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FEDERAL ELECTION COMMISSION  
JUN 11 1 48 PM '98

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 4646  
Carol J. Lewis, et al. )

**GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**I. INTRODUCTION**

On April 28, 1998, the Federal Election Commission (the "Commission") found reason to believe (1) that Amy Robin Habie knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of another and (2) that Carol J. Lewis, Wallace Walker, Rhea Weil and Lawrence Herman violated 2 U.S.C. § 441f by knowingly allowing their names to be used to effect a contribution in the name of another. The Commission also found reason to believe that Amy Robin Habie knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) by contributing in excess of the monetary limits of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA"). The Office of General Counsel (the "Office") has since received requests for both pre-probable cause conciliation and a waiver of the Act's confidentiality provisions from respondent Lewis.

**II. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY**

On May 11, Lewis submitted, via facsimile, a written request for pre-probable cause conciliation. (Attachment 1.)<sup>1</sup> In its First General Counsel's Report, this Office

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<sup>1</sup> Lewis's letter seems to imply that this Office has made some sort of promise regarding the future of the Commission's proceedings against her. See Attachment 1. In fact, this Office has made no such promise to Lewis, and has informed her accordingly. See Attachment 2.

indicated that though it believed it was aware of most of the relevant facts, it was not recommending conciliation as questions remained regarding two of the contributions at issue (one by Weil and one by Herman). This Office believes (1) that Lewis's role in the straw scheme -- a single reimbursed contribution -- is a sufficiently discrete part of the case and (2) that the Office is in possession of all of the relevant facts regarding Lewis's violation of the Act, including her admission that she was reimbursed by Habie for her contribution, such that this Office recommends offering conciliation to Lewis at this time.<sup>2</sup>

Attached for the Commission's approval is a conciliation agreement with Lewis

### **III. WAIVER OF CONFIDENTIALITY**

On June 1, the Commission received a written request from Lewis to waive the confidentiality provisions of the Act. (Attachment 4.)<sup>3</sup> Lewis, who is also the complainant, has requested that the Commission not apply the confidentiality provisions set forth in 2 U.S.C. § 437g(a)(4)(B)(i) and § 437g(a)(12)(A) to this matter. None of the

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<sup>2</sup> The Office has been in contact with counsel for Habie and Walker, who has indicated his clients' desire to cooperate with the Office in its investigation of this matter. Specifically, counsel has indicated a willingness to provide financial information regarding the transactions at issue. This Office remains confident that following informal discovery, it will shortly be in a position to recommend that the Commission enter into conciliation negotiations with the rest of the respondents in this matter.

<sup>3</sup> The precise text of Lewis's letter is as follows: "By this letter I am informing the Federal Election[] Commission that as a party under investigation, I wish to make all

other respondents have waived confidentiality. Therefore, the waiver of confidentiality pertains solely to information concerning Lewis. The Commission's acknowledgment of Lewis's waiver will make clear that she may not disclose any information pertaining to other respondents in this matter until the entire file is closed.

Section 437g(a)(12)(A) provides that any notification or investigation shall not be made public by the Commission without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. By its terms, Section 437g(a)(12)(A) does not impose an affirmative duty on the Commission to publicize this matter at this time as it pertains to Lewis. Therefore, this Office will respond to requests for information subject to the following considerations. First, requests must be in writing. Second, such requests would be considered by the Commission subject to the provisions of the Freedom of Information Act, the Government in the Sunshine Act, and all relevant privileges which would limit or preclude the release of such requested information.

As noted, Lewis's letter also refers to Section 437g(a)(4)(B)(i), making confidential all actions and information derived in connection with a conciliation attempt, and providing that such information may be made public only with the written consent of the respondent and the Commission. This Office believes that it would be inappropriate to grant such a waiver during the pendency of the matter. Accordingly, this Office recommends that the Commission deny Lewis' request to waive confidentiality in connection with its conciliation attempts with her.

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documents in my file available to the public at all times during the investigation. See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A)."

#### IV. RECOMMENDATIONS

1. Enter into conciliation with respondent Carol J. Lewis prior to a finding of probable cause to believe, and approve the attached agreement.
2. Deny the request to waive the confidentiality in this matter of information and actions protected by 2 U.S.C. § 437g(a)(4)(B)(i).
3. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

6/10/98  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Attachments:

1. May 11 letter from Carol J. Lewis
2. May 13 letter from OGC
3. Conciliation Agreement
4. Waiver

Staff Assigned:  
J.M. Lehmann



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS  
COMMISSION SECRETARY

A handwritten signature, likely of Marjorie W. Emons, is written inside a hand-drawn oval next to the "FROM" line.

DATE: JUNE 15, 1998

SUBJECT: MUR 4646 - General Counsel's Report dated June 10, 1998.

The above-captioned document was circulated to the Commission  
on Thursday, June 11, 1998

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Aikens	—
Commissioner Elliott	—
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	<b>XXX</b>

This matter will be placed on the meeting agenda for  
Tuesday, June 23, 1998.

Please notify us who will represent your Division before the Commission on this  
matter.