104TH CONGRESS
2d Session

SENATE

REPORT
104–280

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

FINAL REPORT

OF THE

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

JUNE 17, 1996.—Ordered to be printed

Filed under authority of the order of the Senate of June 13, 1996

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REPORT
104–280

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

JUNE 17, 1996.—Ordered to be printed

Filed under authority of the order of the Senate of June 13, 1996

Mr. D'AMATO, from the Special Committee to Investigate Whitewater Development Corporation and Related Matters, submitted the following

FINAL REPORT

together with

ADDITIONAL AND MINORITY VIEWS

PREFACE

On May 17, 1995, the United States Senate, by a vote of 96–3, adopted Senate Resolution 120, which established the Special Committee to Investigate Whitewater Development Corporation and Related Matters (hereinafter the "Special Committee"), to be administered by the Committee on Banking, Housing, and Urban Affairs (the "Banking Committee"). Resolution 120 charged the Special Committee with the responsibility to conduct an extensive investigation into and to hold public hearings on specified matters relating to the President's and Mrs. Clinton's investment in Whitewater Development Corporation ("Whitewater") along with James and Susan McDougal, Madison Guaranty Savings and Loan Association ("Madison Guaranty"), and related matters.

In discharging its responsibilities under Resolution 120, the Special Committee deposed 274 witnesses and held 60 days of public hearings, during which 136 witnesses testified. The Committee also reviewed approximately 1 million pages of documents produced by the President and Mrs. Clinton, the White House, various federal agencies, and a number of individual witnesses.

Resolution 120 authorized the Committee to investigate and to hold public hearings into three general subject areas. Section 1(b)(1) authorized investigation into whether White House officials

engaged in improper conduct in handling papers in Deputy White House Counsel Vincent Foster's office following his death on July 20, 1993—the so-called Foster Phase of the Special Committee's inquiry.

With respect to the Washington Phase of the inquiry, Section 1(b)(2) authorized investigation into whether the White House improperly interfered with any investigations or prosecutions by various federal agencies relating to, among other things, Whitewater, Madison Guaranty related entities, and Capital Management Services, Inc. ("CMS").

Finally, in the Arkansas Phase, §1(b)(3) of Resolution 120 authorized the Special Committee to investigate, among other things, the activities of Whitewater, Madison Guaranty, CMS, Lasater & Co., and the work and billing practices of the Rose Law Firm relating to Madison Guaranty.

1. THE FOSTER PHASE

During the 103d Congress, the Banking Committee, pursuant to Senate Resolution 229, conducted an inquiry into the cause of Mr. Foster's death and the conduct of the subsequent investigation of his death by the United States Park Police. On July 15, 1994, Special Counsel Robert B. Fiske, Jr. advised the Banking Committee that "public hearings on the subject of the handling of documents in Mr. Foster's office while this investigation is continuing could prejudice our investigation."[1] Accordingly, the Banking Committee's public hearings on July 29, 1994 into the cause of Mr. Foster's death excluded inquiry into the handling of documents in Mr. Foster's office.

At the conclusion of the Banking Committee's hearings in the summer of 1994, the following matters, among others, were identified for future inquiry relating to Mr. Foster's death:

the White House interference into the Park Police search of Mr. Foster's office;

the presence of White House counsel staff during standard Park Police investigatory interviews;

the White House insistence that the Park Police investigation proceed with Department of Justice involvement to the extent that DOJ was "calling the shots" and "setting up protocol" and the Park Police were "stand[ing] and waiting for permission to do our job"; and

the late delivery of the note in Mr. Foster's office to Park Police, discovered by White House counsel.[2]

On April 22, 1995, Independent Counsel Kenneth W. Starr advised the Chairman and Ranking Member of the Banking Committee that his investigation would not be hindered or impeded by a Senate inquiry into the way in which White House officials handled documents in Mr. Foster's office following his death.

Accordingly, the Special Committee commenced its investigation and public hearings into whether White House officials engaged in improper conduct in handling documents in Mr. Foster's office at the time of his death. The Special Committee recognizes that Mr. Foster's death remains a source of much grief to his family and friends. In conducting its inquiry under section 1(b)(1) of Resolution 120, the Committee sought to balance carefully the need to

protect the privacy of the Foster family and its duty to carry out fully the mandate of the Senate.

2. THE WASHINGTON PHASE

Resolution 120 directed the Special Committee to review the handling of several federal investigations relating to the Whitewater real estate venture; Madison Guaranty McDougal's S&L, the failure of which cost American taxpayers more than $60 million; and CMS, a small business investment company owned by David Hale, who made illegal loans to James and Susan McDougal in part to finance the Whitewater investment. Specifically, section 1(b)(2) of the Resolution authorized the Special Committee to conduct an investigation and public hearings into the following matters:

(A) whether any person has improperly handled confidential Resolution Trust Corporation ("RTC") information relating to Madison Guaranty or Whitewater, including whether any person has improperly communicated such information to individuals referenced therein;

(B) whether the White House has engaged in improper contacts with any other agency or department in the Government with regard to confidential RTC information relating to Madison Guaranty or Whitewater;

(C) whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty or Whitewater;

(D) whether RTC employees have been improperly importuned, prevented, restrained, or deterred in conducting investigations or making enforcement recommendations relating to Madison Guaranty or Whitewater; and

(E) whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of deposition testimony—

(i) were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing, and Urban Affairs pursuant to Senate Resolution 229 (103d Congress); or

(ii) were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty or Whitewater.[3]

In conducting the inquiry mandated during this so-called "Washington Phase" of the investigation, the Special Committee examined whether the President and Mrs. Clinton—or their agents—misused the power of the presidency in responding to a series of investigations of the Whitewater matter. As in the past, the Senate sought to serve as the public's watchdog, to expose abuses of the public trust.

