

(A)

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.

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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

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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				<u>\$2,960,000</u>

(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:

Robert A. ...
FOREPERSON

Eric H. Holder, Jr. /y

ATTORNEY OF THE UNITED STATES IN
AND FOR THE DISTRICT OF COLUMBIA



U.S. Department of Justice

United States Attorney

District of Columbia

FILE (B)
COPY

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. § 3045, 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

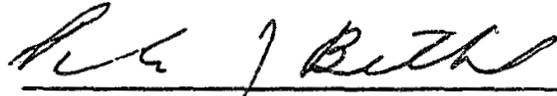
I have read this Agreement, have placed my initials on each page, and carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it. No agreements, promises, understandings or representations have been made with, to or for me other than those set forth above.

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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99 04 304 10 66

C

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)

EST. 1952 "40" 50

JOHNSON, J.

INFORMATION

FILED

The United States informs the Court that:

JUN 4 1996

COUNT ONE

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

A

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

99-04394-193

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 F. Lawler III
WILLIAM E. LAWLER, III
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Craig Iscoe
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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.⁴

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

⁴On 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.

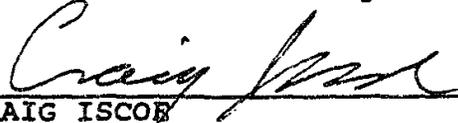
III. CONCLUSION

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,

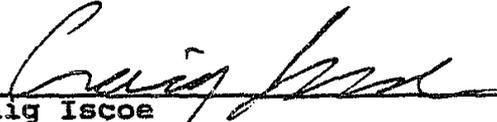
ERIC H. HOLDER, JR.
United States Attorney

By:


CRAIG ISCOE
Assistant United States Attorney
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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.



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E

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

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.

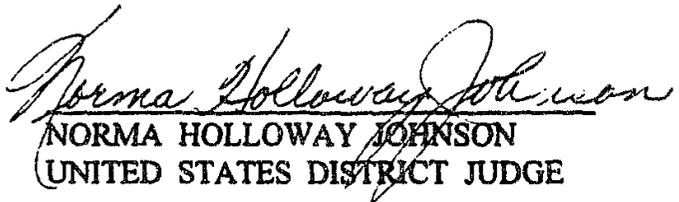
The Court finds that defendant's conduct with respect to *Counts I and II of the criminal information* filed in criminal action 96-185 required more than minimal planning. Defendant obtained more than 26 different advances, totaling \$4.1 million, from Greene's father. He deposited these funds into one 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).

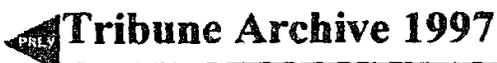
In addition, the Court has determined that the total offense level should be adjusted upward to account for defendant's continuing criminal activity while on release. Under 18 U.S.C. § 3553(b), a sentencing court may impose a sentence outside the applicable guideline range if "there exists an aggravating 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
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

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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.



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, he, 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.)

17

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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

The Hill

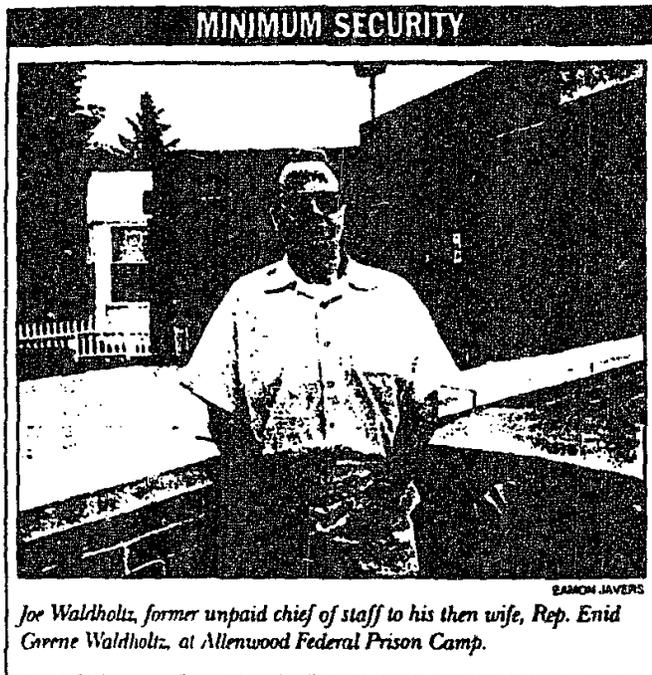
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Wednesday, June 10, 1998



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

■ CONTINUED ON PAGE 26

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 members, former Navy secretary and then-ranking

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 KPXN 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 had to cut them way back," he said.

Susan Neilsen, 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

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 broad 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 of us hail from different pas-

■ CONTINUED ON PAGE 12

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 or 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. Misdeals? 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."



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 reputations.

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

After losing weight during his lengthy court battle, Waldholtz has lost 127 pounds since coming to Allenwood, which is sometimes referred to as "Club Fed," for its minimum security inquiries 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.

Located 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 list 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 pace pallor gone, he says he's focused on keeping the weight off.

He says, "I run, do aerobics, hit weights. Play a mean game of bocce. I'm a very ardent supporter of the softball team. [This] shocks people to death because I was Mr. Inhofe 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 spoke 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 low-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 messed 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: [You, 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 to

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 on an, like you say, ever so slightly and then snowballed?

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 grandmothers, 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 41

Joe Waldholtz: Thoughts on scandal and prison

■ CONTINUED FROM PAGE 35

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 stuff 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 the ...

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 BRIBES

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 wrindle 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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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Enid Greene
Dunford Forrest Greene

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MURs 4322 and 4650

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

SEP 28 3 04 PM '98

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SECRET

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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 ENID 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 Enid Greene (former R-UT) violated 2 U.S.C. § 441f by knowingly permitting her name to be used to effect twenty-eight contributions in the name of another to her 1994 campaign committee, Enid '94. Counsel for Enid Greene respectfully submit this brief in opposition to the General Counsel's probable cause recommendation. Counsel for Enid Greene also represent D. Forrest 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 Enid 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 an incredibly selective and, with regard to crucial facts, completely disingenuous reading of the depositions of Ms. Greene and her father, D. Forrest Greene. The General Counsel's conclusion that there is probable cause to believe that Ms. Greene violated 2 U.S.C §

441f (hereinafter "section 441f") amounts to nothing more than the General Counsel's subjective belief that Ms. Greene should have known the unthinkable: that her husband, Joseph P. Waldholtz, was defrauding her father out of millions of dollars and was secretly funneling a portion of those funds into her 1994 campaign. On the contrary, the evidence of Joseph P. Waldholtz's deception of Ms. 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 Enid Greene in federal court, counsel for Enid Greene will seek attorneys' fees pursuant to the Equal Access to Justice Act.¹

The General Counsel reached his patently unfair conclusion only by ignoring voluminous un rebutted exculpatory evidence demonstrating that Ms. Greene was deceived by Joseph P. Waldholtz into believing that she had the personal wealth to make the reported contributions to her 1994 campaign. In addition, the General Counsel simply ignored exculpatory statements Joseph P. Waldholtz made to the national media completely exonerating D. Forrest and Enid Greene 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.

Enid, he maintains, was unaware of his plans. 'Was Enid ambitious? Yes. Misdeeds? 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 for her from the sidelines.'

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).

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 B).

The General Counsel's subjective belief that Enid Greene must have been involved in Joseph P. Waldholtz's plan to evade FECA's regulatory scheme is simply not borne out by the available evidence. The record in these matters is replete with facts that are flatly inconsistent with the General Counsel's conclusion that Enid Greene conspired with Joseph P. Waldholtz to defraud her father out of millions of dollars and then plotted to use those funds to finance her 1994 campaign:

- It was Enid Greene who retained a nationally known FEC accounting firm to prepare the Enid '94 FEC reports once campaign workers came to her and raised questions about Joseph P. Waldholtz's actions as treasurer.
- It was Enid Greene who finally forced Joseph P. Waldholtz to come up with proof that the so-called "Waldholtz Family Trust" actually existed and Enid Greene who called the police when Joseph P. Waldholtz disappeared after he was unable to produce any such proof.
- It was Enid Greene who cooperated fully with a year-long criminal investigation of her 1994 campaign and who was cleared of any criminal wrongdoing, albeit grudgingly, by the U.S. Attorney for the District of Columbia.

- It was Enid Greene who brought the FECA violations that are the subject of these MURs to the attention of the Commission and Enid Greene who provided the Commission with proof that Joseph P. Waldholtz was responsible for these violations.

The General Counsel dismisses Ms. Greene's repeated assertions under oath that she was unaware that her husband was contributing funds he stole from her father to the Enid '94 campaign as "unconvincing." General Counsel's Brief at 19. Yet nowhere in its brief does the General Counsel discuss – much less refute – the plethora of documentary evidence discovered and provided to the General Counsel's office by Ms. Greene that demonstrates, *beyond any doubt*, that Joseph P. Waldholtz went to extraordinary lengths to deceive her into believing that she, by virtue of their marriage, had the personal wealth to contribute millions of dollars to the 1994 campaign.

