filed by Enid Greene and the Enid committees.

Joseph P. Waldholtz's predominant method of embezzling money from the Enid committees was to simply use wire transfers to move money directly from the Enid committees' bank accounts into his own personal accounts or those of his relatives. Between February 14, 1994 and August 9, 1995, Joseph P. Waldholtz transferred a total of \$63,375, in a series of twenty-five (25) transactions, directly from the Enid committees' bank accounts into bank accounts that were either *in his name*, controlled by him, or in the names of his family members. Complaint at ¶ 44. For example, on March 31, 1994, Joseph P. Waldholtz wired \$3,000 from

Enid '94 to the bank account of his mother, Barbara Waldholtz, in Pittsburgh, Pennsylvania. Complaint at ¶ 45. On April 4, 1994, he wired \$4,200 from Enid '94 to his personal account at Merrill Lynch in Pittsburgh, Pennsylvania. Complaint at ¶ 46. On May 25, 1995, he wired \$2,000 from Enid '96 to the bank account of his grandmother, Rebecca Levenson, in Pittsburgh, Pennsylvania. Complaint at ¶ 47. There were no identifiable legitimate campaign purposes for these transfers. Indeed, the wire transfers to the bank accounts of Joseph P. Waldholtz's relatives were apparently designed to replace funds that Joseph P. Waldholtz had earlier stolen from both his mother and his grandmother.

Joseph P. Waldholtz also embezzled campaign funds from the Enid committees in several other ways. Over a period of two months, he stole a total of thirty-six (36) campaign contribution checks made payable to the Send Enid Greene to Congress Committee (the original name of Enid '94) and deposited them into his personal checking account. Complaint at ¶ 49. He also withdrew a total of \$25,950 in cash from the Enid committees, in a series of twenty-five (25) cash withdrawals. Complaint at ¶ 50. On at least twelve (12) separate occasions, he signed campaign contributions over to "Cash," which permitted him to embezzle an additional \$6,200 from the Enid committees. Complaint at ¶ 51. On at least seven (7) occasions, he issued campaign checks made payable to himself and used them to withdraw a total of \$5,500 from the Enid committees' bank accounts. Complaint at ¶ 52. On three other occasions, he issued Enid '96 campaign checks made payable to Enid Greene and deposited a total of \$8,000 into his personal banking account without the knowledge or endorsement of Enid Greene. Complaint at ¶¶ 53(a)-(c).

Finally, Joseph P. Waldholtz used the Enid committee banks accounts interchangeably with his own personal bank accounts to pay his personal bills, including his credit card bills. Complaint at ¶¶ 54, 55. For example, on February 16, 1994, he signed a check, drawn on the Enid '94 account to make a \$1,000 payment to a personal First Security Bank VISA account. Complaint at ¶ 54. On November 28, 1994, he authorized a debit memo to transfer \$5,000 from an Enid '94 account to his personal First Security Bank VISA account. Complaint at ¶ 55. There were no identifiable legitimate campaign purposes for these payments.

In addition to his various embezzlement schemes, the complaint submitted by Enid Greene alleged that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz, on twenty-eight (28) separate occasions, used funds he had obtained by fraud from Mr. Greene, and knowingly and willfully contributed to Enid '94 a total of nine hundred eighty-four thousand dollars (\$984,000) in the name of Enid Greene. Complaint at ¶¶ 4, 26(a), 29, 31, and 32. These contributions by Joseph P. Waldholtz violated FECA's prohibition on making contributions in the name of another (2 U.S.C. § 441f), as well as the prohibition on contributing more than \$1,000 to a single candidate for any one election (2 U.S.C. § 441a(a)(1)(A)) and the prohibition on contributing more than \$25,000 in any one calendar year (2 U.S.C. § 441a(a)(3)).

Clearly, throughout his tenure as treasurer of the Enid committees, Joseph P. Waldholtz also regularly violated 2 U.S.C. § 434(b) by deliberately filing inaccurate reports with the FEC in order to prevent Enid Greene from discovering that he was embezzling campaign funds.

On June 17, 1997 -- more than six months after D. Forrest and Enid Greene were exonerated and Joseph P. Waldholtz was convicted -- the Commission found reason to believe, based on the very same information that led to Joseph P. Waldholtz's conviction, that (1) D.

Forrest Greene violated 2 U.S.C. §§ 441a(a)(1)(A)) and (a)(3) and 2 U.S.C. § 441f by, respectively, making contributions in excess of the \$1,000 limit per election, by making contributions in excess of the overall annual \$25,000 limit, and by making contributions in the name of another; (2) Enid Greene violated 2 U.S.C. § 441f by knowingly permitting her name to be used to effect these contributions; and (3) the Enid committees and Enid Greene, as treasurer, should be held responsible for various violations of FECA [2 U.S.C. §§ 434(b), 441a(f), 441b(a) and 441ff] and applicable FEC regulations [11 C.F.R. § 110.4(c)(2)] that were committed by Joseph P. Waldholtz during the time he served as treasurer of the Enid committees.

On July 28, 1997, D. Forrest Greene, Enid Greene and the Enid committees filed a joint response to the Commission's reason to believe determination. Five volumes of exhibits documenting Joseph P. Waldholtz's sole personal and individual responsibility for the violations alleged against D. Forrest Greene, Enid Greene, and the Enid committees accompanied the joint response.

For the next several months, D. Forrest and Enid Greene continued to cooperate with the FEC investigation. In September 1997, they both submitted to depositions conducted by the General Counsel. Less than one week after the depositions of D. Forrest and Enid Greene, the existence of the Commission's investigation was leaked to the press in violation of 2 U.S.C. § 437g(a)(12)(A). On October 1, 1997, The Salt Lake Tribune published an article entitled, *FEC Starts Greene Probe*, in which three former employees of Enid '94 – David Harmer, KayLin Loveland, and Peter Valcarce – confirmed that they had been interviewed by representatives of the Office of General Counsel within the past two months. (Exhibit F). The former campaign workers characterized the interviews as “wide-ranging” and gave the reporter the impression that “the FEC investigation is a new one and not limited to the allegations and issues raised in

Greene's complaint [against Joseph P. Waldholtz]." All three former campaign workers cited FECA's confidentiality provision in declining to discuss specific issues raised in their interviews. The fact that they nevertheless confirmed that they had been interviewed by the Office of General Counsel and felt free to characterize the interviews as "wide-ranging" indicated that the witnesses had not been adequately advised as to their duties under FECA by the Office of General Counsel. Despite these egregious violations of 2 U.S.C. § 437g(a)(12)(A), both D. Forrest and Enid Greene continued to cooperate with the General Counsel's investigation.