Of necessity, the Special Committee inquired into the investigative and prosecutorial processes of Executive Branch agencies to determine whether the laws were properly and faithfully executed. Congress has a duty to investigate allegations that the normal investigative and prosecutorial processes of the Executive Branch have been compromised.[4] More important, Congress has the con-

stitutional obligation to ensure that the President's private interests have not been elevated above the public good.

3. THE ARKANSAS PHASE

This is the beginning of the Whitewater matter. In this phase of its inquiry, the Senate charged the Special Committee with investigating the complex web of intermingled funds, fraudulent transactions, political favors, and conflicted relationships which comprise the "20 years of public life in Arkansas" that Mrs. Clinton did not want an independent counsel, among others, to look into.[5]

Specifically, Section 1(b)(3) of Resolution 120 authorized an investigation and public hearings into the following matters:

> (A) the operations, solvency, and regulation of Madison Guaranty Savings & Loan Association, and any subsidiary, affiliate, or other entity owned or controlled by Madison Guaranty Savings and Loan Association;
>
> (B) the activities, investments, and tax liability of Whitewater Development Corporation and, as related to Whitewater Development Corporation, of its officers, directors, and shareholders;
>
> (C) the policies and practices of the RTC and the Federal banking agencies (as that term is defined in section 3 of the Federal Deposit Insurance Act) regarding the legal representation of such agencies with respect to Madison Guaranty Savings and Loan Association;
>
> (D) the handling by the RTC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Savings and Loan Insurance Corporation of civil or administrative actions against parties regarding Madison Guaranty Savings & Loan Association.
>
> (E) the sources of funding and the lending practices of Capital Management Services, Inc., and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation;
>
> (F) the bond underwriting contracts between Arkansas Development Finance Authority and Lasater & Company; and
>
> (G) the lending activities of Perry County Bank, Perryville, Arkansas, in connection with the 1990 Arkansas gubernatorial election.

These various subjects, seemingly disparate, are nevertheless woven together by common and recurring themes of abuse of power, fraud on federal institutions and theft of public funds, and frequent neglect, if not deliberate disregard, of professional, ethical, and, at times, legal standards.

The Special Committee completed its task under Resolution 120 in a bipartisan manner. With few notable exceptions, the Special Committee conducted its investigation and public hearings by mutual consent between the Chairman and Ranking Member, thus obviating the need for votes by the Special Committee.

Because the testimony of witnesses before the Special Committee was often contradictory, incomplete, or inaccurate as to important events and actions, the Committee placed particular emphasis on available documentary evidence. Unfortunately, throughout its in-

quiry, the Committee was hindered by parties unduly delaying the production of, or withholding outright, documents critical to its investigation. Although the White House was most often and most notably engaged in this course of action, the pattern of noncooperation extended to other parties, as this Report lays out more fully in the Washington Phase of the Special Committee's inquiry.

This Report of the Special Committee is divided into three separate but interrelated parts. Part 1 focuses on the Foster Phase of the inquiry, into whether White House officials engaged in improper conduct in the handling of documents in Mr. Foster's office at the time of his death. Part 2 summarizes the Special Committee's investigation into the Washington Phase and discusses the handling of federal investigations into Whitewater and related matters, the Administration's attempts to interfere with these investigations, and the White House's attempts to interfere with Congressional inquiries into the Administration's alleged improprieties. Part 3 centers on the Arkansas Phase and details the transactions and activities that comprise Governor Clinton's web of political, personal, and business relationships—a web that includes, among others, Whitewater, Madison, CMS, James McDougal, David Hale, and Danny Ray Lasater. Each Part begins with a separate, detailed outline and concludes with respective endnotes.

These three parts are interrelated because the entire story of Whitewater is not simply the sum of its parts. Rather, seeping through the pages that follow are clearly identifiable patterns of motivation, conduct, and, at times, concealment. Beyond discrete judgments of impropriety in particular instances, therefore, the Special Committee has examined the evidence and reached conclusions that transcend any individual persons, actions, or events but rather illuminate patterns of conduct behind the Whitewater affair.

The Conclusions of the Special Committee are summarized at the beginning of each Part. They do not answer all questions and allegations that have surfaced, but, taken together, they provide a comprehensive survey of the facts uncovered by the Special Committee in its 13 months of investigation. And they offer a full, fair, and often troubling picture of the inner workings of government that the Senate, by an overwhelming mandate, charged the Special Committee to present to the American people.

PART I—THE FOSTER PHASE

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CONCLUSIONS OF THE SPECIAL COMMITTEE

"Bernie, are you hiding something?"—Philip Heymann, former Deputy Attorney General.[6]

Whitewater is a "can of worms you shouldn't open."—Vincent Foster's handwritten notes.[7]

"HRC 'doesn't want [an independent counsel] poking into 20 years of public life in Arkansas.'"—Diary of Roger Altman, former Deputy Secretary of Treasury, quoting Margaret Williams, Chief of Staff to the First Lady.[8]

"Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office."—Associate White House Counsel Stephen Neuwirth.[9]

The death of White House Deputy Counsel Vincent W. Foster, Jr. on July 20, 1993 marked the first time since the death of Secretary of Defense James Forrestal in 1949 that a high-ranking U.S. official took his own life.[10] Now, almost three years later, the circumstances surrounding Mr. Foster's tragic death remain the subject of much speculation and even suspicion. Against the backdrop of the death of a high-ranking U.S. official, this controversy has been fueled by a series of misguided actions taken by senior White House officials to shield the documents in Mr. Foster's office from independent career law enforcement investigators and to spirit the documents to the White House Residence.