Among the many documents that Joseph P. Waldholtz manufactured as part of his scheme to deceive Ms. Greene were: (1) falsified tax returns showing more than \$250,000 in annual income from the supposed "Waldholtz Family Trust;" (2) a falsified statement from Ms. Greene's supposed "TWC Ready Assets" mutual fund account showing a balance of more than \$4 million as of March 31, 1994; and (3) falsified Financial Disclosure Statements Joseph P. Waldholtz duped Ms. Greene into filing in 1994 and 1995 that indicated that Joseph P. Waldholtz was the beneficiary of a blind trust. All of these documents were provided to the General Counsel in response to the Commission's reason to believe determination and were discussed in detail in the Joint Response filed by Enid and D. Forrest Greene. Joint Response at 34-42, Exhibit Vol. 5, Tabs 6, 7, 9, 10, 11 and 12. Astonishingly, the General Counsel *never even questioned* Ms. Greene about these documents during her deposition.

Finally, the General Counsel's brief states repeatedly that Ms. Greene never received any documentation of the so-called Asset Swap. General Counsel's Brief at 16, 21. Indeed, the

General Counsel's probable cause recommendation rests, to a very large extent, on the absence of documentation for the Asset Swap. The General Counsel's representations in this regard are, at best, disingenuous and, at worst, border on misconduct. Ms. 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 requests, Joseph P. Waldholtz manufactured 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 the Greenes 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 D. Forrest Greene's response. Exhibit Vol. 5, Tabs 2, 3, 4 and 5.

Not only did the representative of the General Counsel not question Ms. Greene about these documents during her deposition, he tried to suppress the truth by repeatedly preventing her 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 Ms. Greene from eliciting relevant information from her about these documents. Enid Greene Dep. at 220-29. Despite the best efforts of the General Counsel, Ms. 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 exculpatory evidence the only defect in its brief. Indeed, the General Counsel's brief is noteworthy principally for what it *does not* contain. It is devoid of any documentary or testimonial evidence that would corroborate the General Counsel's subjective belief that Ms. Greene knowingly violated section 441f. Despite the fact that the General Counsel's investigation in this matter lasted more than a year, the General Counsel's brief cites no evidence other than the depositions of Enid and Forrest Greene. Where is the testimony of Huckaby & Associates, the campaign finance accounting firm that actually prepared the Enid '94 FEC reports that are the subject of MURs 4322 and 4650? Surely the testimony of the individuals who actually prepared the reports is relevant. Indeed, we believe that any such testimony would be exculpatory and would show that Joseph P. Waldholtz alone perpetrated the section 441f violations in these matters.

Moreover, where is the testimony of the only individual in this case who the General Counsel concedes violated section 441f -- Joseph P. Waldholtz? General Counsel's Brief at 4, n.7. Until recently, Joseph P. Waldholtz was incarcerated in the Allenwood Federal Prison Camp in Allenwood, Pennsylvania serving a thirty-seven (37) month sentence for election fraud, so it should not have been difficult for the General Counsel to take his deposition. Does his testimony match his public statements both before and after sentencing that he and he alone committed the section 441f violations at issue here? If not, what possible reason could there be for the General Counsel to omit any reference to his testimony when making a probable cause recommendation with regard to Ms. Greene?

The Commission is charged with determining whether there is probable cause to believe that Ms. Greene violated section 441f. Any fair and objective evaluation of *all* the evidence that

has been gathered in this case – including the overwhelming exculpatory evidence the General Counsel chooses to ignore – will conclude that there is not.

II. BACKGROUND AND PROCEDURAL HISTORY.

Enid Greene represented the Second District of Utah in the U.S. House of Representatives during the 104th Congress. Her principal campaign committee in the 1994 congressional election was named Enid '94. Enid '96 was established to be Ms. 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. Mr. 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, Mr. 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. Ms. Greene, however, explained her father's mental condition during her deposition. Enid Greene Dep. at 190.

Joseph P. Waldholtz -- Ms. Greene's former husband and Mr. 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 Ms. 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 Ms. Greene. Accordingly, Joseph P. Waldholtz was the treasurer of

both Enid '94 and Enid '96 (hereinafter the "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 and 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 C).

On Saturday, November 11, 1995, Joseph P. Waldholtz fled Washington, D.C. to escape the government's investigation. Over the rest of that weekend, Ms. 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

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 Ms. 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.

accounting specialists with the national accounting firm of Coopers & Lybrand LLP and directed them to completely reconstruct the campaign records of both committees.

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

Ms. 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. Ms. 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 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 Ms. 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 D); Plea Agreement at 2-3 (Exhibit E).

Moreover, while cooperating with the investigation of the bank fraud allegations, Ms. 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 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 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;
- 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; and
- Embezzled funds from both Enid '94 and Enid '96.

Plea Agreement at 4-5 (Exhibit E).

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 Ms. Greene, both Mr. and Ms. 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 Enid Greene and D. Forrest 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 Enid and D. Forrest Greene continued to cooperate with the government. Both Enid and D. Forrest 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 Enid and D. Forrest Greene. Both Enid and D. Forrest Greene voluntarily complied with document requests related to Ms. Greene's 1994 congressional campaign, turning over more than 10,000 pages of documents. Ms. Greene voluntarily testified before a federal grand jury investigating these transactions on three separate occasions. Mr. 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 Greene 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 D). 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 Ms. 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 F); Plea Agreement at 3-4 (Exhibit E). 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. § 110.11.⁴

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 Mr. and/or Ms. Greene had conspired with Joseph P. Waldholtz to violate section 441f. Plea Agreement at 7 (Exhibit E). 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 E).

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 D); Plea Agreement at 1-3 (Exhibit E). 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 F); Plea Agreement at 4 (Exhibit E).

⁴ The basis for Ms. Green's belief is discussed in detail infra at pp. 26-46.

During the summer of 1996, the U.S. Attorney's Office attempted to corroborate claims by Joseph P. Waldholtz that both Mr. and Ms. Greene had conspired with him to violate section 441f. Several additional witnesses were called before the grand jury investigating Mr. and Ms. 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 Enid or D. Forrest Greene.

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 G). U.S. District Court Judge Norma Holloway 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 H).

B. Procedural History of FEC Investigation.

On June 17, 1997 -- almost eight months after Enid and D. Forrest 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.

Enid Greene, D. Forrest 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 Enid Greene, D. Forrest Greene, and the Enid committees. On July 28, 1997, Enid and D. Forrest Greene also filed a preliminary response to the subpoenas accompanying the Commission's reason to believe determination. On August 7, 1997, counsel for Enid and D. Forrest 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, Enid and D. Forrest Greene filed yet another supplemental response to the Commission's subpoenas in anticipation of their depositions by the General Counsel's Office.

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 Enid and D. Forrest Greene and the Enid committees. Enid Greene Dep. at 224. Moreover, the General Counsel tried to prevent Ms. Greene from testifying about the most important exhibits supporting the joint response. Enid Greene Dep. at 209-10, 212-15, 218-19. The General Counsel even went so far as to attempt to suppress the truth by preventing counsel for Ms. Greene from eliciting relevant information from her about these documents when the General Counsel failed to do so. Enid Greene Dep. at 220-29. Eventually, Ms. Greene did testify 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 I). 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, Ms. 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 Ms. Greene and would consider taking action against her depending upon the outcome of the Commission's investigation. (Exhibit J).

Despite these egregious violations of 2 U.S.C. § 437g(a)(12)(A), both Enid and D. Forrest Greene continued to cooperate with the General Counsel's investigation. On December 1, 1997, counsel for Enid and D. Forrest 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 Enid and D. Forrest Greene responded to yet another request for documents from the General Counsel and turned over Mr. 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 Enid nor D. Forrest Greene was a knowing participant in his plan to circumvent FECA's regulatory scheme. Counsel for Enid and D. Forrest 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 Ms. Greene violated 2 U.S.C. § 441f by knowingly permitting her name to be used to effect twenty-eight contributions in the name of another to her 1994 campaign committee, Enid '94. This recommendation is frivolous and should be rejected to avoid a miscarriage of justice.

III. SECTION 441f VIOLATIONS REQUIRE PROOF OF SPECIFIC INTENT TO CIRCUMVENT FECA'S REGULATORY SCHEME.

A. The General Counsel's Brief Contains No Discussion of the Appropriate Scierter Standard in a Section 441f Matter.

The General Counsel has recommended that the Commission find probable cause to believe that Enid Greene *knowingly* permitted her name to be used to effect contributions from her father, D. Forrest Greene, to her 1994 campaign committee, Enid '94, in violation of section 441f. However, it is difficult to tell from the General Counsel's inartfully drafted brief exactly what standard of knowledge the General Counsel believes applies in section 441f cases. At times, the General Counsel seems to be arguing for a negligence standard, i.e. that Enid Greene may be sanctioned if she "should have known" about Joseph P. Waldholtz's scheme to circumvent FECA's dollar limitations on individual contributions. See General Counsel's Brief at 21 (citing Enid Greene's "lack of vigilance" regarding Joseph P. Waldholtz's actions as a basis for concluding that Ms. Greene knowingly permitted her name to be used to effect contributions funded by Mr. Greene).

In other portions of his brief, the General Counsel seems to be arguing two different theories of general intent. The General Counsel's discussion of the facts concludes that, "At a minimum, the available facts indicate that Enid Greene was conveniently inattentive to Joseph P. Waldholtz's actions regarding her 1994 and 1996 campaigns." General Counsel's Brief at 19

(emphasis added). This seems to be some sort of an attempt to impose liability on Ms. Greene based on a novel willful blindness theory.

Finally, in other portions of his brief, the General Counsel seems to be arguing that the knowledge requirement of section 441f is one of general intent, which can be established by showing merely that the respondent had knowledge of the operative facts. General Counsel's Brief at 21 ("Enid Greene testified that she clearly was aware that the funds from her father were being used for her campaign.").

The General Counsel's confusion as to the appropriate scienter standard to apply in these matters 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 Mr.