On December 1, 1997, counsel for D. Forrest and Enid Greene provided the General Counsel with a copy of the contract between Enid '94 and the FEC accounting firm of Huckaby & Associates. On December 17, 1997, counsel for D. Forrest and Enid Greene responded to yet another request for documents from the General Counsel and turned over D. Forrest Greene's personal calendar for 1995 and copies of all of the password-protected documents retrieved from Joseph P. Waldholtz's laptop computer.

During the first two weeks of June 1998, Joseph P. Waldholtz, in preparation for his release from prison, gave interviews to a number of members of the national media. In these prison interviews, Joseph P. Waldholtz repeatedly indicated that neither Enid nor D. Forrest Greene was a knowing participant in his plan to circumvent FECA's regulatory scheme. Joseph P. Waldholtz indicated that he alone was responsible for the violations. Counsel for D. Forrest and Enid Greene provided the General Counsel with copies of the resulting articles on June 18, 1998.

On July 20, 1998 -- approximately one month after Joseph P. Waldholtz's prison interviews -- the General Counsel recommended that the Commission find probable cause to believe that the Committees violated 2 U.S.C. § 434(b), by failing to report numerous

contributions and for filing inaccurate reports; 2 U.S.C. § 441a(f), by knowingly accepting contributions in violation of the limitations imposed by section 441a; 2 U.S.C. § 441f, by accepting contributions in the name of another; and 11 C.F.R. § 110.4(c)(2), by failing to return cash contributions in excess of \$100. In addition, the General Counsel recommended that the Commission find probable cause to believe that Enid '94 and Enid Greene, as treasurer, violated 2 U.S.C. § 441b(a), by accepting a corporate contribution from Keystone Productions, Inc.

III. ARGUMENT.

The Enid committees, and Enid Greene, as treasurer, strongly disagree with the General Counsel's recommendation that the Enid committees should be held culpable for FECA violations committed by Joseph P. Waldholtz. Enid Greene uncovered the hundreds of FECA violations Joseph P. Waldholtz committed in order to prevent the discovery of his efforts to circumvent FECA's regulatory scheme, removed him as treasurer of the Enid committees, informed the Commission of Joseph P. Waldholtz's wrongdoing and spent well in excess of \$150,000 to reconstruct and correct the Enid committees' FEC reports. To penalize the Enid committees and Enid Greene, as treasurer, for doing everything in their power to correct Joseph P. Waldholtz's wrongdoing runs counter to a long line of FEC precedents absolving committees for the actions of rogue campaign officials. To penalize the Enid committees under these circumstances would establish a terrible new precedent – one that would forever discourage campaigns from coming forward to disclose wrongdoing by campaign workers

Moreover, the General Counsel attempts to gloss over the fact that there is no legal basis for holding the Enid committees and Enid Greene, as treasurer, responsible for FECA violations committed by Joseph P. Waldholtz during his tenure as treasurer of the Enid committees. The General Counsel spends the first eleven (11) pages of his thirteen (13) page brief discussing

Joseph P. Waldholtz's scheme to use loans he obtained by fraud from D. Forrest Greene to fund the Enid '94 campaign. There is not the slightest mention of the fact that Joseph P. Waldholtz embezzled nearly \$100,000 from the Enid committees during the same time period. Only on page twelve (12) of the thirteen (13) page brief does the General Counsel attempt a "legal analysis" of the liability of the Enid committees. The General Counsel's "legal analysis" is conducted almost as an "aside," as if it were a foregone conclusion that the Enid committees and Enid Greene, as the successor treasurer, are liable for the criminal actions of Joseph P. Waldholtz. With one broad brush, the General Counsel begins *and* ends his "legal analysis" in two sentences:

Joseph Waldholtz engaged in the above malpractices [sic] as treasurer of Enid '94 and Enid '96. Since he was acting as [sic] agent of Enid '94 and Enid '96, the committees are responsible for his actions on their behalf. See MUR 2602.

General Counsel's Brief at 12.

The General Counsel fails to cite *a single case* to support the proposition that a campaign committee is *always* liable for the criminal actions of its agents. In fact, the General Counsel's probable cause recommendation with regard to the Enid committees and Enid Greene, as successor treasurer, is wrong as a matter of law. Finally, the General Counsel fails to address the inequity of holding the Enid committees and Enid Greene, as treasurer, liable for the actions of a rogue campaign official who not only embezzled nearly \$100,000 from the campaigns, but who cost the campaigns an additional \$150,000 to correct the record he falsified to hide his criminal actions.

A. The General Counsel's Probable Cause Recommendation is Contrary to the Commission's Long-Standing Policy of Not Pursuing Enforcement Actions Against Campaign Committees in Cases Where FECA Violations Were Committed by Rogue Committee Officers In Order to Conceal Their Own Personal Criminal Activity.

The General Counsel's recommendation to the Commission is contrary to the Commission's long-standing policy of not pursuing enforcement actions where the violations are the result of fraudulent activity by a rogue officer. See, e.g., In the Matter of Elwood Broad, PRE-MUR 256, MUR 3549, discussed infra. The FEC has never brought an enforcement action in federal court to seek civil penalties against a committee or a successor treasurer in cases involving fraud committed by a rogue officer. Indeed, the Commission has even followed this long-standing policy with regard to presidential campaigns, where, unlike here, the candidate is contractually liable for the wrongs of his committee agents. See 11 C.F.R. § 9003.1.

The first time the FEC confronted this issue was in 1982, In the Matter of Kathy Luhn, MUR 1402. In that case, Kathy Luhn served as an organizer of a fund-raising event for Congressman James C. Wright, Jr. Ms. Luhn worked on behalf of the Wright Appreciation Committee. After a fund-raising dinner, Ms. Luhn forwarded all proceeds/contributions, except for \$9,000, to the Wright Appreciation Committee. Ms. Luhn unlawfully pocketed the \$9,000 and used it for her own personal purposes. This matter came to the Commission's attention after receiving a letter from the Wright Appreciation Committee after Ms. Luhn confessed her misdeed. In reporting the error to the FEC, the Wright Appreciation Committee requested that the Commission accept Ms. Luhn's repayment as punishment, with no penalty accruing to the Committee. The Wright Appreciation Committee pointed out to the FEC that they were not aware of the violation, nor did they authorize it. The Commission voted 6-0 to affirm the

recommendation of the Wright Appreciation Committee, which was adopted by the General Counsel. Certification of Commission Action (January 13, 1982).