As Deputy Counsel to the President, Mr. Foster was the number two lawyer in the White House. He worked on the most important public issues faced by the new Clinton Administration. At the time of his death, Mr. Foster also was one of the Clintons' key advisors on Whitewater and Travelgate. These matters are now the subject of criminal investigations by Independent Counsel Kenneth Starr. In fact, by July 20, 1993, federal investigators already were examining Madison Guaranty Savings and Loan Association, the S&L at the center of the Whitewater affair, as well as the controversial firing in May 1993 of seven career White House Travel Office employees. Mr. Foster's office contained important evidence of actions that the Clintons and senior White House officials took with respect to Whitewater and Travelgate.

The Special Committee's investigation into the handling of Mr. Foster's documents was among the most important matters of inquiry under Resolution 120. It raised the question, once again in our nation's history, whether the power of the White House was misused to serve the purely private ends of the President and his associates: specifically, whether senior officials took improper steps, in their handling of Mr. Foster's documents, to cover up embarrass-

ing revelations or even crimes relating to Whitewater and Travelgate.

Often, the successful prosecution of financial crimes and public corruption depends on the documentary trail left by the perpetrators of such wrongdoing. For example, Independent Counsel Starr recently obtained the convictions of Arkansas Governor Jim Guy Tucker and James and Susan McDougal, the owners of Madison Guaranty and the Clintons' partners in the Whitewater real estate development, in part on the basis of more than 600 documents introduced into evidence. By the same token, the concealment or removal of documents can seriously delay or derail investigation of financial malfeasance.

The White House undeniably mishandled the review of documents in Mr. Foster's office following his death. Department of Justice and Park Police investigators told the Special Committee that their investigations were hindered and impeded by the refusal of senior White House officials to allow them to review Mr. Foster's documents. The question before the Committee, then, is whether senior White House officials simply committed an inexplicable series of blunders and misjudgments or whether these officials deliberately interfered with the investigations into Mr. Foster's death and, perhaps, into the Whitewater and Travelgate affairs.

After careful review of all the evidence, the Special Committee concludes that senior White House officials, particularly members of the Office of the White House Counsel, engaged in a pattern of highly improper conduct in their handling of the documents in Mr. Foster's office following his death. These senior White House officials deliberately prevented career law enforcement officers from the Department of Justice and Park Police from fully investigating the circumstances surrounding Mr. Foster's death, including whether he took his own life because of troubling matters involving the President and Mrs. Clinton. At every turn, senior White House officials prevented Justice Department and Park Police investigators from examining the documents in Mr. Foster's office, particularly those relating to the Whitewater and Travelgate affairs then under investigation.

This pattern of concealment and obstruction continues even to the present day. The Special Committee concludes that senior White House officials and other close Clinton associates were not candid in their testimony before the Committee. Specifically, the Committee concludes that Margaret Williams, Chief of Staff to the First Lady, Susan Thomases, a New York attorney and close advisor to Mrs. Clinton, Bernard Nussbaum, then-White House Counsel, and Webster Hubbell, former Associate Attorney General and now-convicted felon, all provided inaccurate and incomplete testimony to the Committee in order to conceal Mrs. Clinton's pivotal role in the decisions surrounding the handling of Mr. Foster's documents following his death.

Finally, the Special Committee concludes that the misconduct surrounding the handling of Mr. Foster's documents is part of a larger and more troubling pattern, that began in Arkansas in the 1980s and has continued in Washington during the Clinton Administration, in which the Clintons and their associates have sought to hinder, impede and control investigations into Madison Guaranty

S&L and the Whitewater real estate investment. Parts of this larger pattern include (i) Mrs. Clinton's decision in 1988—when federal investigators were examining possible misconduct leading to Madison Guaranty's failure just two years before—to order the destruction of records relating to her representation of this S&L; (ii) Mr. Foster's and Mr. Hubbell's improper and unauthorized 1992 removal of Rose Law Firm records and files relating to Mrs. Clinton's representation of this corrupt S&L; and (iii) and the improper communication to White House officials during the fall of 1993 of confidential information relating to ongoing criminal investigations of Madison Guaranty and of Capital Management Services, Inc., a small business investment company also central to the Whitewater affair.

By the time of Vincent Foster's death in July 1993, the Clintons had established a pattern of concealing their involvement with Whitewater and the McDougals' Madison Guaranty S&L

The actions of senior White House officials and other close Clinton associates in the days and weeks following Mr. Foster's death cannot be viewed in a vacuum. Their actions were but part of a pattern that began in 1988 of concealing, controlling and even destroying damaging information concerning the Whitewater real estate investment and the Clintons' ties to James and Susan McDougal and the Madison S&L. Indeed, at the time of Mr. Foster's death, the Clintons and their associates were aware that the Clintons' involvement with Whitewater land deal, the McDougals, and the Madison S&L might subject them to civil liability and even criminal investigation.

In 1988, Mrs. Clinton ordered the destruction of records relating to her representation of Mr. McDougal's Madison S&L.[11] This was not a routine destruction of records. At the time, federal regulators were investigating the operation and solvency of Madison in anticipation of taking it over. These Rose Law Firm records, which after Madison's failure would have belonged to the Resolution Trust Corporation ("RTC"),[12] were directly relevant to that investigation.