Greene and attributed it to another person, Ms. 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.

Faced with this conundrum, the General Counsel relies on the second clause of section 441f, which prohibits anyone from knowingly permitting his or her name to be used to effect a contribution in the name of another. Unfortunately, in casting about for the appropriate standard of knowledge to apply in this case, the General Counsel has hit upon every possible standard except the correct one: specific intent.

B. The General Counsel's Brief Fails to Establish a Violation of Section 441f Under Any Standard of Knowledge.

As discussed in detail in sections IV and V below, Ms. Greene mistakenly believed, due to a series of calculated and deliberate misrepresentations by Joseph P. Waldholtz both before and during their marriage, that she had the personal wealth to make all of the contributions that were made in her name to Enid '94. Under any standard of knowledge, these mistakes of fact preclude the Commission from finding that there is probable cause to believe that Ms. Greene knowingly violated section 441f.

1. Negligence.

The General Counsel's subjective belief that Ms. Greene "should have known" that Joseph P. Waldholtz was stealing money from her father and contributing it to Enid '94 in her name is simply inadequate as a matter of law to establish a violation of section 441f. The second clause of section 441f was enacted as part of a *criminal* statute and the scienter requirement of that statute must be interpreted as a matter of criminal law.⁶ "Knowledge in criminal law is

⁶ Section 101(f)(1) of the Federal Election Campaign Act Amendments of 1974 added a new section 614 to

actual consciousness. . . . 'Should have known' is closer to negligence than to knowledge. . . . 'Knowledge' is a cousin to 'purpose'; both concepts exclude 'should have known but didn't.' . . . What the defendant should have known is not knowledge." United States v. Bader, 956 F.2d 708, 710 (7th Cir. 1992)(internal citations omitted). Accordingly, there is no basis in law for finding Ms. Greene liable for a violation of section 441f on the basis of what the General Counsel believes she should have known.

2. General Intent.

Similarly, there is no support in the law for the General Counsel's apparent belief that the scienter requirement of section 441f can be satisfied by a showing of general intent. In order to demonstrate that a respondent acted with general intent, the government must show that the respondent acted voluntarily and intentionally, and not because of "mistake or accident or other innocent reason." United States v. Docktor, 58 F.3d 1284, 1287-88 (8th Cir. 1995); United States v. Lawson, 780 F.2d 535, 542 (6th Cir. 1985). Accordingly, if Ms. Greene mistakenly believed that she had the personal wealth to make the reported contributions to Enid '94, she cannot be found to have had the general intent to violate section 441f. More importantly, there is no basis for the General Counsel's apparent belief that general intent is the appropriate scienter standard in a section 441f matter.

the U.S. Criminal Code. Section 614 made it a crime for anyone to *knowingly* permit his name to be used 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 411f 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.

a. Willful Blindness.

We know of no court that has ever imposed civil penalties on a respondent in a section 441f case on the basis of the General Counsel's novel willful blindness theory. Indeed, as the General Counsel notes in his brief, the Department of Justice chose not to rely on this theory to prosecute Ms. Greene for criminal violations of section 441f. General Counsel's Brief at 5. The fatal flaws in the General Counsel's novel willful blindness theory are discussed in detail *infra* at pp. 47-53.

b. Knowledge of Operative Facts.

Nor were we able to find any case in which a court 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 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 taken 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).

Even if the courts had adopted a uniform interpretation of the "knowing" standard of section 441a, those cases would be of little use in interpreting the scienter requirement of section 441f. Section 441a is and always has been a civil statute. The Commission has exclusive jurisdiction over "knowing" violations of section 441a. In contrast, as noted above, section 441f is a criminal statute, which is subject to both civil enforcement by the Commission and criminal prosecution by the Department of Justice. U.S. Department of Justice, Criminal Division, Public Integrity Section, Federal Prosecution of Election Offenses 107 (6th ed. January 1995). 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).

3. Specific Intent.

This interpretation of the scienter requirement of section 441f is borne out by the only known decision to interpret the term "knowingly" in a section 441f case. In FEC v. Rodriguez, No. 86-687 Civ-T-10(B)(M.D. Fla. May 5, 1998)(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 names 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.

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.

The Commission adopted 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 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's 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 Ms. Greene knew both that (1) funds contributed to Enid '94 in her name had in fact come from Mr. Greene, and (2) she 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.

IV. ENID GREENE DID NOT KNOWINGLY VIOLATE SECTION 441f.

The General Counsel has recommended that the Commission find probable cause to believe that Enid Greene violated section 441f by knowingly allowing her name to be used to report twenty-eight separate contributions to her 1994 campaign committee, Enid '94, when she supposedly knew that the money used to make those contributions came from her father, D. Forrest Greene. All of these contributions were made between July 8, 1994 and November 14, 1994. The General Counsel fails to distinguish between these contributions, believing, apparently, that by simply rejecting Ms. Greene's testimony as a whole, he need not demonstrate her state of mind with regard to each contribution. In order to understand Joseph P. Waldholtz's scheme to inject D. Forrest Greene's money into Enid '94 without Enid Greene's knowledge, however, it is necessary to divide these twenty-eight contributions into two separate groups.

It is beyond dispute that Ms. Greene believed that the first eleven contributions, (those made during July and August of 1994), were made from a \$5 million mutual fund, the so-called "TWC Ready Assets" account, that had been given to her as a wedding gift by Joseph P. Waldholtz. Enid Greene Dep. at pages 155-56. This account was supposedly part of the so-called "Waldholtz Family Trust," the source, Ms. Greene believed, of all of Joseph P. Waldholtz's apparent wealth. Indeed, as will be discussed in greater detail in section IV.A. below, Joseph P. Waldholtz went to extraordinary lengths to convince Ms. Greene that he was a beneficiary of this family trust, which supposedly had over \$300 million in assets. In fact, however, Joseph P. Waldholtz made these eleven contributions using funds he had obtained by fraud from D. Forrest Greene.⁷ In a scheme that began in January 1994 and extended well past the 1994 election, Joseph P. Waldholtz obtained a series of personal loans from Mr. Greene, ostensibly to cover the financial obligations of Waldholtz family members who, for various reasons, could not access funds from the so-called "Waldholtz Family Trust."

Nine of these personal loans were made between the beginning of January and the end of August 1994. General Counsel's Brief at 8. The General Counsel concedes that Ms. Greene knew of only two or three of these loans – all of which were made well before Joseph P. Waldholtz made the first contribution in Ms. Greene's name to Enid '94 on July 8, 1994. General Counsel's Brief at 11-12. Indeed, a forensic analysis of the Enid '94 and Joseph P. Waldholtz bank accounts, prepared by the accounting firm of Coopers & Lybrand, LLP and provided to the General Counsel by Enid Greene, shows that the source of the first contribution

⁷ Long before the Commission decided that there was reason to believe that D. Forrest Greene conspired with Joseph P. Waldholtz to violate section 441f, a Utah state court had found that Joseph P. Waldholtz 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. The General Counsel showed no deference whatsoever to this prior court ruling, despite the fact that it strikes at the heart of the General Counsel's determination that Mr. Greene was a knowing participant in Joseph P. Waldholtz's plan to circumvent FECA's regulatory scheme. See Brief of Respondent D. Forrest Greene at 33-36.

to Enid '94 was a personal loan of \$150,000 that D. Forrest Greene made to Joseph P. Waldholtz on July 7, 1994. General Counsel's Brief at 8. The General Counsel concedes that this loan was made in the form of a wire transfer that was addressed *solely* to Joseph P. Waldholtz. General Counsel's Brief at 9. There is, therefore, no evidence to show that Ms. Greene knew that her father was the source of the first eleven contributions. Moreover, there is clear documentary evidence to support Ms. Greene's belief that the source of these contributions was her so-called "TWC Ready Assets" account in the "Waldholtz Family Trust." Accordingly, the General Counsel has failed to show that there is probable cause to believe that Ms. Greene violated section 441f with regard to these first eleven contributions.

The remaining seventeen contributions were made between August 26, 1994 and November 14, 1994. All of these contributions were made using funds derived from the "Asset Swap" engineered by Joseph P. Waldholtz. See section IV.B. below. The General Counsel's probable cause recommendation with regard to these later contributions is based largely on the fact that Enid Greene knew that the funds derived from this supposed transaction were subsequently contributed to Enid '94 in her name. General Counsel's Brief at 21. The General Counsel faults Ms. Greene for relying on Joseph P. Waldholtz, the treasurer of Enid '94 and a man who had infinitely more experience with the Federal Election Campaign Act than did she, to determine whether the proposed transaction complied with FEC requirements. *Id.* *The General Counsel conveniently omits the fact that Ms. Greene explicitly directed Joseph P. Waldholtz to have the proposed transaction reviewed by Huckaby & Associates, a nationally recognized FEC accounting firm that had been hired two months earlier for the express purpose of ensuring that Enid '94 operated in complete compliance with FEC requirements.* Enid Greene Dep. at pages 160-61, 194.