Several years later, in a case strikingly similar to the instant matters, In the Matter of the Don Ritter for Congress Committee and Don Ritter, as treasurer, and Jerome Kindrachuk, MUR 2137 Representative Don Ritter discovered that Jerome Kindrachuk, the treasurer of the Don Ritter for Congress Committee, had apparently misappropriated committee funds and then falsified the committee's FEC reports to prevent his thefts from being discovered. Representative Ritter immediately fired Mr. Kindrachuk, assumed the position of treasurer himself, and retained the national accounting firm of Peat, Marwick, Mitchell & Co. to conduct a comprehensive investigation of the committee's records.

The General Counsel of the FEC found reason to believe that Mr. Kindrachuk, as treasurer of the Don Ritter for Congress Committee, had knowingly and willingly violated 2 U.S.C. § 434(b) and recommended that the Commission "proceed against Mr. Kindrachuk personally since it is alleged that he prepared the report improperly as part of a scheme to misappropriate funds belonging to the Committee." MUR 2137, General Counsel's Report at 2 (April 23, 1986). The General Counsel then went on to recommend that the Commission take *no* action against the *Don Ritter for Congress Committee* or Representative Don Ritter as treasurer. Id. at 4. The Commission voted 5-0 to accept the General Counsel's recommendations. Certification of Commission Action (April 28, 1986). Mr. Kindrachuk eventually entered into a conciliation agreement and paid a civil penalty of \$13,700 for several FECA violations, including commingling personal and campaign funds. *Conciliation Agreement* (November 9, 1987). No action was ever taken against the *Don Ritter for Congress Committee* or Representative Don Ritter, as treasurer.

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The Commission has also consistently declined to take enforcement action against campaign committees when committee officials other than the treasurer commit crimes against the committee and then falsify FEC reports to avoid discovery. In In the Matter of Mark E. Barry, MUR 1644, Representative Mickey Edwards, the Edwards in '82 Committee, the Edwards in '84 Committee, and Don Zachritz, treasurer of the Edwards' committees, filed a complaint against the committees' assistant treasurer, Mark Barry, alleging that he had falsified committee reports to hide the fact that he had misappropriated committee funds. The General Counsel recommended that the Commission take action against both the former assistant treasurer, Mr. Barry, for commingling personal and campaign funds, and against the Edwards' committees and Mr. Zachritz, as treasurer, who, the General Counsel argued, had at least constructive knowledge of Mr. Barry's activities. MUR 1644 General Counsel's Report at 8-9 (November 9, 1984). *The Commission, by a vote of 5-0, rejected the General Counsel's recommendation to take action against the Edwards' committees and their treasurer and instead authorized the General Counsel to take further action against the assistant treasurer, Mr. Barry only. Certification of Commission Action (November 30, 1984). Mr. Barry was eventually ordered by a federal district court to pay a \$20,000 civil penalty for embezzling approximately \$164,000 from the Edwards' committees.*

In 1986, the Commission also confronted a similar issue in In the Matter of James V. Sanchelli, MUR 2152. In that case, James Sanchelli served as the treasurer for the Hartnett for Congress Committee during the 1980 election cycle. Without authorization from the Hartnett for Congress Committee, Mr. Sanchelli opened a bank account and began depositing campaign contributions and other funds there. The General Counsel's report revealed that a total of \$250,000 was unlawfully taken, with \$40,000 of the amount being from committee funds. MUR

2152, General Counsel's Report at 2 (June 23, 1986). The General Counsel recommended that the Commission find reason to believe that Mr. Sanchelli knowingly and willfully violated 2 U.S.C. § 432(b)(3). It is important to note that the General Counsel specifically recommended that the Commission *not* take action against the Hartnett for Congress Committee:

Although the treasurer of 1982 and 1984 Committees did not place receipts into the depository account as required by the Act and regulations, this Office makes no recommendations regarding these committees at this time, because their failure to do so presently appears to have been the result of Mr. Sanchelli's alleged criminal conduct.

MUR 2152, General Counsel's Report at 4, n. 4 (June 23, 1986) (emphasis added). The Commission voted 6-0 to accept the General Counsel's recommendation. Certification of Commission Action (June 25, 1986).

In 1987 and 1988, the Commission reviewed In the Matter of Kansans for Kline and James R. Kline, Jr., as treasurer; and Major C. Weiss, MUR 2316. Major C. Weiss served as the treasurer of the Kansans for Kline Committee until committee personnel discovered that Mr. Weiss was embezzling campaign funds for personal expenses. In total, Mr. Weiss misappropriated approximately \$8,900. The Kansans for Kline Committee reported this illegal activity to the FEC, which prompted an investigation. On January 9, 1987, the Commission found reason to believe that Kansans for Kline, and Mr. Weiss, as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i), by failing to file the 1986 Pre-General Election Report in a timely manner. Additionally, the Commission found reason to believe that Mr. Weiss violated 2 U.S.C. § 432(b)(3), based on allegations of misappropriation of campaign funds. Afterwards, the General Counsel recommended that the Commission enter into conciliation with Kansans for Kline and James R. Kline, Jr., as treasurer, prior to a finding of probable cause. MUR 2316, General Counsel's Report at 12 (November 15, 1988). The Commission voted 5-1 to accept this recommendation. Certification of Commission Action (December 2, 1988). Ultimately,

Kansans for Kline agreed to pay a fine of just \$350 for its violation. See Letter to the FEC, dated August 11, 1989, from Phillip D. Kline, counsel to Kansans for Kline.