By ordering their destruction, Mrs. Clinton eliminated pertinent records and also exposed her firm to potential liability with respect to her representation. Indeed, if such representation was proper, as Mrs. Clinton has claimed, her document destruction deprived the law firm of the records necessary to defend itself in a suit by federal investigators. Moreover, in 1988, Seth Ward, a former associate of Mr. McDougal and Webster Hubbell's father-in-law, was actually suing Madison Guaranty over a land deal that federal regulators have described as a fraud.[13] Mrs. Clinton had performed work on the project, including having numerous telephones calls and meetings with Mr. Ward, and the law firm record of her work and the transactions surrounding this land deal certainly would have been highly relevant to the conduct of that suit.

Accordingly, Mrs. Clinton's destruction of documents could constitute a breach of legal ethics and, possibly, a violation of law if done with the knowledge that the documents are material to investigations or ongoing litigation.[14] Professor Stephen Gillers of New York University, a noted ethics expert, has recently stated: "I don't know how it could be that these files were destroyed. . . . It makes

it stranger that they were destroyed, not only so soon after they were created but also at a time when this lawsuit was about to go to trial. . . . It certainly could lead to suspicion that she has something to hide because one possible inference from the destruction is that there was something in those files that she did not want to have made public." [15]

The pattern further continued during the 1992 presidential campaign, after questions arose about the Clintons' investment with the McDougals in Whitewater and Mrs. Clinton's representation of Madison Guaranty before a state agency. In an effort to respond to inquiries from the press and charges from other candidates, Mrs. Clinton's then-law partner, Vincent Foster, collected all the information he could on the Madison representation. At the conclusion of the campaign, the Madison files, which were by now the property of the RTC as conservator of Madison, as well as the files of other Rose clients for whom Mrs. Clinton had performed legal services, were secretly removed from the firm by another then-Rose Law Firm partner, Webster Hubbell. Mr. Hubbell removed these files, at times taking the firm's only copies,[16] without obtaining the consent of the firm or client.[17] Given that Mr. Hubbell was about to assume a position of great public trust as Associate Attorney General, his unauthorized decision to remove these files is especially troubling.

Also during the 1992 presidential campaign, Mr. Foster or Mr. Hubbell ordered the printing of billing records relating to the Rose Law Firm's representation of Madison Guaranty. These important records revealed the extent of Mrs. Clinton's legal work for McDougal's S&L, including her telephone call to Beverly Bassett Schaffer, the Arkansas Securities Commissioner appointed by Governor Clinton, about the troubled thrift's controversial proposal to raise capital by issuing preferred stock. The records also reflected Mrs. Clinton's work on the IDC or Castle Grande transaction, which federal regulators described as a series of fraudulent land flips.[18] The records contain the handwritten questions of Mr. Foster to Mrs. Clinton and notations by Mr. Hubbell.[19] Mrs. Clinton has recently stated through her lawyer that she may have reviewed them during the 1992 presidential campaign.

After federal investigators began to look into matters relating to Madison Guaranty and Whitewater, a number of subpoenas were issued for these Rose Law Firm billing records. By then, however, the records were nowhere to be found. Despite extensive searches conducted by the law firm, neither the originals nor copies were discovered.[20] They were not in the firm computers, its client files, or the firm's storage facility.[21]

Apparently, at some point, someone removed these billing records from the Rose Law Firm. In August 1995, Carolyn Huber, an assistant to Mrs. Clinton, discovered them in the book room of the White House Residence, next to Mrs. Clinton's office.[22] At the time, Mrs. Huber did not realize the records were under subpoena, and she placed them in a box in her office. In January 1996,[23] Mrs. Huber identified these records, and personal counsel for the President and Mrs. Clinton turned them over investigators. Mr. Hubbell testified that he last saw the records during the 1992 presidential campaign in the possession of Mr. Foster.[24]

By July 1993, the Clintons and their associates had established a pattern of concealment with respect to the Clintons' involvement with Whitewater and the Madison S&L. Because of the complexity of the allegations of misdeeds involving these institutions, documents and files are critical to any inquiries into the matter. Yet, at every important turn, crucial files and documents "disappeared" or were withheld from scrutiny whenever questions were raised.

The Clintons and their associates were aware, at the time of Mr. Foster's death, that the Clintons' involvement with Whitewater and the Madison Guaranty S&L might subject them to liability

In late fall 1992, Betsey Wright, the coordinator of "damage control" efforts during the presidential campaign and a former chief of staff to Governor Clinton, learned of a "criminal referral regarding a savings and loan official in Arkansas and . . . involv[ing] the Clintons."[25] Ms. Wright testified that she learned this information from a Clinton supporter from California who had a friend who heard it at a cocktail party in Kansas City.[26] At the cocktail party, an RTC official informed someone, whose friend reported it to Ms. Wright, that the RTC had just sent a "criminal referral up to the prosecutor in Little Rock."[27] Upon hearing the news, Ms. Wright tried to gather more information about the referral.[28] She then told Mrs. Clinton about the referral directly. Ms. Wright testified: "I remember I asked Hillary if she was aware of any friend of theirs who was in a savings and loan business who might be under criminal investigation, and we couldn't think of anybody."[29]

It is with this knowledge that the Clintons and their advisers came to Washington, taking with them the important documents relating to Whitewater and Madison. The documents (including documents improperly taken from the law firm) were entrusted only to close associates of the Clintons, chiefly Messrs. Foster and Hubbell.