Finally, the General Counsel relies disingenuously on the fact that Ms. Greene never actually received any documentation supporting the "Asset Swap." General Counsel's Brief at 21. In fact, as the General Counsel well knows, Ms. Greene repeatedly asked Joseph P. Waldholtz to produce such documentation. Enid Greene Dep. at 195, 207-09, 211-12, 236-37. And, in fact, although she never saw it, Joseph P. Waldholtz manufactured false documentation so he could demonstrate to both Enid and D. Forrest Greene that the "Asset Swap" had taken place. Those false documents, which Ms. Greene has provided to the General Counsel on two separate occasions, preclude the Commission from making a finding of probable cause to believe that Ms. Greene violated section 441f with regard to the final seventeen contributions, because they demonstrate conclusively that she was not a knowing participant in Joseph P. Waldholtz's scheme to circumvent the requirements of FECA. The mere fact that she was aware that funds obtained from her father were ultimately used in her campaign is not enough to satisfy the scienter requirement of section 441 when there is unrefuted evidence that she was deceived into believing that those funds were obtained in a legal transaction.

A. Enid Greene Was Unaware that Loans Joseph P. Waldholtz Had Obtained by Fraud From D. Forrest Greene Were Used By Joseph P. Waldholtz to Make Contributions in Her Name to Enid '94.

As noted above, it is undisputed that Ms. Greene believed that the first eleven contributions, (those made during July and August of 1994), came from a \$5 million mutual fund, the so-called "TWC Ready Assets" account, that had been given to her as a wedding gift by Joseph P. Waldholtz. Enid Greene Dep. at pages 155-56. Ms. Greene also testified that she was not aware that Joseph P. Waldholtz was borrowing hundreds of thousands of dollars from her father at the same time that she believed that the TWC Ready Assets account was being used to fund her 1994 campaign. Enid Greene Dep. at 148. The General Counsel simply dismisses

Ms. Greene's testimony as "unconvincing." General Counsel's Brief at 19. The General Counsel's brief, however, fails to address, much less refute, the documentary evidence that supports Ms. Greene's testimony. That evidence shows conclusively that Joseph P. Waldholtz went to extraordinary lengths to convince Ms. Greene that he was a beneficiary of a family trust, which he claimed had over \$300 million in assets, and that, by virtue of their marriage, she had more than enough personal wealth to contribute millions of dollars to Enid '94. Moreover, the documentary evidence also shows that Joseph P. Waldholtz tried to conceal from Enid Greene the fact that Joseph P. Waldholtz was borrowing hundreds of thousands of dollars from D. Forrest Greene and using those funds to make contributions to Enid '94.

1. Joseph P. Waldholtz went to extraordinary lengths to deceive Enid Greene into believing that she had the personal wealth to make millions of dollars in contributions to Enid '94.

a. Falsified Tax Returns.

Joseph P. Waldholtz's deception of Ms. Greene began well before their marriage. In the spring of 1993, before their August 1993 wedding, Joseph P. Waldholtz and Ms. Greene submitted a mortgage application to Salt Lake City's First Security Bank in order to purchase the house they intended to live in after their wedding. As part of that mortgage application, Joseph P. Waldholtz submitted copies of what he said were his individual income tax returns for tax years 1991 and 1992.

Joseph P. Waldholtz claimed approximately two hundred and fifty thousand dollars (\$250,000) in annual income from the "J.M. [sic] Waldholtz Trust" on both of those returns when, in fact, he knew (although Ms. Greene did not) that there was no "Waldholtz Family Trust" (Exhibit K). Incredibly, First Security Bank (the largest bank in the Intermountain West)

subsequently granted the mortgage application based largely on Joseph P. Waldholtz's representations as to his sources of income. Enid Greene Dep. at 146-47, 157.

By the time of the mortgage application, Ms. Greene had been told many times by Joseph P. Waldholtz, during the well over two years of their acquaintance and courtship, that he was a beneficiary of the so-called "Waldholtz Family Trust." Enid Greene Dep. at 155, 203. His spending habits certainly seemed to confirm that he was a wealthy man and, indeed, the General Counsel concedes that Joseph P. Waldholtz portrayed himself as a millionaire. General Counsel's Brief at 3, n. 4. These falsified tax returns and the fact that First Security Bank granted a mortgage application on the basis of these returns only confirmed Ms. Greene's belief the Joseph P. Waldholtz was independently wealthy. Enid Greene Dep. at pages 146-47, 157, 203.

b. Falsified TWC Ready Assets Statement.

As noted above, Ms. Greene believed until shortly after Joseph P. Waldholtz fled Washington, D.C. on November 11, 1995, that the source of the personal contributions she made to her congressional campaign through August of 1994 was a mutual fund that had supposedly been established in her name by the so-called "Waldholtz Family Trust" at the time of her August 8, 1993, wedding to Joseph P. Waldholtz. Joseph P. Waldholtz told her *on their wedding day* that, as a wedding gift, he had the trustees of the so-called "Waldholtz Family Trust" place approximately \$5 million into a TWC Ready Assets mutual fund in Ms. Greene's name for her to do with as she wished. Enid Greene Dep. at pages 155-56.

In July of 1995, reporters for a Salt Lake City newspaper compared Ms. Greene's 1994 and 1995 congressional financial disclosure statements⁸ with Enid '94's FEC reports and

⁸ Joseph P. Waldholtz's falsification of Ms. Greene's 1994 and 1995 financial disclosure forms is discussed in the following section

concluded that she did not have the personal assets to have financed her 1994 campaign. Based on misrepresentations made to her by Joseph P. Waldholtz and her belief that the TWC Ready Assets account contained approximately \$5 million, Ms. Greene told the reporters that there was a typographical error on the financial disclosure reports and that the TWC Ready Assets account should have been valued at over \$1 million, not between \$500,000 and \$1 million as originally reported. In essence, the wrong box had been checked on the report form.⁹ When the reporters asked for copies of the TWC Ready Assets statement to confirm its value, Ms. Greene directed Joseph P. Waldholtz to contact the trustees of the so-called "Waldholtz Family Trust" and have them produce a copy of the statement. After some delay, Joseph P. Waldholtz eventually produced a statement showing that, as of March 31, 1994, Ms. Greene's TWC Ready Asset account had a balance of nearly \$4.5 million.

After Joseph P. Waldholtz fled Washington, D.C., however, Enid Greene discovered a memorandum from Joseph P. Waldholtz to a friend directing him to produce a phony TWC Ready Assets statement "as a joke" on Ms. Greene. Attached to this document was a marked-up copy of Joseph P. Waldholtz's own Merrill Lynch statement for the friend to use as a model (Exhibit L). It was this falsified statement that Ms. Greene provided to reporters, believing it to be genuine.

c. Falsified Financial Disclosure Statements.

In both 1994 and 1995, Ms. Greene relied on her former husband, Joseph P. Waldholtz, to provide her with accurate information regarding the assets he brought into their marriage. As previously discussed, Joseph P. Waldholtz told her that he was a beneficiary of the so-called "Waldholtz Family Trust," which he claimed had hundreds of millions of dollars in assets. Ms.

⁹ The disclosure forms require valuation of assets only in broad categories; the boxes for these two categories appear contiguously on the disclosure form.

Greene incorporated this information into the financial disclosure statements she prepared for the House of Representatives in 1994 and 1995. We now know, of course, that there was no "Waldholtz Family Trust" and that the assets Joseph P. Waldholtz claimed to own were purely fictitious.

Joseph P. Waldholtz's deception of Ms. Greene went even deeper than merely lying to her about his assets. On two separate occasions he duped her into signing financial disclosure statements that were materially different than the ones she had read and approved.

Joseph P. Waldholtz's deception of Enid and D. Forrest. Greene hinged on their continued belief in the non-existent "Waldholtz Family Trust." When Ms. Greene had to file her first financial disclosure statement as a candidate in 1994, however, he ran into a problem. The Ethics in Government Act allows a candidate to avoid reporting details of a qualified blind trust that benefits her spouse or dependent children. In order to take advantage of this exemption, however, the trust documents must be submitted to the House Committee on Standards of Official Conduct to determine whether the trust meets the statutory requirements for a qualified blind trust. 5 U.S.C. app. 4, § 102(e)(3)(D).

Joseph P. Waldholtz, of course, wanted Ms. Greene to believe that the so-called "Waldholtz Family Trust" met the requirements for a qualified blind trust so as to avoid the specific reporting requirements. However, since there was no such trust, there were no trust documents to submit to the Committee on Standards of Official Conduct. Accordingly, to maintain his deception, Joseph P. Waldholtz had to have Ms. Greene *sign* a financial disclosure statement claiming the qualified blind trust exemption, while actually *filing* a statement that did not claim this exemption.

The exemption for qualified blind trusts appears on the first page of the financial disclosure statement form. The person filling out the form must check a box labeled YES or NO in order to claim the exemption. In 1994, Joseph P. Waldholtz and Ms. Greene filled out her financial disclosure statement in pencil. On the draft they prepared together, the YES box following the qualified blind trust exemption question was marked with an X. (Exhibit M). After the draft had been completely filled out, Ms. Greene then signed a blank financial disclosure statement form and trusted her husband to fill it out in accordance with the draft and file it. Joseph P. Waldholtz simply erased the X in the YES box on the draft form and inserted an X in the NO box. He then filled out the blank form Ms. Greene had already signed. On the form that he actually filed, the NO box following the qualified blind trust exemption question was marked with an X (Exhibit N).

In 1995, Joseph P. Waldholtz used a variation on this successful scheme. This time, he typed two different versions of the financial disclosure statement form -- one with the YES box marked with an X and another with the NO box marked with an X. At the end of the day the form was due, he presented Ms. Greene with the first form. She reviewed it, saw that the YES box was marked with an X, and signed it. Joseph P. Waldholtz left the office with the signed form and then later suddenly reappeared, saying he had "messed up" the form and that Ms. Greene would have to sign another copy. He thrust an unsigned copy of the completed form in front of her and urged her to sign it immediately, so he would be able to submit the form before the applicable congressional office closed. Ms. Greene quickly signed the form without reviewing it again. Joseph P. Waldholtz then ran out of the office to file the form with the House Office of Records and Registration. The form that was filed, of course, had the NO box marked with an X (Compare Exhibit O with Exhibit P).