In 1988, the Office of the General Counsel also reviewed In the Matter of Rhodes for Congress Committee, Kent H. Mulkey, as treasurer, and John J. O'Neill, et al., MUR 2602. John J. O'Neill served as both finance chairman and the assistant treasurer of the Rhodes for Congress Committee. The allegations concerned his collection of a series of "loans" from various contributors. The "loans" were actually unlawful contributions. On April 15, 1988, the General Counsel recommended that the Commission find reason to believe that the Rhodes for Congress Committee and Kent H. Mulkey, as treasurer, violated 2 U.S.C. §§ 441f, 441a(f), 441b(a), 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), 434(b)(5)(A), and 434(b)(3)(E)), amongst other recommendations concerning Mr. O'Neill and the contributors. Six years later, in 1994, the Commission entered into a conciliation agreement with the Rhodes for Congress Committee, and John J. Rhodes, III, as treasurer. In the agreement, the Commission recognized several "unusual circumstances." Because of the circumstances, the Commission recommended a civil penalty of just \$25,000, as opposed to the "appropriate penalty" that they had determined to be \$108,000. The circumstances that effected the Commission's decision were: that Mr. O'Neill had been involved in many of the violations and in fact had pleaded guilty to violating 18 U.S.C. § 1001; that one of the "contributors" had been subject to criminal prosecution and had been convicted for several matters; and lastly, that the candidate, Mr. Rhodes, who was no longer in office, had become treasurer of his committee and had assumed personal responsibility in the matter. Conciliation Agreement at 11 (December 2, 1994).

In 1989, the Commission reviewed In the Matter of Michael Caulder, PRE-MUR 222, MUR 3015. William Batoff, the treasurer of the Alerted Democratic Majority PAC (hereinafter

"ADM"), brought the matter to the FEC's attention. Mr. Batoff discovered that Mr. Caulder had embezzled a total of approximately \$52,000 of ADM's funds. Mr. Batoff also discovered that Mr. Caulder had prepared and filed inaccurate reports with the FEC in order to conceal his illegal activities. Upon discovery of this information, Mr. Batoff notified the FEC and the law enforcement authorities. He also performed an audit of ADM's accounts and filed amended reports with the FEC. After performing its investigation, the General Counsel recommended that the Commission find reason to believe that ADM and Mr. Batoff, as treasurer, violated 2 U.S.C. § 434(b). PRE-MUR 222 General Counsel's Report at 3 (November 21, 1989). The Commission found reason to believe with regard to ADM, Mr. Batoff, as treasurer, and Mr. Caulder, but then voted to take no further action against ADM and Mr. Batoff. Certification of Commission Action (December 6, 1989).

In 1992, the Commission reviewed In the Matter of Elwood Broad, PRE-MUR 256, MUR 3549. Catherine Matz, treasurer of Yatron for Congress Committees, reported Mr. Broad, the former treasurer of Yatron for Congress Committees, to the Commission after finding the Mr. Broad had misappropriated approximately \$14,000 from the committees. The allegations included violations of 2 U.S.C. § 432(b)(3), for commingling, and 2 U.S.C. § 434(b), for failing to file accurate reports of the committees' financial activities. In its report, the Office of the General Counsel noted:

Normally, such a failure to file accurate reports would subject the offending committee and its treasurer to liability. However, the Commission has generally not proceeded against, or gone beyond findings of reason to believe as to, committees where inaccurate reporting resulted from fraudulent activity. See, e.g., MURs 3015, 2152, 2137; but cf. MUR 2316 (where the Commission conciliated after a finding of reason to believe with a committee which had failed to timely file a report in a situation where fraudulent activity was involved).

PRE-MUR 256, General Counsel's Report at 5 (June 5, 1992). The General Counsel did not make a recommendation for a finding of reason to believe. The Commission voted 6-0 to accept the General Counsel's recommendation. Certification of Commission Action (June 17, 1992).

In late 1994, the Commission approved the final audit report on the Tsongas Committee, Inc., Senator Paul Tsongas' 1992 presidential campaign committee. The Commission *rejected*, by a vote of 5-1, a staff recommendation that the committee be held responsible for the actions of the committee's chief fundraiser. The fundraiser, Nicholas Rizzo, had solicited illegal campaign contributions in the form of loans from several contributors and then embezzled most of the money. Unlike House and Senate candidates, presidential candidates and their principal campaign committees, as a condition for obtaining federal matching funds, are required to sign an agreement with the FEC making them responsible for the actions of the committee's agents. 11 C.F.R. § 9003.1. Both Senator Tsongas and the Tsongas Committee had signed such agreements. Nevertheless, the Commission decided that for equitable reasons, it would be inappropriate to hold the Tsongas Committee responsible for the actions of a rogue committee officer. See FEC Letter to the Tsongas Committee (December 16, 1994).

At the same time that the Commission was reviewing the audit report regarding the Tsongas committee, the Commission was considering taking enforcement action against the committee and its treasurer. In the Matter of the Tsongas Committee, Inc., and George Kokinos, as treasurer, MUR 3585. On November 29, 1994, the FEC found reason to believe that the Tsongas Committee and George Kokinos, as treasurer, violated 2 U.S.C. §§ 432(h)(1), 441a(f) and 441b(a). In June 1995, the Office of General Counsel further recommended that the Commission find reason to believe that the Tsongas Committee, and George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f), for accepting excessive contributions, and 2 U.S.C. §

434(b), for misstating financial information on its disclosure reports. The Commission accepted the General Counsel's recommendations on July 18, 1995. More than one year later, on November 19, 1996, the General Counsel recommended that the Commission find probable cause concerning the same violations. The Tsongas Committee responded to the General Counsel's Brief on January 15, 1997. Sadly, Senator Tsongas passed away two days later, on January 17, 1997.

Following the death of Senator Tsongas, the Office of the General Counsel reversed its position regarding the findings concerning the Tsongas Committee and George Kokinos, as treasurer. On February 25, 1997, the Office of the General Counsel filed an amended brief requesting that the Commission take no further action against the Tsongas Committee and Mr. Kokinos, as treasurer. General Counsel's Brief at 14 (February 25, 1997). The General Counsel based its recommendation on three factors: first, Senator Tsongas had passed away; second, the Committee would no longer be involved in the political process and had little cash or resources from which to satisfy any penalty; and third, the General Counsel had concerns regarding the statute of limitations. General Counsel's Brief at 5 (February 25, 1997). Additionally, the General Counsel stated, "[f]urther pursuit of these matters would not be an efficient use of the Commission's limited resources." *General Counsel's Brief at 6 (February 25, 1997).*

In light of this well-established line of precedents, the Commission should take no further action against Enid '94, Enid '96, and Enid Greene, as treasurer of the Enid committees. The Commission's long-standing policy is *not* to penalize committees and treasurers who do the "right" thing, legally and ethically, by reporting campaign violations of rogue officers. The FEC, with its limited resources as acknowledged in the Tsongas matter, must rely on the campaign committees to police themselves. It is not in the Commission's interest to punish those who

report the violator. In virtually every case discussed supra, it was the successor treasurer who reported the campaign violations. By punishing the successor treasurer and the committees, the Commission only invites more unreported misconduct. Treasurers will not report violations by rogue officers for fear that they themselves will be held liable. As such, the Commission should not pursue the Enid committees and Enid Greene, as successor treasurer; rather, the Commission should pursue action against the true self-admitted miscreant in this case, Joseph P. Waldholtz.