By March 1993, senior Clinton Administration officials confirmed that the RTC had sent a criminal referral mentioning the Clintons to the Justice Department.[30] Specifically, RTC Senior Vice President William H. Roelle testified that, after taking office, Roger Altman, then Deputy Treasury Secretary, directed the staff to inform him of all important or potentially high-visibility issues.[31] According to Mr. Roelle, on or about March 23, 1993, he told Mr. Altman of an RTC referral involving the Clintons.[32]

Powerful documentary evidence strongly indicates that Mr. Altman immediately passed this important information on to White House Counsel Bernard Nussbaum. On March 23, Mr. Altman sent Mr. Nussbaum a facsimile with a handwritten cover sheet, forwarding an "RTC Clip Sheet" of a March 9, 1992 New York Times article with the headline, "Clinton Defends Real-Estate Deal."[33] This article reported the responses of presidential candidate, Bill Clinton, to an earlier Times report on the Clintons' Whitewater investment. The next day, Mr. Altman faxed to Mr. Nussbaum the same article that he sent the day before and portions of the earlier *Times* report on Whitewater, dated March 8, 1992, entitled "Clintons Joined S&L Operator in an Ozark Real-Estate Venture."[34]

In addition, SBA Associate Administrator Wayne Foren testified that, in early May 1993, he briefed Erskine Bowles, the new SBA

Administrator about the agency's ongoing investigation of David Hale's Capital Management Services because the case involved President Clinton.[35] Shortly thereafter, Mr. Bowles told Mr. Foren that he had briefed White House Chief of Staff Mack McLarty about the case.[36] Although Mr. Bowles did not recall being briefed by Mr. Foren about Capital Management[37] or talking to Mr. McLarty about the case,[38] Mr. Foren's account was corroborated by his deputy, Charles Shepperson.[39] Mr. McLarty's calendar indicated that Mr. Bowles had two meetings with Mr. McLarty at the White House in early May 1993.[40]

As of July 1993, therefore, Mrs. Clinton and others in the Administration were on notice that there was an ongoing federal investigation to which Madison-related documents could be relevant.

At the time of his death, Mr. Foster's office contained damaging evidence about the Whitewater and Travelgate affairs

After he became Deputy White House Counsel, Mr. Foster continued to play a key role in controlling potential damage to the Clintons from Whitewater. He was given the responsibility for overseeing the preparation of Clintons' tax returns for 1992 to reflect properly the sale of their shares in Whitewater.[41] Mr. Foster worked with other White House officials in the Spring of 1993 in preparing a response to expected Whitewater questions.[42] And, most interestingly, Mr. McDougal had left a message for Mr. Foster on June 16, 1993, "re tax returns of HRC, VWF and McDougal."[43] The documents in Mr. Foster's office at the time of death included a file on Whitewater and his notes of conversations with the Clintons' accountant, Yoly Redden, concerning the tax treatment of the sale of Whitewater.[44] The notes identified the tax problem as a "can of worms you shouldn't open"[45] and further warned: "Don't want to go back into that box Was McD trying to circumvent bank loss—why HRC getting loan from other."[46]

Mr. Foster also played a central role in both the firing of seven career employees of the Travel Office on May 19, 1993 and subsequent attempts to conceal Mrs. Clinton's true role in the controversial firings. Harry Thomason, a close Clinton confidant, reportedly instigated the firings after the career employees rejected his plan to obtain the White House's charter business for a company he partly owned.[47] With public criticism growing, the White House circumvented normal procedures and directly asked the FBI (not the Department of Justice) to investigate allegation so possible criminal misconduct by the career employees of the Travel Office.[48] Although Mr. Foster was not formally reprimanded for his role in the firings, he felt personally responsible.[49]

Other senior White House officials implicated in Travelgate include David Watkins and Patsy Thomasson. The Special Committee belatedly obtained a memorandum of Mr. Watkins outlining Mr. Foster's extensive involvement as Mrs. Clinton's conduit to the firings.[50] Indeed, Mr. Watkins fingered Mr. Foster as the person who directly communicated to him Mrs. Clinton's order that the Travel Office staff be fired: "Foster regularly informed me that the First Lady was concerned and desired action—the action desired was the firing of the Travel Office staff."[51] Notwithstanding Mrs. Clinton's clear involvement in the firing of the staff, Mr. Foster and

other White House officials did nod disclose her true role to investigators probing the affair.

Significantly, at the time of his death, Mr. Foster's briefcase contained files, a personal notebook and a torn-up note, all concerning the controversial Travel Office matter.

Thus, when Mr. Foster committed suicide in July 1993, White House officials were aware that a danger existed that the law enforcement officials might discover documents concerning Whitewater or Travelgate in his office. In fact, David Margolis, one of the Justice Department officials who attended the search of Mr. Foster's office two days after his death, was aware of an RTC criminal referral concerning Madison that mentioned the Clintons.[52] This risk of discovery provides the backdrop against which the story of Mr. Foster's death and the White House's subsequent scramble must be viewed.

White House officials engaged in highly improper conduct in handling documents in Vincent Foster's office following his death

The evidence before the Special Committee established that White House officials engaged in a pattern of deliberate obstruction, and interference with, efforts by law enforcement authorities to conduct their several investigations into Mr. Foster's death.