Exhibits M through P are crucial to any resolution of these matters, because they establish conclusively that Ms. Greene cannot be held liable for any violations of section 441f. *If Ms. Greene had been a knowing participant in Joseph P. Waldholtz's plan to circumvent FECA's regulatory scheme, there would have been no need for the elaborate charade documented by these exhibits – both during and after the 1994 campaign.* Indeed, the only possible explanation for these convoluted maneuvers is that Joseph P. Waldholtz's scheme depended upon his ability to keep Ms. Greene in the dark about the true source of the funds that he was contributing in her name to Enid '94. Astonishingly, the General Counsel never even questioned Ms. Greene about these documents during her deposition, despite the fact that they had been provided to the General Counsel two months earlier as part of Ms. and Mr. Greene's joint response to the Commission's reason to believe finding. In his brief, the General Counsel relegates his discussion of the 1994 financial disclosure form to a footnote and provides no explanation of the bizarre circumstances surrounding the preparation of this document. General Counsel's Brief at 3, n.4. Any fair consideration of these matters requires the Commission to conduct a more thorough examination of these exhibits than the General Counsel was willing to conduct in his rush to judgment against Ms. Greene.

2. Joseph P. Waldholtz went to extraordinary lengths to hide from Enid Greene the extent of his borrowing from D. Forrest Greene.

Between January 21, 1994 and August 8, 1994, Mr. Greene loaned Joseph P. Waldholtz a total of \$598,000 in nine separate transactions.¹⁰ As Mr. Greene testified during his deposition -- and has already been determined by a Utah state court and admitted by Joseph P. Waldholtz --

¹⁰ 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 "Asset Swap," making it impossible to tell precisely where one scheme ended and the next one began.

these loans were made based 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.¹¹ However, after Joseph P. Waldholtz fled Washington, D.C. on November 11, 1995, Ms. Greene discovered a computer diskette among the belongings he left behind. 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 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

¹¹ 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.

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 Mr. Greene (April 28, 1994)(emphasis added)(Exhibit Q).

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 Enid and D. Forrest Greene. Neither Ms. Greene nor her father were 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 he tried deliberately to hide from Enid Greene the vast extent of his borrowing from D. Forrest Greene. Enid Greene Dep. at page 148.

3. The General Counsel has failed to show any connection between the loans Enid Greene knew Joseph P. Waldholtz had obtained from D. Forrest Greene and the subsequent contributions that were made in Enid Greene's name to Enid '94.

Aside from his complete failure to address the documentary evidence supporting Ms. Greene's testimony, the General Counsel's brief is also deficient in that it fails to cite to any evidence in the record that would demonstrate a connection between the loans Ms. Greene knew Joseph P. Waldholtz had obtained from her father and the contributions that were later made in her name to Enid '94. One of the major factors the General Counsel cited in support of his probable cause recommendation against Enid Greene was the fact that the "transfers from D. Forrest Greene began in January of 1994, at the beginning of her 1994 campaign." General Counsel's Brief at 20. Unfortunately for the General Counsel's argument, the first contributions to Enid '94 in Ms. Greene's name did not occur until six months later. There is no evidence in the record that would bridge this gap and demonstrate that Ms. Greene knew that money that was loaned to Joseph P. Waldholtz by her father was subsequently contributed to Enid '94 in her name.

The General Counsel concedes that Ms. Greene was only aware of the first two of Joseph P. Waldholtz's many requests for loans from Mr. Greene. General Counsel's Brief at 11. These two requests were made in January and February of 1994 – months before the first reported contributions were made to Enid '94. Enid Greene Dep. at pages 181-82, 184-86. The General Counsel attempted to establish a tie between later loans to Joseph P. Waldholtz and contributions to Enid '94, but he quickly abandoned this line of questioning when it turned out that Joseph P. Waldholtz had forged Ms. Greene's signature on a loan check that had been made out jointly to Joseph P. Waldholtz and Ms. Greene. Enid Greene Dep. at 200-01. The General Counsel declined to question Ms. Greene further regarding the many documented instances of Joseph P.

Waldholtz forging Ms. Greene's signature on financial documents – including two separate occasions when he forged her endorsement on her congressional paychecks.¹² Enid Greene Dep. at 199. Ms. Greene did concede that she had endorsed a May 9, 1994 check from D. Forrest Greene that was apparently a loan to Joseph P. Waldholtz. Enid Greene Dep. at 200-01.

Enid Greene, however, signed that check approximately two months before the first contribution to Enid '94 was made in her name. A forensic analysis of the Enid '94 and Joseph P. Waldholtz bank accounts, prepared by the accounting firm of Coopers & Lybrand, LLP, and provided to the General Counsel by Ms. Greene, shows that the source of the first contribution in Ms. Greene's name to Enid '94 was not the May 9, 1994 check endorsed by Enid Greene, but a personal loan of \$150,000 that D. Forrest Greene made to Joseph P. Waldholtz on July 7, 1994. General Counsel's Brief at 8. Indeed, the General Counsel concedes that this loan was made in the form of a wire transfer that was addressed *solely* to Joseph P. Waldholtz. General Counsel's Brief at 9. The forensic analysis also demonstrates that it was this \$150,000 wire transfer – which was made without the knowledge of Enid Greene -- that was the apparent source of *all* of the contributions that were made to Enid '94 in Ms. Greene's name during the month of July. Finally, the General Counsel also concedes that the next loan from D. Forrest Greene to Joseph P. Waldholtz was a wire transfer of \$83,000 that was made on August 8, 1994 and was addressed *solely* to Joseph P. Waldholtz. General Counsel's Brief at 9. Again, the forensic analysis shows that this wire transfer was the source of all of the contributions that were made to Enid '94 in Ms. Greene's name during the month of August prior to the Asset Swap. Accordingly, the General Counsel has failed to demonstrate *any* connection between the loans Ms. Greene knew Joseph P. Waldholtz had obtained from her father and the contributions that were later made in her name to

¹² Shortly before Joseph P. Waldholtz's disappearance in November 1995, Ms. Greene asked House of Representatives employees to trace her paychecks, believing them lost or stolen. There would have been

Enid '94. On the contrary, all the evidence in the record supports Enid Greene's testimony that she had no idea that Joseph P. Waldholtz was taking funds he had obtained by fraud from D. Forrest Greene and was contributing them to Enid '94 in her name. There simply is no basis for the Commission to conclude that there is probable cause to believe that Ms. Greene knowingly violated section 441f with regard to the first eleven contributions that are the subject of these matters.

B. Due to the Elaborate Deception Perpetrated by Joseph P. Waldholtz, Enid Greene Mistakenly Believed She Had a Legal Right to Contribute Funds Obtained From D. Forrest Greene in the So-Called Asset Swap to Enid '94.

As noted above, between August 25, 1994 and November 14, 1994, D. Forrest Greene transferred a total of \$2,211,000 to accounts controlled by Joseph P. Waldholtz. 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.

Ms. 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 188-98, 206-14, 224-32. The General Counsel's probable cause recommendation 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 for documentation of the Asset Swap (Enid Greene Dep. at pages 195, 207-09, 211-12, 236-37) and evidence that, in response to her requests, Joseph P. Waldholtz fabricated false documentation,

no need for her to do so if she knew her husband was the thief.

the General Counsel's probable cause recommendation is based, in large part, on the premise that Ms. Greene never actually *received* any 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 Mr. 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 Ms. 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 Ms. Greene at the time of their August 8, 1993 wedding. Ms. 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.¹³

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

¹³ The TWC Ready Assets account, and the extreme measures Joseph P. Waldholtz took to convince Ms. Greene that it did, in fact, exist, are discussed in greater detail in section IV.A.1.b.

estate from a relative of his grandmother's. He told Ms. Greene that the real estate was in probate, but that the property was worth \$2.2 million and that there was already a 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, Ms. 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.

Ms. 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 Ms. Greene, Joseph P. Waldholtz apparently sat down at his computer and drafted a letter to Mr. 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 Mr. and Mrs. Forrest Greene (August 24, 1994)(Exhibit R).

Apparently, Joseph P. Waldholtz never actually sent this letter.¹⁴ As was the case with the other password-protected letter to D. Forrest Greene that was recovered from Joseph P. Waldholtz's laptop computer, Mr. Greene has no recollection of receiving this letter and no copies were found during a search of his 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 Mr. 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 Mr. 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 195, 207-09, 211-12, 236-37. In response to her persistent requests, Joseph P. Waldholtz approached the campaign's newly hired press secretary, Michael Levy. 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 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 S).

¹⁴ 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 Mr. 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.

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 S). 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 S).

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 S). See also Fax from Emanuel Faust to Mike Levy (9/23/94)(Exhibit T).

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 S). See also Fax from Jim Kelly to Michael Levy (9/29/94)(Exhibit U).

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 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 V).

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 Enid Greene into believing that the Asset Swap was a lawful transaction. More importantly, these documents demonstrate that Enid Greene was not a knowing participant in Joseph P. Waldholtz's scheme to circumvent FECA. There would have been no need for Joseph P. Waldholtz to research assignment documentation through Michael Levy and a respected Washington, D.C. firm if Enid Greene were a participant in the scheme to defraud D. Forrest Greene. 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 Enid Greene violated section 441f in connection with the last seventeen contributions that are the subject of these matters.