B. The Enid Committees and Enid Greene, As Treasurer, Are Not Liable for FECA Violations Committed by Joseph P. Waldholtz as a Matter of Law.

For two legal reasons, the Enid committees and Enid Greene, as treasurer, are not liable for the criminal actions of Joseph P. Waldholtz. First, Joseph P. Waldholtz, though an agent of the Enid committees, was not acting within the scope of his employment. Second, throughout his tenure as treasurer of the Enid committees, Joseph P. Waldholtz became the "alter ego" of the committees, using their bank accounts as if they were his own.

1. Joseph P. Waldholtz Was Not Acting Within The Scope of His Employment And Authority as an Agent of the Committee When He Committed the FECA Violations at Issue in These Matters.

The General Counsel appears to base its legal conclusion that the Enid committees and Enid Greene, as treasurer, may be held liable for the FECA violations committed by Joseph P. Waldholtz on an incorrect application of the law of agency. The Enid committees do not dispute that Joseph P. Waldholtz was, in general terms, an "agent" of the Enid committees. Commission regulations define an "agent" as:

[A]ny person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

11 C.F.R. § 109.1(b)(5).

Generally, when a principal, such as the Enid committees, grants an agent, such as Joseph P. Waldholtz, express or implied authority, the principal is responsible for the agent's acts *within the scope of his authority*. Weeks v. United States, 245 U.S. 618, 623 (1918) (emphasis added). The legal question that requires analysis, therefore, is whether Joseph P. Waldholtz was acting within the scope of his employment when he defrauded D. Forrest Greene of millions of dollars, when he used campaign accounts as his own for his own personal expenses, and when he illegally funneled the money from D. Forrest Greene into Enid '94.

The Restatement (Second) of Agency, § 228(1), states that an agent is acting within his scope of employment if:

- (a) it is of the kind he is employed to perform;
- (b) it occurs substantially within the authorized time and space limits; and,
- (c) it is actuated, at least in part, by a purpose to serve the master.

The section further states that, “[c]onduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.” Restatement (Second) of Agency, § 228(2).

Section 231 of the Restatement explores criminal or tortious acts committed by the agent.

The Comment to Section 231 is especially instructive:

The fact that the servant intends a crime, especially if the crime is of some magnitude, is considered in determining whether or not the act is within the employment, since the master is not responsible for acts which are clearly inappropriate to or unforeseeable in the accomplishment of the authorized result. The master can reasonably anticipate that servants may commit minor crimes in the prosecution of the business, but serious crimes are not only unexpected but in general are in nature different from what servants in a lawful occupation are expected to do.

Restatement (Second) of Agency, § 231, Comment (a) (emphasis added).

Section 235 of the Restatement, which is entitled “Conduct Not For Purpose Of Serving Master” states, “[a]n act of the servant is not within the scope of employment if it is done with no

intention to perform it as a part of or incident to a service on which account he is employed.” The Comment to the section indicates, “[t]he rule stated in this section applies although the servant would be authorized to do the very act done if it were done for the purpose of serving the master, and although outwardly the act appears to be done on the master’s account, it is the state of the servant’s mind which is material.” Restatement (Second) of Agency, § 235, Comment (a) (emphasis added).

The next step in the analysis is to look at Joseph P. Waldholtz’s state of mind. Because it is in the nature of Joseph P. Waldholtz to be in the “spotlight” and to enjoy the attention focused on him, the Commission has the benefit of reviewing his many statements and of actually reviewing evidence of his state of mind.

Joseph P. Waldholtz’s first public statements in this regard occurred at his sentencing on November 7, 1996. He emphatically stated, “I would like to express my deepest regret and sorrow for my actions. My behavior was deplorable. And I alone am responsible.... It is my responsibility and my responsibility alone.” Partial Transcript of Sentencing Proceedings at 1B-2. (Exhibit G). Clearly, these are not the statements of a man who was acting at the direction of the intended victims of his crimes – Enid Greene and the Enid committees. Joseph P. Waldholtz acted alone. *He acted in his interest and in his interest alone*, as he had so many times in his past.

He made further statements during prison interviews while he was in custody at Allenwood Federal Prison Camp serving his thirty-seven (37) month sentence for election, bank and tax fraud. According to one of the resulting articles, Joseph P. Waldholtz, while treasurer of the Enid committees, recognized that “they would need more money than Enid could or would raise well before the 1994 election, and that’s when he started his periodic calls to Enid’s

wealthy father, Forrest Greene, for 'loans' that he then funneled into their campaign." Javers, *Joe Waldholtz in Prison: Slimmer, Sober and Penitent*, The Hill, June 10, 1998, at 36, col. 1 (emphasis added). (Exhibit H).

The key word is "their" campaign. Although this was Enid Greene's campaign to become a United States Representative, Joseph P. Waldholtz saw this as "his" campaign. In order to analyze the question of agency, as the Restatement indicates, it is necessary to explore the agent's state of mind. To do that, the Commission must explore his mind and his actions, not just in 1994, but in the years leading up to 1994 and 1995, to understand how Joseph P. Waldholtz arrived at that point.

When Enid Greene met Joseph P. Waldholtz, he presented himself as a person with unlimited wealth. He was well known in political circles. He wore expensive clothing; he had wealthy friends; and, he commonly picked up the tab when out on the town with others. In effect, Joseph P. Waldholtz was the picture of "a political mover and a shaker."

He had spent his entire adult life in political fundraising, at both the state and national levels. He had served as the chief of staff for Elsie Hillman, a member of the Republican National Committee, ran the Pennsylvania Bush/Quayle '92 campaign, and after meeting Ms. Greene, served as the executive director of the Utah Republican Party. Enid Greene Dep. At 39-40, 42, 69-70, 73. Joseph P. Waldholtz saw the promise in Enid Greene that others saw in her – a young female leader to help move the Republican Party in a new direction. But Joseph P. Waldholtz saw more. He saw an opportunity. Enid Greene became Joseph P. Waldholtz's way to "bigger and better things." She was his ticket to Washington, D.C., nirvana for political wannabe's. Joseph P. Waldholtz wanted to be a player in the major leagues of American politics and Enid Greene was his ticket.