This White House interference began immediately following Mr. Foster's death on the night of July 20. Senior White House officials ignored specific requests by the Park Police to seal Mr. Foster's office on the night of his death.[53] Instead, White House Counsel Bernard Nussbaum, Chief of Staff to the First Lady Margaret Williams and Deputy Assistant to the President Patsy Thomasson entered Mr. Foster's office purportedly to search for a suicide note.

According to career Secret Service Office Henry O'Neill, and corroborated by Secret Service records, Ms. Williams removed file folders from Mr. Foster's office that night. Even assuming, contrary to the testimony of Officer O'Neill, that no files were removed from the office that night, the multiple entries into Mr. Foster's office plainly compromised the integrity of evidence the Park Police considered to be valuable.[54] Beyond this, Mr. Nussbaum not only ignored instructions to seal Mr. Foster's office, but also allowed Ms. Thomasson, a staffer without a security clearance who was involved in the Travel Office matter, to conduct an improper search of Mr. Foster's office. For reasons unknown—but to a large extent illuminated by Officer O'Neill's testimony—Margaret Williams also participated in the late night foray through Mr. Foster's office.

The next morning, on July 21, Mr. Nussbaum's personal secretary, Betsy Pond, also rummaged through Mr. Foster's office—ostensibly to straighten it up—thereby disturbing important evidence.[55] Stephen Neuwirth, Mr. Nussbaum's associate, immediately recognized the impropriety: "I didn't think it was appropriate for an assistant to Mr. Nussbaum to be in the office at that time."[56] Thomas Castleton, a staff assistant, also entered Mr. Foster's office in the morning of July 21.[57] Only the Park Police investigators were impeded in their attempt to enter Mr. Foster's office to search for evidence. They waited in vain all day "for approval from Mr. Nussbaum" to conduct their investigation.[58]

In addition, members of the White House Counsel's office participated in the Park Police interviews of White House staffers, not to protect the legal interests of the staffers but, in the words of Park Police Detective Peter Markland, to "report back to Mr. Nussbaum what was being said in the interviews."[59] The White House Counsel's office coached the staffers about their testimony during a meeting on "comportment and interrogation."[60] The Park Police left with the impression that their interviews had been rehearsed.[61]

The pattern of obstruction continued with the White House dealings with the Justice Department. Mr. Nussbaum agreed with Deputy Attorney General Heymann on the procedures for reviewing documents in Mr. Foster's office.[62] The next day, when Susan Thomases, a close advisor to Mrs. Clinton and a member of the Whitewater defense team during the 1992 presidential campaign,[63] complained about the review procedures after a conversation with Mrs. Clinton, Mr. Nussbaum broke the agreement and changed the procedures.[64] In explaining this about-face, Mr. Nussbaum told his associate, Stephen Neuwirth, that Ms. Thomases and Mrs. Clinton were "concerned about anyone having unfettered access to Mr. Foster's office."[65] Contrary to his promise to the Deputy Attorney General, Mr. Nussbaum proceeded to review the documents by himself and did not afford Mr. Heymann an opportunity to decide whether Justice Department officials should be present for the review.[66]

The Special Committee concludes that Mr. Nussbaum engaged in highly improper conduct in braking the White House agreement with the Justice Department. Mr. Nussbaum, in effect, interposed himself between the investigators and the matters under investigation. Prompted by Mrs. Clinton, Susan Thomases, and senior White House officials, he made a conscious decision to interfere with a federal investigation.

Beyond this, the Special Committee concludes that the "review" of documents in Mr. Foster's office on July 22 was a sham. Law enforcement authorities did not review any documents; Mr. Nussbaum relied on their presence simply to "dress up" the review.[67] Mr. Nussbaum ignored repeated complaints by Justice Department officials that they had no meaningful role in the review, and that Mr. Nussbaum was providing only a "generic description"[68] of the files in the office.[69] He carefully glossed over sensitive documents that he knew could embarrass the President and the Administration, including those related to Whitewater and Travelgate.

Almost immediately after law enforcement offices left Mr. Foster's office, Mr. Nussbaum went to work to conduct the real search in secret. Michael Spafford, an attorney for the Foster family, testified that he overhead Mr. Nussbaum tell Mr. Sloan at the end of the meeting that they would look through the materials again later.[70] Associate White House Counsel Clifford Sloan's notes of the meeting ended with the following: "get Maggie—go through office—get HRC, WJC stuff."[71]

Ms. Williams and Mr. Nussbaum collected the files, including at least one marked Whitewater. Ms. Williams then consulted with Mrs. Clinton, and transferred one or two boxes of documents to the White House Residence for further review by the President and Mrs. Clinton. In the case of Mr. Foster's highly sensitive Travelgate files, Mr. Nussbaum took the records to his office.[72] There is also

evidence that indices of files in Mr. Foster's officer were altered or destroyed after his death.[73] These indices were the only means of securing a chain of custody for Mr. Foster's documents.

In short, senior White House officials deliberately disrupted the critical chain of custody of Mr. Foster's documents and may have lost or destroyed evidence now highly relevant to ongoing criminal investigations of Whitewater and Travelgate.

During the July 22 search, Mr. Nussbaum also failed to inform law enforcement officials that scraps of paper were at the bottom of Mr. Foster's briefcase. He was told by both Clifford Sloan[74] and Deborah Gorham[75] that papers remained in Mr. Foster's briefcase after his search, but did not inform law enforcement. When Mr. Neuwirth finally "discovered" Mr. Foster's torn-up note on July 26, the White House waited a further 26 hours before notifying the authorities. Although the ostensible reason for the delay was to permit the President and Mrs. Foster to review the note, White House officials conducted a series of meetings during this period to discuss the consequences of turning the note over to the authorities.

