RECEIVED BY
OFFICE OF CITY CLERK

1994 JUN 13 AM 9:25

CAMBRIDGE MA.

92-4th St. Cambridge Ma. 02141
June 10, 1994

Cambridge City Council
City Hall, Cambridge Ma.
795 Mass Ave, 02139

Dear Councilors,

I saw this article in yesterday's Harvard Crimson about Councilor Walsh.

The article points out the differences in the allowable evidence in Walsh's trial vs that of other defendants who were accused of an identical charge, concealing second mortgages, but who were tried before a different federal judge.

In those other cases, all charges were dismissed.

Since The Crimson has a small circulation, you may not have seen this piece. Also since so much has been written in the other local papers with an obvious bias, this information might provide you with a different perspective.

I hope you will read this timely article and that it will temper your deliberations about seeking Councilor Walsh's removal.

Thank You

Sincerely, John F. Natale

John F. Natale

c. The Crimson
Terry Manson, Julie Park

The Harvard Crimson

SCRUTINY

Section D

June 9, 1994

Commencement 1994

In Walsh, Did Feds Get the Wrong Man?

City Councillor Is Convicted for Fraud, But Bank May Have Known of Violations

By TERRY H. LANSON and JULIE H. PARK

But did they get the wrong man?

On March 28, Cambridge city councillor William H. Walsh became the first Cambridge elected official in this half of the twentieth century to be convicted of a felony while in office.

Walsh was found guilty of 41 counts of bank fraud and making false statements to a federally insured institution in connection with a scheme to defraud Dime Savings Bank of New York. A federal jury ruled that Walsh's law firm, which sold condominiums, provided buyers with Dime loans and sold them second mortgages to cover the property down payments in violation of the bank's rules.

The ruling against Walsh set off a political firestorm in the city, with various groups moving, unsuccessfully, for the councillor's resignation.

But the recriminations against Walsh may have come too soon. A Crimson investigation of the connections between Walsh and Dime suggests that bank officials were hardly oblivious to the city councillor's activities.

Federal, court and bank documents show that Dime was more concerned with lending out as much money as it could than it was with following its own procedures.

In two recent court cases, federal judges have dismissed charges against closing attorneys who, like Walsh, allegedly concealed second mortgages from Dime. The rulings were based largely on evidence of the bank's complicity and even encouragement of the deals.

"In this case, the evidence is overwhelming that it was the bank itself who created and carried out this scheme with full knowledge of its implications," U.S. District Court Judge Edward F. Harrington said in his ruling in *United States v. Alan Segal and Robert Kline*.

In that case, Assistant U.S. Attorney Paul G. Levenson '79 acknowledged that there was "imprudent and greedy and irresponsible and in some instances perhaps criminal conduct by bank insiders."

Harrington dismissed charges against Segal following the unexpected death of Segal's 39-year-old wife. And in his ruling on the case, the judge said he believed that both defendants were innocent.

"The bank who created this monster is immune," Harrington wrote, "and people who only did that which the bank wanted done are prosecuted."

"From the evidence in this case," the judge concluded, "the bank knew that second mortgages were the source of the deposit.

"They knew."

The Boom

The real estate market boomed in the early 1980s and busted at the end of the decade, leaving many borrowers unable to repay the loans they had used to buy properties.

When the going was good, Dime had attempted to snatch a huge part of the real estate loan market. In 1985, then-Dime CEO Harry W. Albright Jr. told the National Mortgage News that the bank wanted to increase its cash flow to $1.8 billion from the previous year's $1 billion.

In an effort to boost its loan numbers, Dime Savings Bank of New York opened wholly-owned subsidiaries known as Dime Real Estate Services in Massachusetts, New Hampshire, Georgia, Florida, Connecticut and other states.

The bank also went public in 1986, bringing an infusion of capital which it used to claim more of the growing real estate loan market.

"There was money waiting to be lent," says then-Dime attorney Daniel M.J. Foley.

In addition, the deregulation of the savings and loans industry in the early 1980s loosened accounting procedures and created another incentive for Dime to lend.

After deregulation, banks could immediately count loans as assets, which in turn inflated the lending institutions' stock values. Losses on loan defaults did not have to be deducted for 20 years.

The bonus structure of Dime executives also prompted the bank to distribute a large quantity of loans, without regards to the financial security of the borrowers.