Eventually, in August 1993, they married. On their wedding day, Joseph P. Waldholtz enthusiastically informed Enid that he had given her a \$5 million gift as a wedding present. Did he have the money? No. Did the \$5 million trust exist? No. Why would he do this? He had built a facade and he needed to maintain the picture. With the encouragement of Joseph P. Waldholtz and with her newly found financial backing, Enid Greene began contemplating that which she had previously written off – another attempt at national office. Ms. Greene had previously run for Congress in 1992 and lost. In 1993, with the enthusiastic prompting of her new husband, Joseph P. Waldholtz, she decided to make another attempt.

Upon forming her committee and structuring her campaign, Enid Greene chose her husband, Joseph P. Waldholtz, as her treasurer. Why? Because she loved and trusted him. Because he had run federal campaigns previously. Because he was familiar with federal election laws. He seemed to be the natural choice. Why? Because Joseph P. Waldholtz had placed himself in that position by continuing his facade. Joseph P. Waldholtz had many deficiencies, but one controlling deficiency was his lack of self-respect, his belief that he had to be someone other than he was in order to achieve acceptance and approval.

Joseph P. Waldholtz took the job as treasurer with enthusiasm. He was going to propel Enid Greene to national attention. He was going to be the power source behind the campaign. He was going to get her elected. What was his state of mind? He wanted the attention and access that her success would bring him.

At the time he became the treasurer, Joseph P. Waldholtz knew what others did not: that he and Enid '94 did not have the resources to run the type of campaign that he envisioned. Joseph P. Waldholtz needed a great deal of money to continue his charade or he would never attain his goal of attaining political power. He also knew that he had prior debts that demanded

his attention; that he had an expensive lifestyle to maintain; and that he needed to continue to conceal prior frauds he had committed against immediate family members in Pittsburgh, Pennsylvania, by sending them money from the "investments" he had made for them. Joseph P. Waldholtz approached the one person whom he knew could supply the amounts of cash that he and Enid '94 needed, and whom he knew would never let down his loved ones. Joseph P. Waldholtz went to D. Forrest Greene, Enid's father.

As in the past, Joseph P. Waldholtz chose a wealthy, elderly person as his target. Joseph P. Waldholtz had previously victimized his own mother, Barbara Waldholtz, and his grandmother, Rebecca Levenson. He had defrauded his mother out of approximately \$100,000, her entire life savings, by convincing her to take out a mortgage on the home she owned free and clear and giving him the money to "invest" on her behalf. And he defrauded his grandmother out of at least \$400,000 by convincing her to allow him to "invest" her money in non-existent Ginnie Mae securities. Instead of investing the money for them, as he had claimed he would, he used the funds to perpetuate his fraud. But, to evade discovery, he needed to send his family money from these fictitious investments.

Accordingly, while he served as treasurer of the Enid committees, Joseph P. Waldholtz was in a constant struggle to prevent his prior victims from discovering his treachery. On March 31, 1994, Joseph P. Waldholtz wired \$3,000 from Enid '94 to Barbara Waldholtz's bank account in Pittsburgh, Pennsylvania so that there would be enough money in her account to meet that month's mortgage payment. Complaint at ¶ 45. On May 25, 1995, he wired \$2,000 from Enid '96 to Rebecca Levenson's bank account in Pittsburgh, Pennsylvania so other family members would not discover that he had looted her assets. Complaint at ¶ 47. Joseph P. Waldholtz's management of the Enid committees' bank accounts was a constant exercise in "robbing Peter to

pay Paul," embezzling funds from the Enid committees to prevent discovery of his earlier crimes, all to further his personal goal of enhancing his reputation as a political kingmaker.

Throughout 1994 and well into 1995, Joseph P. Waldholtz obtained a series of loans from D. Forrest Greene under the pretext of needing the money to cope with financial setbacks caused by his mother. Joseph P. Waldholtz used these funds for an entirely different purpose: to maintain the illusion of personal wealth and to secretly fund the Enid '94 campaign. He continued buying expensive clothing; he continued to pay for lavish dining out and lengthy bar tabs; and he continued to let Enid believe that she was funding the 1994 campaign with her own, lawful money. Most importantly, as mentioned above, Joseph P. Waldholtz used the money for his own personal benefit to cover his prior criminal actions in regards to the frauds committed against his own mother and grandmother.

Joseph P. Waldholtz also consistently deposited the money from D. Forrest Greene into the Enid committees. The steady infusions of cash into Enid '94 from January through the middle of August 1994, were done without Enid's knowledge. The cash transfers of which Enid was aware, she believed were from the proceeds of a legitimate asset swap between herself and her father, using a piece of marital property that Joseph P. Waldholtz assured her was legitimate. Ultimately, like the money that Joseph P. Waldholtz embezzled for his own personal gain, these cash infusions into the Enid committees were for the benefit of Joseph P. Waldholtz. As twisted as that argument sounds, it is as twisted as Joseph P. Waldholtz's psyche was. His life was a lie, spinning out of control. The only way he could control that lie was to attempt to *continue* it. Eventually, on November 11, 1995, his house of cards crumbled, and with it, the lives of Enid Greene and their baby daughter.

Generally, the knowledge of the agent is imputed to the principal. However, the law recognizes an "adverse interest exception" to this general principle. This "exception" is discussed in 3 Am. Jur. 2d (Agency), § 290:

Where the conduct and dealings of an agent are such as to raise a clear presumption that he will not communicate to the principal the facts in controversy, as where the agent acting nominally as such is in reality acting in his own business or for his own personal interest and adversely to the principal, or is acting fraudulently against the interests of the principal, or for any other reason has a motive or interest in concealing the facts from his principal, then contrary to the general rule, the knowledge of the agent is not imputed to the principal.

3 Am. Jur. 2d (Agency), § 290 at 794 (Law. Co-op. 1986) (emphasis added) (citations omitted).

The treatise further states:

This is the case where the agent is engaged in committing an independent fraudulent act on his own account and the facts to be imputed relate to this fraudulent act so that the communication of such facts to the principal would necessarily prevent the consummation of the fraud....This rule also applies where the agent is engaged in prosecuting some fraudulent or illegal enterprise the success of which would be impaired or defeated by the disclosure to his principal of the notice or knowledge sought to be imputed. In all such cases, it is obvious that the agent will not communicate the true facts to the principal and there is no latitude for any presumption that he will.