Even without the benefit of all the facts uncovered by the Special committee within the last year, Deputy Attorney General Philip Heymann aptly summed up the pattern of troubling behavior by the White House as it appeared to him on July 27, when he finally saw the note:

> I'm trying to describe a collection of little things, each of which I'm prepared to believe is just a difference of opinion, and in my view, a clumsy and foolish way to handle the matter on the part of the White House staff and Mr. Nussbaum.
>
> But they're starting to collect, and as they're collecting too much, and the last one's quite dramatic.
>
> I mean, first of all, we had a sensible system for reviewing the documents, and that's changed to a system that doesn't have any law enforcement input into it at all. It's changed without notifying me.
>
> I'm vaguely worried about the Park Police feeling that they're not wholly able to investigate those messages are not too clear.
>
> And then along comes a note that should have been found on the 22nd, if they really went through all the documents. I never looked at the briefcase but it at least worries me that perhaps it should have been found, and we learn about it 27 hours later.[76]

Mr. Heymann then ordered the Justice Department to investigate the discovery of the note and Mr. Foster's assertions made therein.

Amazingly, the White House did not cooperate fully even with the new investigations ordered by Mr. Heymann. During official FBI interviews, where they were under an obligation to tell the truth, senior White House officials did not tell the FBI that Mrs. Clinton saw the note, and that Susan Thomases was told about it by Mr. Nussbaum, before it was disclosed to the authorities. At Mr. Heymann's request, the Justice Department's Office of Professional Responsibility investigated Mr. Foster's assertion that the FBI lied

in their report to the Attorney General on the Travelgate controversy. Mr. Foster's notebook on that matter, which Mr. Nussbaum found in Mr. Foster's briefcase, was critical evidence to that investigation. Nevertheless, instead of disclosing its existence to Justice Department officials, Mr. Nussbaum tucked away in his office Mr. Foster's notebook and other Travelgate materials.[77]

In July 1995, when he found out about Mr. Nussbaum's concealment of Mr. Foster's Travelgate notebook, the Director of the Office of Professional Responsibility at the Justice Department, Michael Shaheen, wrote an angry memorandum to Associate Attorney General David Margolis. After outlining specific instances of noncooperation by the White House, Mr. Shaheen concluded: "The fact that we have just now learned of the existence of obviously relevant notes written by Mr. Foster on the subject of the FBI report is yet another example of the lack of cooperation and candor we received from the White House throughout our inquiry.[78]

Viewed in the aggregate, then, these numerous instances of White House interference with several ongoing law enforcement investigations amounted to far more than just aggressive lawyering or political naivete. Rather, the Special Committee concludes that the actions of these senior White House officials constitute a highly improper pattern of deliberate misconduct.

Mrs. Clinton was closely involved in the handling of documents in Mr. Foster's office following his death and directed that investigators be denied "unfettered access" to his office

From the moment that she was notified of Mr. Foster's death, Mrs. Clinton and her key agents—Margaret Williams and Susan Thomases—were engaged in the subsequent handling of documents in Mr. Foster's office. Telephone records indicate that upon learning the news, Mrs. Clinton first called her Chief of Staff, Margaret Williams.[79] After talking with Mrs. Clinton, Ms. Williams and her assistant, Evelyn Lieberman, drove to the White House and searched Mr. Foster's office. The second call Mrs. Clinton made on the night of Mr. Foster's death was to the residence of Harry Thomason,[80] a key player in the Travelgate scandal. Mrs. Clinton then called Susan Thomases, who handled Whitewater damage control during the 1992 presidential campaign, and talked for 20 minutes.[81]

This series of telephone calls in the hours immediately following Mr. Foster's death established a communications triangle among Mrs. Clinton, Ms. Thomases, and Ms. Williams that would surface frequently in the handling of documents in Mr. Foster's office. The evidence strongly suggests that Mrs. Clinton, upon learning of Mr. Foster's death, at least realized its connection to Mr. Thomason's Travelgate scandal, and perhaps to the Whitewater matter, and dispatched her trusted lieutenants to contain any potential embarrassment or political damage.

After speaking with Mrs. Clinton, Ms. Thomases paged Ms. Williams, while Ms. Williams was searching Mr. Foster's office at the White House,[82] presumably to monitor the progress of the search. After the completion of her search, Ms. Williams returned home and called Mrs. Clinton at 12:56 a.m. on the morning of July 21.[83] Upon the conclusion of her eleven minute conversation with Mrs.

Clinton, Ms. Williams called Ms. Thomases at 1:10 a.m. and spoke for fourteen minutes.[84]

These telephone calls illustrated a pattern that would be repeated at each critical event in the handling of papers in Mr. Foster's office: discussions among Mrs. Clinton, Ms. Thomases, and Ms. Williams; subsequent implementation by Ms. Williams, monitored by Ms. Thomases; and, finally, reporting by Ms. Williams to Mrs. Clinton and Ms. Thomases.