V. **ENID GREENE WAS NOT WILLFULLY BLIND TO JOSEPH P. WALDHOLTZ'S SCHEME TO CONTRIBUTE FUNDS HE HAD OBTAINED BY FRAUD FROM D. FORREST GREENE TO ENID '94 IN THE NAME OF ENID GREENE.**

Finally, let us put to rest any notion the General Counsel may have regarding the use of a willful blindness theory in these matters. As noted at the outset, the General Counsel seems to be arguing at various points in his brief that Ms. Greene may be sanctioned for violations of section 441f on the basis that she was willfully blind to the criminal acts of Joseph P. Waldholtz. The General Counsel's assessment of the evidence in these matters leads him to conclude that "Enid Greene was conveniently inattentive to Waldholtz's actions regarding her 1994 and 1996 campaigns." General Counsel's Brief at 19. He then bases his probable cause recommendation, in part, on "Enid Greene's lack of vigilance regarding Waldholtz's actions" General Counsel's Brief at 21.

The General Counsel does not do himself any favor by trying to pursue a willful blindness theory. Even if the law allowed the General Counsel to use a willful blindness theory to establish a violation of section 441f, which it does not, he still would have to show that Ms. Greene acted with deliberate ignorance and conscious avoidance of actual knowledge. The General Counsel would have to come forward with proof that Ms. Greene deliberately closed her eyes to what otherwise would have been obvious. United States v. Glick, 710 F.2d 639, 642 (10th Cir. 1983); United States v. Jewell, 532 F.2d 697 (9th Cir. 1976); Griego v. United States, 298 F.2d 845 (10th Cir. 1962). The standard of proof in willful blindness cases is very high:

A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realised its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness

indistinguishable from the civil doctrine of negligence in not obtaining knowledge.

Jewell, 532 F.2d at 700, n. 7 (quoting G. Williams, Criminal Law: The General Part 159 (2d ed. 1961)).

There is nothing in the record that would even remotely support an argument that Ms. Greene deliberately closed her eyes to obvious wrongdoing by Joseph P. Waldholtz. Indeed, the evidence in the record shows exactly the opposite: at the first hint of possible concern Ms. Greene took affirmative action to ensure that Enid '94 would be operated in complete compliance with FECA requirements.

In mid-June 1994, KayLin Loveland, the assistant treasurer of Enid '94, approached Ms. Greene with concerns about the accuracy of the FEC reports prepared by Joseph P. Waldholtz. Enid Greene Dep. at pages 166-167. Ms. 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. She did so both to assist her husband and to protect his reputation. Moreover, Ms. 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.

Ms. 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 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 Ms. Greene during the campaign to inform her that they were having difficulty documenting the committee's contributions and expenditures. Enid Greene Dep. at 161.

There was, indeed, negligence in the operation of Enid '94, but it was the negligence of Huckaby & Associates, not that of Enid Greene. Ms. Greene took every reasonable step to ensure that her campaign committee was operated in accordance with all applicable legal requirements. The negligence of her outside consultants cannot be imputed to her, and in no way demonstrates that she was willfully blind to the criminal actions of the committee's treasurer, Joseph P. Waldholtz.

Nor, without the benefit of hindsight, can it seriously be argued that Ms. Greene was willfully blind to the legality of the Asset Swap. The General Counsel finds it incredible that a candidate for Congress, who was busy campaigning 12 to 15 hours a day, would turn to her husband and campaign treasurer, a man whose entire adult life had been spent in political fundraising at the federal level, to determine whether a specific business transaction would be permissible under FEC regulations. The only apparent basis for the General Counsel's incredulousness is the fact that Ms. Greene was an attorney, and Joseph P. Waldholtz was not. General Counsel's Brief at 21.

The General Counsel's contention that it was unreasonable for Ms. Greene to rely on Joseph P. Waldholtz to determine the legality of the Asset Swap, because she was a lawyer and he was not, is patently ridiculous. The General Counsel seems to believe that, because Ms. Greene had taken a course in law school on election law in 1983, she should have been able to

determine whether the Asset Swap would have been permissible under FECA. General Counsel's Brief at 4, n. 5. In fact, the law school course Ms. Greene took dealt with a number of federal election law issues, including the Voting Rights Act and apportionment. Only a small portion of the course dealt with federal campaign finance law. Enid Greene Dep. at 11-12. Moreover, Ms. Greene took that course *more than ten years* before her 1994 campaign. While Ms. Greene was active politically during those ten years, she testified that she was never involved directly in political fundraising until her first campaign for Congress in 1992. Enid Greene Dep. at 18, 23, 27, 106-09. Moreover, while Ms. Greene was a lawyer, she was a litigator, not a campaign finance specialist. Enid Greene Dep. at 12-13. To expect a person with that level of training and experience in campaign finance law to be able to determine whether the Asset Swap was permissible under FECA is simply ludicrous.

In contrast to Ms. Greene's limited experience with FECA, Joseph P. Waldholtz had spent his entire adult life in political fundraising at the highest levels of American politics. In the years leading up to his stint as treasurer of Enid '94, Joseph P. Waldholtz had raised funds for Senator Rick Santorum's (R-PA) first campaign for federal office, served as the chief of staff for Elsie Hillman, a member of the Republican National Committee, ran the Bush/Quayle '94 campaign in Pennsylvania, and served as the executive director of the Utah Republican Party. Enid Greene Dep. at 39-40, 42, 69-70, 73. Indeed, Ms. Greene testified that Joseph P. Waldholtz was named treasurer of Enid '94 precisely because "he had more expertise [in campaign finance] than anyone else I thought in the State of Utah and he was my husband and I trusted him." Enid Greene Dep. at pages 158.

Moreover, Joseph P. Waldholtz was supposedly in day-to-day contact with Huckaby & Associates, the nationally recognized FEC accounting firm that had been retained for the explicit

purpose of ensuring that Enid '94 was in complete compliance with all FEC requirements. Ms. Greene did not blindly delegate to Joseph P. Waldholtz the responsibility for determining the legality of the Asset Swap; she explicitly directed him to consult with the FEC experts:

I said we need to check this through with the lawyers, meaning the trust lawyers on the real property side of it, and you have to check with the accountants, meaning Huckaby on the FEC side of it. I said you have to absolutely make sure that this thing is valid. He came back to me two days later. . . . He used enough [legal terminology] to convince me that yes he had talked to the lawyer and the accountant and everything was working. Now mind you, I'm in the middle of the campaign. I've left all this to Joe to figure out because he's used to dealing with the trustees and he's been dealing with Huckaby. He comes back to me and said yes, it will work. They said it will work.

Enid Greene Dep. at pages 194-95.

Under these circumstances, given what she knew about Joseph P. Waldholtz at the time, it was completely reasonable for Ms. Greene to rely on her campaign treasurer to consult with FEC professionals to determine that the Asset Swap was permissible under FECA. Moreover, although she did not know it at the time, there was an existing FEC precedent that supported the legality of the Asset Swap. In Advisory Opinion 1984-60, [1976-1990 Transfer Binder] Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5802, the Commission held that a former candidate could sell an interest in real estate to a family member in an arms-length transaction and use the proceeds from that sale to retire campaign debts. Moreover, the Commission held that the funds received by the candidate as a result of this transaction would not constitute a contribution by the purchaser of the interest in real estate. Accordingly, it was not unreasonable for Ms. Greene to believe that the Asset Swap was permissible under FECA.

Finally, Ms. Greene cannot be found to have been willfully blind to Joseph P. Waldholtz's criminal actions based on what the General Counsel believes was her "lack of vigilance" in supervising Joseph P. Waldholtz's actions as treasurer of Enid '94. General

Counsel's Brief at 21. As the General Counsel is well aware, a candidate has no legal duty to supervise the actions of the campaign's treasurer. The candidate is merely an agent of the campaign committee. It is the treasurer and the treasurer alone who is legally responsible for any violations of FECA. FEC v. Gus Savage for Congress '82 Committee, 606 F. Supp. 541, 546-47 (N.D. Ill. 1985).

VI. CONCLUSION.

The General Counsel's recommendation that the Commission find probable cause to believe that Enid Greene violated 2 U.S.C. § 441f is based on nothing more than his erroneous subjective belief that Ms. Greene "should have known" that her then-husband, Joseph P. Waldholtz, was contributing funds he stole from D. Forrest Greene to Enid '94 in her name. General Counsel's Brief at 21. However, the scienter requirement of section 441f requires that the General Counsel demonstrate that it is more probable than not that Enid Greene knew both that (1) funds contributed to Enid '94 in her name had in fact come from D. Forrest Greene, and (2) she was a willing participant in a deliberate plan to evade FECA's regulatory scheme. Contrary to the General Counsel's recommendation, any fair evaluation of *all* the evidence that has been adduced in these matters would establish that Enid Greene did not knowingly allow her name to be used by Joseph P. Waldholtz as part of his scheme to channel funds he obtained by fraud from D. Forrest Greene into Enid '94.

Ms. Greene testified that she was totally unaware that funds initially loaned by her father to Joseph P. Waldholtz were being transferred to the Enid '94 campaign accounts, and later believed, due to the misrepresentations of Joseph P. Waldholtz regarding her interest in a piece of commercial real estate in Pennsylvania, that she had an unequivocal legal right to transfer certain funds to the Enid '94 campaign accounts.