"Dime is a collection of individuals," says Andrew M. Fischer, an attorney representing two Dime borrowers who are suing the bank. "Each of the individuals stood to profit from making deals."

William J. Candee, who was a vice president of Dime and head of the bank's legal department during the '80s, testified in the Segal trial that there was a direct correlation between the number of the loans written and the bonuses of the senior officers in New York.

PAGE ONE

CONT.

Was Walsh A Scapegoat For Dime's Abuses?

"Dime didn't care if people could afford loans," says Richard V. Kelleher, president of the southern Massachusetts branch of the Dime Borrowers Association. The association seeks financial settlements for faulty Dime loans.

But when the real estate market crashed, Dime saw its loans default at an abnormally high rate. And jilted borrowers began asking questions about how Dime loaned money, which in turn led to federal investigations of Walsh, Segal and others.

Kelleher, himself a Dime borrower, says the bank not only made money on its loans but set up a subsidiary, Garden Management Co., to purchase foreclosed property. In some cases, Kelleher charges, Dime foreclosed and then sold property for a profit.

'Impact' Loans

As demand for borrowing increased, Dime devised more and more creative ways to loan money.

The bank began to offer loans with two features—low documentation, or "low-doc loans," and "teaser" rate loans, which offered low initial interest rates that later increased.

The "teasers" eventually became negative amortization loans in which interest rates went up so high that monthly payments did not cover the accrued interest.

The higher rates later in the loan increased the value of the borrowing to the bank and made Dime's assets look better, sources say.

Under the "low-doc" program, Dime did not verify the income of borrowers. Bank policy required only an application, a 20 percent cash down payment and an appraisal of the property.

Although Dime claimed to strictly enforce the 20 percent down payment and to prohibit secondary financing, neither loan applications nor down payments were verified.

Paul Colasono, a senior vice president at Dime, testified in the *U.S. v. Zimmerman* trial that the purpose of the low doc program was "to cull out some of the paperwork and streamline [the mortgage process]."

Colasono defended Dime by arguing that other banks were also offering low doc loans. But competitors appear to have been more careful than Dime, which granted loans to virtually anyone with a pulse, according to documents and several sources.

'Nauseating'

William J. Mellin, then-head of Dime Real Estate Services of Massachusetts, wrote in a 1988 memo that "a number of Dime mortgage programs do not require the verification of down payments for purchase of property."

In other words, a borrower didn't actually have to make the down payment. He or she only had to say they had.

"We will accept verbal statement from the applicant that the unfinanced portion of the down payment has occurred previous to the scheduled closing," Mellin's memo said.

The problem was compounded by the fact that Dime's loan officers were instructed not to be vigilant. Bank employees were frequently reminded that they were "not detectives," former Dime loan officer Dann A. Maurno said in an interview with The Crimson.

Maurno said a woman borrowing from the bank once called him to say she had lost her job, but bank officials ordered him to process the application anyway.

"The application said she did work, [and] we were told to process as if she did work," Maurno said. "It was nauseating."

But Maurno—like many other Dime officials who have avoided federal prosecution—maintains that the second mortgages used by city councillor Walsh in his law firm were not permitted. "If we found second mortgages, we would be encouraged to deny the loans," Maurno said.

But Maurno could not explain why Dime was concerned about second mortgages but did not bother to check out income reports on loan applications.

"It's just a value judgment [on the part of the bank]," Maurno said. "In my opinion, a lie's a lie."

While it is common in the banking industry to finance down payments with second mortgages, Dime claims it had rules against seconds in order to make sure borrowers would be able to repay their loans.

But several other former Dime employees have indicated the bank knew about the second mortgages and didn't care.

Sheryl Strong Mone, who was an underwriter at Dime Real Estate Services of Massachusetts, told the FBI that bank officials were not concerned about second mortgages, according to an FBI report obtained by The Crimson.

The report says Mone occasionally reviewed documentation that indicated second mortgages had been made.

Mone and other loan underwriters knew second mortgages were against Dime's guidelines. But when several employees brought this problem to the attention of their supervisors, the bank simply moved to cover up the second mortgages, according to the report.

"On most occasions the LPRs [loan processing representatives] would resubmit mortgage documentation which did not contain the second mortgage references," the report says.

In addition to the FBI report, two witnesses in the Segal trial testified that Dime officials actually did not care about second mortgages.

Arthur E. Peach, a former Dime loan officer, was charged along with Walsh but pleaded guilty in exchange for a reduced sentence. He testified that Dime "absolutely" accepted secondary financing as a source of down payments.