Id. at 795 (citations omitted).

It is clear that Joseph P. Waldholtz, as husband and as treasurer, did not communicate his fraud to Enid Greene or to the Enid committees. As soon as Enid became aware of the misdeeds of Joseph P. Waldholtz, she did everything she could to correct his criminal actions. She immediately fired Joseph P. Waldholtz from his position as treasurer; she notified law enforcement authorities; she notified the FEC; she hired Coopers & Lybrand at a great, personal cost to reconstruct the Enid committee records and to correct previously filed FEC reports; she hired attorneys to assist the accountants; and finally, she became treasurer of her committees. At a great, personal, emotional, cost to Enid Greene and her family, her devastated private life became public.

The test for principal liability, according to principles of agency law, is whether Joseph P. Waldholtz was acting within the scope of his employment when he committed his criminal fraud – whether the purpose of his actions was to benefit the employer and *not necessarily whether* there was in fact some incidental benefit to the employer. See, e.g., Standard Oil Co. of Texas v. United States, 307 F.2d 120, 128 (5th Cir. 1962) (where agent's fraudulent acts in violation of 15 U.S.C. § 715 et seq. were not intended to benefit defendant corporation, those acts were not imputable to corporation; conviction reversed and judgment rendered in favor of corporation). The record here shows that Joseph P. Waldholtz's actions were intended to benefit him personally, both financially and psychologically, and he acted outside the scope of his employment when he carried out his various criminal schemes. Accordingly, the Enid committees and Enid Greene, as treasurer, may not be held responsible for his actions.

2. Joseph P. Waldholtz So Completely Dominated the Enid Committees That He Became Their Alter Ego and, as Such, He is Personally Responsible for the FECA Violations That He Committed While Treasurer of the Enid Committees.

In analyzing the potential liability of the Enid committees, it is instructive to review cases involving the piercing of the corporate veil. See, e.g., Fidenas AG v. Honeywell, 501 F.Supp. 1029, 1037 (S.D. NY 1980) ("The tests for finding agency so as to hold a parent corporation liable for the obligations of its subsidiary, however, are virtually the same as those for piercing the corporate veil.").

Essentially, Joseph P. Waldholtz was a rogue officer in an unincorporated association. Joseph P. Waldholtz, as treasurer of the Enid committees, so thoroughly controlled the committees that he became their alter ego. It is appropriate to look past the unincorporated association form of the Enid committees to impose liability solely on Joseph P. Waldholtz. "[T]he equitable tool of piercing the corporate veil on the basis of the alter ego theory is

appropriately utilized 'when the court must prevent fraud, illegality, or injustice, or when recognition of the corporate entity would defeat public policy or shield someone from liability for a crime.'” May Bell Schmid v. Roehm GmbH, 544 F.Supp. 272, 275 (D. Kan. 1982) (citations omitted) (emphasis added). “The corporate veil will be pierced only when the corporate 'form has been used to achieve fraud, or when the corporation has been so dominated by an individual or another corporation...and its separate identity so disregarded, that it primarily transacted the dominator's business rather than its own and can be called the other's alter ego.” Costamar Shipping Co. v. Kim-Sail Ltd., 1995 U.S. Dist. LEXIS 18430 at 7 (December 12, 1995) (citations omitted) (emphasis added).

Courts look to several factors in determining whether to pierce the corporate veil, including the intermingling of corporate and personal funds, undercapitalization of the corporation, failure to observe corporate formalities including the maintenance of books and records, failure to pay dividends, insolvency at the time of a transaction, siphoning off of funds, and the inactivity of other officers and directors. Id. (citing William Wrigley Jr. Co. v. Waters, 890 F.2d 594, 600-01 (2nd Cir. 1989) (collecting cases)). “Although there is no set rule as to how many of these factors must be present to pierce the corporate veil, the 'general principle followed by the courts has been that liability is imposed when doing so would achieve an equitable result.'” Id. (citing William Wrigley Jr. Co. v. Waters, 890 F.2d 594, 601 (2nd Cir. 1989) (emphasis added)). Certainly, not all of the factors listed above are directly applicable to the case of the Enid committees and the actions of Joseph P. Waldholtz. However, the factors are instructive.

First, Joseph P. Waldholtz regularly commingled Enid committee funds with his personal accounts. Indeed, Joseph P. Waldholtz essentially used Enid committee bank accounts

interchangeably with his own personal accounts. He paid his credit card bills with Enid committee funds; he wired money from the Enid committees' bank accounts to the bank accounts of his mother and grandmother in order to prevent them from discovering his prior crimes; he transferred money he obtained by fraud from D. Forrest Greene in and out of the Enid committees' bank accounts and used a portion of those funds to maintain his high standard of living. Second, because of his actions, the Enid committees were undercapitalized, which ultimately led to Joseph P. Waldholtz defrauding millions of dollars from D. Forrest Greene. Third, Joseph P. Waldholtz deliberately failed to observe FEC formalities, such as the proper maintenance of books and records, so that he could continue to cover up his crimes. It is the actions of Joseph P. Waldholtz alone that have led to the FEC investigation. He regularly misrepresented the Enid committees' finances and Enid Greene's finances in reports both to the FEC and to the United States Congress. Fourth, it is the actions of Joseph P. Waldholtz alone that led to the insolvency of both Enid '94 and Enid '96. Fifth, Joseph P. Waldholtz siphoned funds from the Committees for his own personal expenses. And sixth, despite Enid Greene's efforts to have outside FEC experts, Huckaby & Associates, supervise Joseph P. Waldholtz's actions, he operated the Enid committees with no effective supervision. The specialists at Huckaby & Associates simply accepted the word of Joseph P. Waldholtz with regard to any proposed FEC filings. Joseph P. Waldholtz functioned as an "unchecked" entity.

"Courts nationwide generally subscribe to the same bottom line: those who commingle corporate assets, take actions to hinder or defraud creditors, disregard corporate formalities, directly engage in tortious conduct (or direct their company to do so), or otherwise abuse the corporate form for an unethical or illegal purpose, will pierce the corporate veil which otherwise

insulates them from personal liability.” Chemtall, Inc. v. Citi-Chem, Inc., 992 F. Supp. 1390, 1402 (S.D. GA 1998) (citations omitted) (emphasis added).