SECRET
The documentary evidence fully supports Ms. Greene's testimony. As discussed in section IV.A. above, Joseph P. Waldholtz went to great lengths to fabricate documents to convince Ms. Greene that she had the personal wealth, as a result of their marriage, to contribute a substantial amount of money to her 1994 congressional campaign. Moreover, the documentary evidence shows that Joseph P. Waldholtz deliberately tried to hide from Enid Greene the extent of his borrowing from D. Forrest Greene. In his April 28, 1994 letter requesting a \$114,000 loan from Mr. Greene, Joseph P. Waldholtz wrote, "I have not discussed all of this with Enid because I don't want to upset her anymore than she has to be. . . . I think we need to keep this between us. I cannot cause more pain for Enid or Mrs. Greene." Letter from Joseph P. Waldholtz to Mr. Greene (April 28, 1994)(Exhibit J). If Enid Greene was not even aware of the extent of Joseph P. Waldholtz's borrowing from her father, she could not possibly have known that Joseph P. Waldholtz was taking those loan proceeds and using them to secretly finance the Enid '94 campaign. Indeed, the General Counsel has failed to demonstrate any connection between the loans Ms. Greene knew Joseph P. Waldholtz had obtained from her father and the contributions that were later made in her name to Enid '94.

Enid Greene was as much a victim of Joseph P. Waldholtz's so-called "Asset Swap" as D. Forrest Greene. The unrefuted documentary evidence demonstrates that Joseph P. Waldholtz went to extraordinary lengths to deceive Enid Greene into believing that the Asset Swap was a lawful transaction. More importantly, these documents demonstrate that Enid Greene was not a knowing participant in Joseph P. Waldholtz's scheme to circumvent FECA.

For all of the foregoing reasons, the Commission should conclude that there is no probable cause to believe that Enid Greene violated 2 U.S.C. § 441f.

Respectfully submitted,



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MINIMUM SECURITY



EMON 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 Neilsen, media liaison for KCRB-

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:

Best 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 17

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 of the hail from different par-

CONTINUED ON PAGE 13

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 or 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. Misled? 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."



Joe Waldholtz at Allentwood 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 my situation that we needed."

After losing weight during his lengthy court battle, Waldholtz has lost 125 pounds since coming to Allentwood, which is sometimes derided as "Club Fed," for its minimum security inmates 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.

Nestled next to a private golf course and a technical college, a passerby could easily mistake Allentwood for wealthy 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 passy 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] shocks people to death because I was Mr. Inhuman 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 Allentwood Federal Prison Camp Monday to break his media silence about his crimes. He spoke 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 meant 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 to

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, as 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 Pictouville, from your father-in-law, to the tune of \$1 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 used credit cards from your own lawyers during this whole time frame. Some people say

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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 stuff 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 to 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 BRIG

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. She 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 wound 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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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. SLODYSKO 4806-A U. S. Courthouse Washington, D. C. 20001 (202) 273-0404
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Computer-Aided Transcription of Stenographic Notes

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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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:

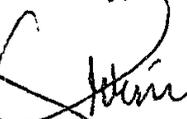
I understand that the Federal Election Commission has initiated an investigation into your 1994 campaign and your father, D. Forrest Greene. Incredibly, the press reports imply that the Commission's investigation is focused on your conduct and your father's, rather than the proven criminal actions of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

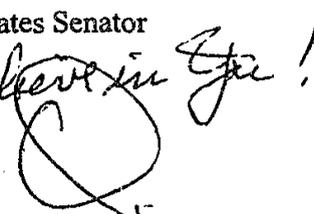
Sincerely,



Orrin G. Hatch
United States Senator

OGH:rlid

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



(D)

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	:	Criminal No.:	96-0143
	:		
	:	Grand Jury Original	
v.	:		
	:	Violations:	
JOSEPH P. WALDHOLTZ,	:	18 U.S.C. § 1344	
Defendant.	:	(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.

49 "01394" 2074

3

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. /j
ATTORNEY OF THE UNITED STATES IN
AND FOR THE DISTRICT OF COLUMBIA



U.S. Department of Justice

United States Attorney

District of Columbia

FILE (E)
COPY

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)(B)) 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. § 3023, 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

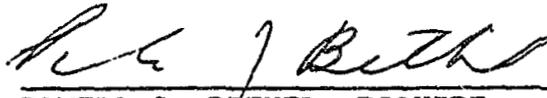
I have read this Agreement, have placed my initials on each page, and carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it. No agreements, promises, understandings or representations have been made with, to or for me other than those set forth above.

6/3/96
Date

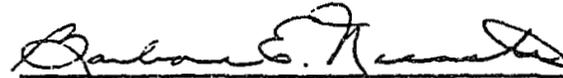
Joseph P. Waldholtz
JOSEPH P. WALDHOLTZ

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

2002 "463" 40" 66

F

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)

REC'D 4/23/96

ROBINSON, 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 96-0185

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

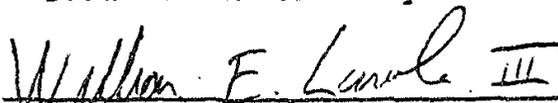
On or about April 14, 1993, JOSEPH WALDHOLTZ did willfully and knowingly aid, assist, counsel and advise Enid Greene Waldholtz in the preparation of her 1993 federal income tax return (IRS Form 1040), which she filed as a married person filing separately, by falsely telling her that he had given her 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
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555 Fourth Street, N.W.
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99-04394-2096

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.⁴

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

⁴On 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 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.

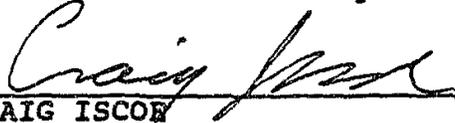
III. CONCLUSION

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,

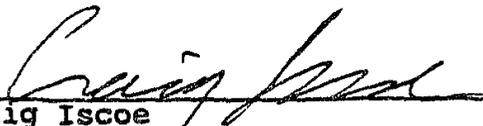
ERIC H. HOLDER, JR.
United States Attorney

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

H

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

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.

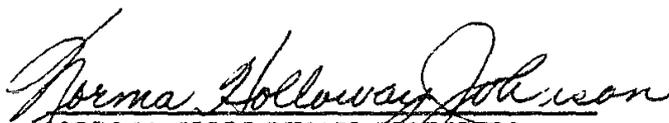
The Court finds that defendant's conduct with respect to Counts I and II of the criminal information filed in criminal action 96-185 required more than minimal planning. Defendant obtained more than 26 different advances, totaling \$4.1 million, from Greene's father. He deposited these funds into one 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
UNITED STATES DISTRICT JUDGE

Dated: November 7, 1996


Tribune Archive 1997

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.



J



Utah State Bar

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- Kate A. Toomey
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- Charles A. Gruber
Assistant Disciplinary Counsel
- Mart V. Mirata
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

(L)

MEMO

To: Andreas
From: Joe Waldholtz
Subject: Additional Info
Date: July 20, 1995

We are going to make three or four separate sheets of info as a part of this joke. I will bring out pictures for a brochure later in the afternoon. I know that won't get done today. It's not a problem.

1. Substitute **READY ASSETS** for Merrill Lynch
2. Account Number is [REDACTED]
3. Taxpayer Number is [REDACTED]
4. Statement Period is 2/28/94 to 3/31/94
5. Get rid of the next line of info...just make the box a different size

ACCOUNT STATUS:

As of 3/31/94

Ready Assets Account	\$4,236,781.28
CASH	\$ 1,901.62
TOTAL	\$4,238,682.90

6. Dividend and Interest Income

Interest	\$10,881.06
----------	-------------

7. Name: Mrs. Enid G. Waldholtz
6691 S. Benecia Drive
Salt Lake City, UT 84121-3487

REF: "H02" "H0" "06"

READY ASSETS

Summary Page
Account No.

Page No.

Page Summary Period
1 of 6 01/01/94 TO 03/31/94

Ms. Ernie Waldholz
6591 S. Benzels Drive
Salt Lake City, UT 84121-3457

READY ASSETS

READY ASSETS ACCOUNT
CASH

As of 03/31/94
\$4,236,781.28
\$1,991.62

TOTAL INVESTMENTS

\$4,238,001.90

Dividend and Interest Income

INTEREST

The Salt-
Lake

Total Dividend and Interest Income
EFFECTIVE YIELD FOR THE PERIOD 02/01/94 TO 03/31/94

6212 162 40 66

**UNITED STATES HOUSE OF REPRESENTATIVES
FINANCIAL DISCLOSURE STATEMENT**

Period Covered: January 1, 1993 - April 16, 1994

FORM B

For use by candidates for the office of Member and new employees

EMIL GILBERT WARDEN
6691 South Bonita Drive
Daytime Telephone: (801) 943-3643

JAIL LAKE CITY UTAH 84121

State: UTAH District: 2

Date of Election: MAY 8, 1994

Check if Amendment

Filer Status: Candidate for the House of Representatives New officer or employee

Employing Office: _____

(Office Use Only)

In all sections, please type or print clearly in black ink.

PRELIMINARY INFORMATION - ANSWER EACH OF THESE QUESTIONS

Did you or your spouse have "earned" income (e.g., salaries or fees) of more than \$200 from any source in the reporting period? If yes, Complete and Attach Schedule I.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Did you hold any reportable positions on or before the date of filing in the current calendar year? If yes, Complete and Attach Schedule IV.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yes, Complete and Attach Schedule II.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Did you have any reportable agreement or arrangement with an outside entity? (New employees only, not candidates.) If yes, Complete and Attach Schedule V.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? If yes, Complete and Attach Schedule III.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Did you receive compensation of more than \$5,000 from a single source in the two prior years? If yes, Complete and Attach Schedule VI.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Each question in this part must be answered.		Attach the appropriate schedule for each "Yes" response.	

EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION - ANSWER EACH OF THESE QUESTIONS

TRUSTS - Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or a dependent child? (See instructions, page 10.)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
EXEMPTION - Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? (See instructions, page 11.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

CERTIFICATION - THIS DOCUMENT MUST BE SIGNED BY THE REPORTING INDIVIDUAL AND DATED

This Financial Disclosure Statement is required by the Ethics in Government Act of 1976, as amended (5 U.S.C. app. 6, § 101 et seq.). The Statement will be available to any requesting person upon written application and will be reviewed by the Committee on Standards of Official Conduct. Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions (See 5 U.S.C. app. 6, § 104 and 18 U.S.C. § 1001).

SIGNATURE OF REPORTING INDIVIDUAL _____

DATE (Month, Day, Year) _____

3

**UNITED STATES HOUSE OF REPRESENTATIVES
FINANCIAL DISCLOSURE STATEMENT**

Period Covered: January 1, 1993 - August 16, 1994

ENID GREENE WALDHOLTZ
(Full Name)
6691 S BENECIA DRIVE
(Mailing Address)
SALT LAKE CITY, UT 84121

Candidate for the House of Representatives
State: UTAH District: 02
 New officer or employee
Employing Office:

Date of Election: MAY 6, 1994

Check if Amendment

MAY 16 1994

(Office Use Only)

A \$200 penalty shall be assessed against anyone who files more than 30 days late.

FORM B
For use by candidates and new employees of T. GOVERNOR

OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

JUN 10 1994

(801) 943-3643
Daytime Telephone:

In all sections, please type or print clearly in black ink.

PRELIMINARY INFORMATION - ANSWER EACH OF THESE QUESTIONS

Did you or your spouse have "earned" income (e.g., salaries or fees) of \$200 or more from any source in the reporting period? If yes, complete and attach Schedule I.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Did you hold any reportable positions on or before the date of filing in the current calendar year? If yes, complete and attach Schedule IV.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yes, complete and attach Schedule II.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Did you have any reportable agreement or arrangement with an outside entity? If yes, complete and attach Schedule V.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? If yes, complete and attach Schedule III.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Did you receive compensation of more than \$5,000 from a single source in the two prior years? If yes, complete and attach Schedule VI.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.

EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION - ANSWER EACH OF THESE QUESTIONS

TRUSTS - Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or a dependent child? (See instructions, pages 10-11.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
EXEMPTION - Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? (See instructions, page 11.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

CERTIFICATION - THIS DOCUMENT MUST BE SIGNED BY THE REPORTING INDIVIDUAL AND DATED

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SIGNATURE OF REPORTING INDIVIDUAL

Enid Greene Waldholtz

DATE (Month/Day/Year)

MAY 16 1994

2

99 04 394 2132

UNITED STATES HOUSE OF REPRESENTATIVES FINANCIAL DISCLOSURE STATEMENT FOR CALENDAR YEAR 1994

FORM A

For use by Members, officers, and employees

ENID G. WALKMOLITZ

P.O. BOX 11232

SALT LAKE CITY, UT 84147-0232

(Full Name)

(Mailing Address)

(202) 225-3011
Daytime Telephone

Filer Status
 Member of the U.S. House of Representatives

State: Utah
District: 2

Annual (May 15) Amendment

Employing Office:

Termination Date:

(Office Use Only)

A \$200 penalty shall be assessed against anyone who files more than 30 days late.

PRELIMINARY INFORMATION -- ANSWER EACH OF THESE QUESTIONS

I. Did you or your spouse have "earned" income (e.g., salaries or fees) of \$200 or more from any source in the reporting period? If yes, complete and attach Schedule I.

Yes No

VI. Did you, your spouse, or a dependent child receive any reportable gift in the reporting period (i.e., aggregating more than \$250 and not otherwise exempt)? If yes, complete and attach Schedule VI.

Yes No

II. Did any individual or organization make a donation to charity in lieu of paying you for a speech, appearance, or article in the reporting period? If yes, complete and attach Schedule II.

Yes No

VII. Did you, your spouse, or a dependent child receive any reportable travel or reimbursements for travel in the reporting period (worth more than \$250 from one source)? If yes, complete and attach Schedule VII.

Yes No

III. Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yes, complete and attach Schedule III.

Yes No

VIII. Did you hold any reportable positions on or before the date of filing in the current calendar year? If yes, complete and attach Schedule VIII.

Yes No

IV. Did you, your spouse, or dependent child purchase, sell, or exchange any reportable asset worth more than \$1,000 in the reporting period? If yes, complete and attach Schedule IV.

Yes No

IX. Did you have any reportable agreement or arrangement with an outside entity? If yes, complete and attach Schedule IX.

Yes No

V. Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? If yes, complete and attach Schedule V.

Yes No

Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.

EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION -- ANSWER EACH OF THESE QUESTIONS

TRUSTS -- Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or dependent child? (See Instructions, pages 10-11.)

Yes No

EXEMPTION -- Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? (See Instructions, page 11.)

Yes No

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SIGNATURE OF REPORTING INDIVIDUAL

Enid G. Walkmoltz

DATE (Month/Day/Year)

5-16-95

99-04-394-2135

7

95 MAY 15 PM 5:32

HAND DELIVERED

(Office Use Only)

A \$200 penalty shall be assessed against anyone who files more than 30 days late.

UNITED STATES HOUSE OF REPRESENTATIVES
FINANCIAL DISCLOSURE STATEMENT FOR CALENDAR YEAR 1994

FORM A
 For use by Members, officers, and employees

ENID G. WALDHOLTZ
 (Full Name)

P.O. BOX 11232
 (Mailing Address)

SALT LAKE CITY, UT 84147-0232

Member of the U.S. House of Representatives State: Utah District: 2
 Officer or Employee

Report Type: Annual (May 15) Amendment

Employing Office: Termination Date: Termination

(202) 225-3011
 Daytime Telephone

PRELIMINARY INFORMATION -- ANSWER EACH OF THESE QUESTIONS

I. Did you or your spouse have "earned" income (e.g., salaries or fees) of \$200 or more from any source in the reporting period? If yes, complete and attach Schedule I. Yes No

VI. Did you, your spouse, or a dependent child receive any reportable gift in the reporting period (i.e., aggregating more than \$250 and not otherwise exempt)? If yes, complete and attach Schedule VI. Yes No

II. Did any individual or organization make a donation to charity in lieu of paying you for a speech, appearance, or article in the reporting period? If yes, complete and attach Schedule II. Yes No

VII. Did you, your spouse, or a dependent child receive any reportable travel or reimbursements for travel in the reporting period (worth more than \$250 from one source)? If yes, complete and attach Schedule VII. Yes No

III. Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yes, complete and attach Schedule III. Yes No

VIII. Did you hold any reportable positions on or before the date of filing in the current calendar year? If yes, complete and attach Schedule VIII. Yes No

IV. Did you, your spouse, or dependent child purchase, sell, or exchange any reportable asset worth more than \$1,000 in the reporting period? If yes, complete and attach Schedule IV. Yes No

IX. Did you have any reportable agreement or arrangement with an outside entity? If yes, complete and attach Schedule IX. Yes No

V. Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? If yes, complete and attach Schedule V. Yes No

Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.

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SIGNATURE OF REPORTING INDIVIDUAL: *Enid G. Waldholtz*

DATE (Month/Day/Year): 5-15-95

7

Descriptive Name: fg.let

Descriptive Type:

Creation Date: 2:27:42 PM

Revision Date: 4/28/94 3:20PM

Author:

Typist:

Subject:

Account:

Keywords:

Abstract:

REF ID: A64055

Q

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.

(R)

Descriptive Name: help.mem

Descriptive Type:

Creation Date: 2:29:21 PM

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

Author:

Typist:

Subject:

Account:

Keywords:

Abstract:

2025-10-06 10:00:00

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# [REDACTED]
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.

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

Cynthia E. Edwards
Notary Public

My Commission Expires: Cynthia E. Edwards
Notary Public, District of Columbia
My Commission Expires June 14, 1998

99-04394-243

ROUTING & REQUEST

(P)

Please... To: MIKE LEVY

- Read
- Handle 801/328-1996
- Approve

And... From: EMANUEL FAUST

- Forward
 - 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:

SEP 29 '94 11:53

F M D S AND M

PAGE 001

DICKSTEIN, SHAPIRO & MORIN, L.L.P.
 3101 L Street, N.W.
 Washington, DC 20037-1526
 Telephone: (202) 783-9700
 Facsimile: (202) 587-0689

Sent By _____

(u)

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) 861-9106, and send the original transmission to us by return mail at the above address.

FROM: Jim Kelly

TELEPHONE: 202-861-9179 OUR REF: _____

CLIENT: 24990.900 YOUR REF: _____

MESSAGE:

M.L. → Sorry for the delay. Given we
 will with any questions.
 Thank to you soon. (P)

If you experience any transmission difficulty, contact our Facsimile Dept. (202) 861-9106.

5742 "TISE" NO. 66

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

09/29/1994 12:12 8813281996
SEP 29 '94 11:54 FROM D S AND M

ENID 94

PAGE 03
PAGE.003

99.01394

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

Memorandum

To: Mr. D. F. Greene c/o East-West Co.
CC: Mr. and Mrs. Joseph P. Waldholtz
From: The Waldholtz Family Trust
Date: December 7, 1995
Subject: Assignment Letter and US Attorney Information

Mr. Greene, we apologize for the delay in sending the materials to you. Joe and Erid 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.