Peach testified that if Dime had not accepted financing through second mortgages, the bank would have written far fewer loans.

Another witness testified at the trial

CONT. -

that personnel at Dime were suspicious of second mortgages. But he said the bank did not investigate because "it was not their policy to verify."

'Teaser'

One of the most frequent complaints of Dime borrowers is that the increase in interest rates under the teaser loans was confusing and deceptive.

Marie T. McDonnell, an independent mortgage counselor who has reviewed nearly 100 Dime loans, says "Dime did not want people to know how the loans worked."

"They were really time-bomb loans," McDonnell says. "That's because after an initial six-month period in which rates and monthly payments were low, the loans went into negative amortization."

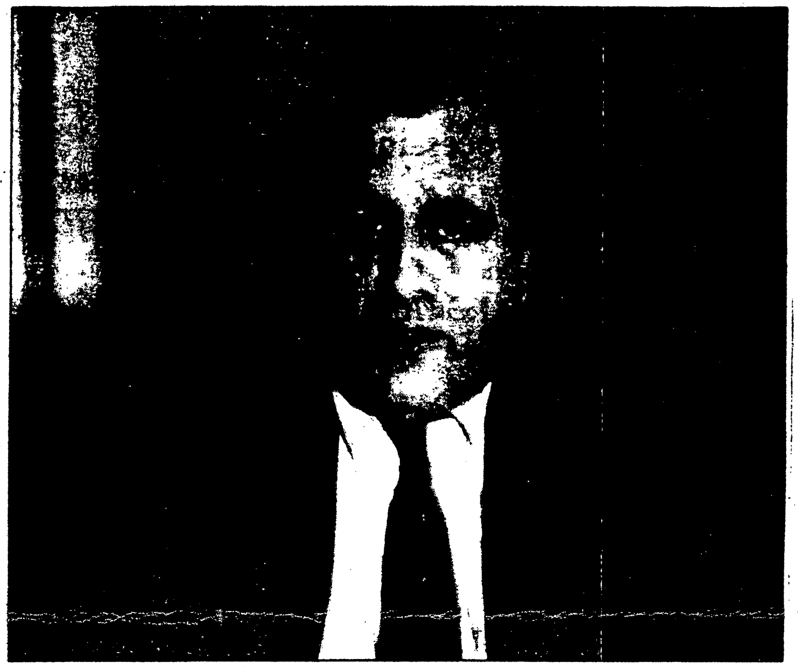
"Misrepresentation of this deleterious feature of the loan is the basis for consumer outrage and the core reason for Dime's exorbitant foreclosure rate," McDonnell writes in a written review of Dime practices.

Fischer, the attorney for a group of borrowers suing Dime, says one of his clients, Isabelle Kirnon, did not understand the terms of the loan.

"Ms. Kirnon...didn't have an attorney [at the time of the closing]," Fischer says. Instead, Kirnon was told to "sign here, sign here, sign here. Nobody really cared if she could make the payments or not."

Another Dime borrower, Brian K. Mayo, says he also was misled by the bank.

"My mortgage was going up and up and up, and no one ever explained it to me," Mayo says. "My payments went up $400 a month."



Cambridge City Councillor WILLIAM H. WALSH: Was he , in fact, just a patsy?

In March 1992, Mayo wrote a letter to Massachusetts Attorney General Scott Harshbarger '64 in which the borrower accused Dime of deception.

"I was never told what negative amortization was," Mayo writes. "Frank [Teleen, the Dime loan officer] also told me that the mortgage rates would probably stay the same or go down for the term of the mortgage."

Teleen, who also originated Kelleher's loan with Dime, committed suicide in early 1992.

In addition, Mayo says his loan was approved even though it was financed by a second mortgage.

When the topic of a second mortgage came up at the loan closing, Mayo says Dime's attorney, Michelle Carrier, "got all bullshit, turned red in the face and said, 'There's no way I'll allow a second.'"

He says Carrier and the lawyer for the real estate dealer left the room. Fifteen minutes later, Mayo says, the attorneys returned and the closing continued with the second mortgage. "Michelle came back all red in the face and didn't say anything," Mayo recalls.

Bust

By the mid-1980s, internal Dime studies began to indicate that the bank's loan practices were leading to a high failure rate.

As early as 1987, the Federal Home Loan Bank Board conducted an examination of Dime's loan procedures.