In Geringer v. Wildhorn Ranch, Inc. et al, a wrongful death action, the District Court of Colorado held that the Wildhorn Ranch was actually the alter ego of M.R. Watters (“Watters”), the “owner” of the Ranch, and the court imposed liability on Watters. 706 F.Supp. 1442 (D.Co. 1988). The court looked to similar factors mentioned above. Wildhorn Ranch is a guest ranch located in Teller County, Colorado. The Geringers, a family of four, vacationed there in the summer of 1986. During their stay, William Geringer and his son, Jared, rented a paddleboat, while Diane Geringer and their daughter, Tara, rented another paddleboat. Diane and Tara Geringer later watched as William and Jared Geringer drowned after their paddleboat began sinking while taking on water.

The Geringer Court held that Watters could not hide behind the corporate shell of Wildhorn Ranch in order to avoid liability. The court found that Watters consistently engaged in a course of conduct by which he ignored the existence of the corporate entity; that he conducted business as an individual by exercising such paramount and personal control over the operations of the corporation that the corporate existence had been disregarded and his business interests and own personal interests could not be reasonably separated; and that his domination of the corporation caused injury to the plaintiffs so that to continue to recognize the existence of the separate corporate entity would promote injustice. Id. at 1448 (emphasis added). The court pointed to factors such as Watters’ payments of debts by funds from another corporation or from his own personal funds, depending on the financial condition of the various entities when the debt came due. Additionally, Watters failed to keep records of loans and was unable to produce certain required ledgers. Id. at 1449.

The Tenth Circuit has also held that "in order to establish as a matter of law that the corporate veil should be pierced and that an individual should be held liable for actions that were carried out in the name of the corporation, it must appear that the corporation was being misused in some manner. For example, that its funds were being diverted or a fraud, constructive or express, was being carried out." Trustees of The Colorado Cement Masons Apprentice Trust Fund, et al. v. Burton Levy, et al., No. 78-1057 and 78-1058, at 7) (10th Cir., August 17, 1979) (unpublished) (as cited in May Bell Schmid v. Roehm GmbH, 544 F.Supp. 272, 275 (D. Kan. 1982)).

Clearly, the Enid committees and Enid Greene, as treasurer, should not be held liable for the rogue actions of Joseph P. Waldholtz. He acted in his own self-interest. He was not following the directions of Enid Greene, and the Enid committees certainly did not benefit from his actions. He clearly abused his position as treasurer of the Enid committees for his own personal benefit. He and he alone should be held accountable for the actions he took in the name of the Enid committees.

The General Counsel takes the simplistic view that the Enid committees benefited from the actions of Joseph P. Waldholtz because the Enid committees received a large portion of the \$4 million that Joseph P. Waldholtz obtained by fraud from D. Forrest Greene. However, it is Joseph P. Waldholtz's criminal actions that led to the *demise* of the Enid committees and to the *end* of Enid Greene's promising political career. Certainly, there was no true benefit here to anyone other than Joseph P. Waldholtz, who received the national attention and media limelight that he always craved, no matter the form.

C. The Committees, and Enid Greene, As Treasurer, Were Victims Of Joseph P. Waldholtz's Criminal Actions And It Would Be Fundamentally Unfair For The Commission To Impose Any Liability Upon The Committees, or Enid Greene, As Treasurer.

Enid Greene, as successor treasurer, did everything the Commission could expect a candidate to do once she discovered the criminal misdeeds of the treasurer of the Enid committees, Joseph P. Waldholtz. When Joseph P. Waldholtz abandoned his wife and ten (10) week old daughter to evade a Department of Justice probe, Ms. Greene immediately fired him from his position as treasurer; she notified the FEC; she notified the FBI; she notified local law enforcement; and, at a cost of more than \$150,000, she hired nationally-renowned accountants to reconstruct the Enid committee records and file corrected reports with the FEC so that the fundamental disclosure goal of FECA would be satisfied. To *punish* her for doing the *right* things reaches an *absurd* result.

As a practical matter, taking further action against the Enid committees or Enid Greene, as treasurer, would be a fruitless waste of the Commission's preciously scarce resources, as noted above in the Tsongas matter. Enid '94 and Enid '96 are *more* than deeply in debt for the attorneys' and accountants' fees made necessary by Joseph P. Waldholtz's criminal actions. In calendar year 1997, Enid '94 received no contributions from individuals and has received no individual contributions in 1998. Enid '96 received \$50 in individual contributions in calendar year 1997, but no individual contributions thus far in 1998.

Moreover, the candidate, Enid Greene, the only individual who could conceivably raise funds for the Committees, is in no position to do so. Ms. Greene liquidated virtually all of her remaining personal assets (those that had not already been stolen by Joseph P. Waldholtz) in 1996, including selling her home in Salt Lake City, in order to pay the legal and accounting fees

the Enid committees incurred for successfully fending off the government's criminal investigation and correcting the Enid committees' FEC reports. These are all expenses that would not have been incurred but for Joseph P. Waldholtz's criminal activities. Until very recently, Ms. Greene has been an unemployed single mother, having received a final decree of divorce from Joseph P. Waldholtz in August 1996. She has no assets from which the Commission could make any recovery.

It would be fundamentally unfair to hold the Enid committees liable for the actions of a rogue officer, Joseph P. Waldholtz. Ms. Greene holds no federal office and is not a candidate for federal office. There will be no deterrent effect served for the simple reason that Enid Greene and the Enid committees were not responsible for Joseph P. Waldholtz's criminal actions. The true criminal, *Joseph P. Waldholtz, has been prosecuted and convicted. The true victim, D. Forrest Greene, has a court judgment against Joseph P. Waldholtz. Enid Greene is attempting to move on with her life and to raise her young daughter. It is time for the FEC to use its resources productively, by pursuing the true responsible party: Joseph P. Waldholtz.*

IV. CONCLUSION

For all of the above reasons and those set forth in our previous responses, the Commission should reject the General Counsel's recommendation that there is probable cause to believe that the Enid committees and Enid Greene, as treasurer, violated any provision of FECA. We respectfully request the Commission take no further action and close its file in this matter.

Respectfully submitted,

Charles H. Roistacher /CAK

Charles H. Roistacher

Brett G. Kappel

Brett G. Kappel

Powell, Goldstein, Frazer & Murphy LLP
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
Phone: (202) 347-0066
Fax (202) 624-7222

Counsel to Enid '94 and Enid Greene, as Treasurer
Counsel to Enid '96 and Enid Greene, as Treasurer

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