"Practices may warrant closer attention in view of the fact that an applicant with an insufficient amount of income or one who has not been forthright with his credit information could be granted a loan he or she is not able or even willing to repay," the bank board's report says, according to records of the Segal trial.

But despite the federal warning, Dime continued to loan money indiscriminately.

CONT-

In 1989, a group of Dime shareholders filed a lawsuit alleging that bank negligence had caused the company's stock values to plummet. The suit cites an internal review of Dime known as the Wright Report, which allegedly was read by members of Dime's senior management.

The lawsuit quotes the Wright Report as saying that approximately 13 percent of all Dime loans were defaulted without the borrower ever making a single payment. In addition, the report says the number of residential property foreclosures had increased by 33 percent in a single month.

According to *Banker and Tradesman* and Suffolk County records cited by Kelleher, roughly half of the Dime loans made in Massachusetts were defaulted.

McDonnell, the independent mortgage counselor, says a normal foreclosure rate for a bank is less than five percent.

'A Bullshit Deal'

To head off angry borrowers, Dime struck a deal with the state attorney general's office in which the bank agreed to re-finance active loans and write off some defaults.

The state of Connecticut recently made a similar agreement with Dime, and the attorney general's office in New Hampshire is working on one as well.

Dorothy Anderson, deputy chief of the Public Protection Bureau in the Massachusetts attorney general's office, says the deal was struck to make restitution to borrowers.

"There was an utter failure to maintain any sort of underwriting standards," Anderson says. "Lending was extremely irresponsible."

But borrowers are not satisfied with the agreement. "There's no satisfaction there," Kelleher says. "It was a real bullshit deal. They did just enough to make the issue go away."

Some evidence suggests that prominent political figures halted an investigation into the higher levels of Dime. Allegedly pressured from above, federal prosecutors went after middle-level players such as Walsh and Segal.

Judge Harrington said when he dismissed the charges against Segal that U.S. attorneys were prosecuting the wrong people.

"All of us are sitting here in a charade prosecuting people who are only doing that which the alleged victim wanted done," the judge told U.S. Attorney Richard Welch in open court.

"Go after the people who ran Dime," Harrington said.

In two recent court cases, federal judges have dismissed charges against closing attorneys, who, like Walsh, allegedly concealed second mortgages from Dime. The rulings were based largely on evidence of the bank's complicity and even encouragement of the deals.

But David J. Totaro, a senior vice president and chief marketing officer at Dime, says that "thus far, evidence has shown we have been, in fact, the victims."

Still, Kelleher charges that the political connections of two high-ranking Dime officials—ex-CEO Harry Albright and CEO Richard Parsons—have allowed them to avoid prosecution, even though they were aware of the second mortgages.

Albright and Parsons served as chief counsel and deputy counsel, respectively, to President Ford's vice president, Nelson D. Rockefeller. And Parsons, a prominent New York Republican, has enough political support in that state to have been mentioned as possible candidate in this year's gubernatorial race.

In addition, the government has tapped Albright for sensitive financial work. After he resigned from Dime, Albright was appointed to oversee the liquidation of the assets of First American Bank in Washington, D.C., which had owned by the Bank of Credit and Commerce International (BCCI).

A Different Interpretation

If Walsh's judge, Mark L. Wolf, had interpreted the law the same way Harrington did in the Segal case, the city councillor would likely be a free man.

Harrington said Segal's intent was not the issue. Rather, "the essential element is: is [the fraud] capable of affecting the bank?" the judge said.

Since the bank condoned and even encouraged fraud, Harrington ruled that any violations by Segal were irrelevant.

But Wolf took a different view, asserting that the key question was whether Walsh had intended to defraud Dime.

Wolf granted a motion by assistant U.S. attorney Peter J. Mullin which excluded "evidence of alleged misconduct or negligence by Dime or its agents unless defendants can show that such evidence bears directly on a defendant's intent to defraud or to influence the Dime."

The city councillor's lawyer did not meet that standard. And a jury of Walsh's peers convicted him—without knowing the facts about Dime.

[A] jury of Walsh's peers convicted him—without knowing the facts about Dime.

Walsh has filed for appeal. His sentencing is set for June 23.

END

Consent Comm. # 16 S-300

Comm. from John F. Natale, 92 - 4th Street, transmitting an article regarding the allowable evidence verses that of other defendants in the Walsh trial.

In City Council,

June 20, 1994

Placed on file