The operation of the Clinton-Thomases-Williams triangle was best illustrated on July 22, when White House officials and Justice Department officials were scheduled to review documents in Mr. Foster's office. Ms. Williams called Mrs. Clinton at 6:44 a.m. Central Daylight Time.[85] Mrs. Clinton then called Ms. Thomases in Washington,[86] who immediately paged Bernard Nussbaum at the White House.[87] When Mr. Nussbaum called back, Ms. Thomases asked him about the upcoming review of Mr. Foster's office and, by Mr. Nussbaum's own account, said that "people are concerned" about the procedures to be employed for conducting the review.[88]

Later that morning, Mr. Nussbaum told Mr. Neuwirth that the First Lady and Ms. Thomases were concerned about law enforcement officials having "unfettered access" to documents in Mr. Foster's office.[89]

At 10:00 a.m., when the document review was scheduled to begin, Mr. Nussbaum told Justice Department officials that he alone would review the documents, breaking a prior agreement with the law enforcement officials. Throughout the day, while White House officials were meeting with Mr. Nussbaum to discuss procedures for reviewing documents in Mr. Foster's office, Ms. Thomases made repeated phone calls to the White House, in an apparent effort to monitor, and perhaps to affect, the progress of those discussions. Telephone records indicated that, between 10:48 a.m. and 11:54 a.m., Ms. Thomases called the office of the Chief of Staff, Mack McLarty, three times and the office of the Chief of Staff to the first Lady, Margaret Williams, three times.[90] At 12:55 p.m., Ms. Williams called the Rodham residence in Little Rock, apparently in response to a page from Mrs. Clinton's personal assistant.[91] And records indicated that, at 1:25 p.m., approximately the time when Mr. Nussbaum told law enforcement officials that he alone would review documents in Mr. Foster's office, a telephone call was placed from the White House to the Rodham residence.[92]

After Mr. Nussbaum finished his review of documents in Mr. Foster's office, he and Ms. Williams conducted a second review to segregate and remove the Clintons' personal files.[93] Ms. Williams called Mrs. Clinton from Mr. Foster's office to seek instructions concerning where to place the files, and Carolyn Huber recalled that Ms. Williams said that "Mrs. Clinton had asked her to call me"[94] about transferring the files to the residence. Ms. Williams told Thomas Castleton that she was taking the files to the residence so that the Clintons could review them before they were handed over to Williams & Connolly.[95] After the documents were transferred, Ms. Williams and Ms. Thomases again talked on the telephone at 5:13 p.m.[96] At 7:12 p.m., Ms. Thomases called Mrs. Clinton in Little Rock.[97]

The evidence leads to the inescapable conclusion that, early in the morning of July 22, Mrs. Clinton, Susan Thomases and Margaret Williams discussed the procedures for conducting the review of documents in Mr. Foster's office. Ms. Thomases then communicated their "concern[s]"[98] to Mr. Nussbaum about his prior agreement with senior Justice Department officials. In place of that agreement, which would have permitted those officials to review jointly Mr. Foster's documents with Mr. Nussbaum,[99] the White House adopted a new procedure under which he alone would review the documents. Thus, as Mrs. Clinton wished, law enforcement would not have "unfettered access', to Mr. Foster's documents. Ms. Williams called Mrs. Clinton from Mr. Foster's office to ask where to take the Clintons' personal documents that she had segregated with Mr. Nussbaum. After getting instructions from Mrs. Clinton, Ms. Williams transferred the files to the White House Residence for the Clintons to review. After the new plan was fully executed, Ms. Thomases again talked to Ms. Williams and, according to telephone records, called Mrs. Clinton.

On July 27, the day after a note in Mr. Foster's hand was discovered and the day that documents from Mr. Foster's office was transferred from the White House Residence to Williams and Connolly, Mrs. Clinton summoned Susan Thomases and Webster Hubbell to the White House.[100] The three were in the White House Residence alone together, and Mr. Hubbell and Ms. Thomases left at the same time.[101] Ms. Thomases and Mr. Hubbell studiously avoided testifying about this meeting in early appearances before the Special Committee. However, when eventually confronted with clear documentary evidence, in the form of Secret Service logs,[102] Ms. Thomases finally admitted that she recalled the three being together at the White House in the week following Mr. Foster's death.[103] Ms Thomases maintained that they did no more than exchange condolences with Mrs. Clinton,[104] and that there was no discussion of the handling of documents in Mr. Foster's office. Mr. Hubbell stated that he went to the White House to give Mrs. Clinton an account of Mr. Foster's funeral after Mrs. Clinton left.[105] He claimed that he did not see Ms. Thomases or discuss the Mr. Foster's note, which had been discovered but not disclosed to the authorities, with Mrs. Clinton.[106]

The Special Committee concludes that this testimony of Ms. Thomases and Mr. Hubbell about their simultaneous visits to the second floor of the White House residence is highly implausible. White House officials, investigators, and the media[107] were all speculating about and searching for a note following Mr. Foster's death. Yet both Ms. Thomases and Mr. Hubbell persist with their unbelievable story that the note was not discussed less than one day after it was discovered in Mr. Foster's briefcase.

In sum, the Special Committee concludes senior Administration officials and Ms. Thomases have sought to conceal the true involvement of Mrs. Clinton in the handling of documents in Mr. Foster's office, an involvement that is unmistakably established by Mr. Neuwirth's admission, and by documentary records, all of which shatter the wall of denial erected by close Clinton associates.

Senior White House Officials and other Clinton Associates provided incomplete and inaccurate testimony to the Special Committee

The Special Committee concludes that its effort to find the truth about the events of July 20–27, 1993 was impeded by what appeared to be a disturbing pattern of incomplete and inaccurate testimony by senior White House officials and close Clinton associates. Time and again, the testimony of career law enforcement officials and others without a motive to lie, as well as documentary evidence, told one consistent story, while senior White House officials and close Clinton associates offered a contradictory version of the facts.

Three Park Police officers testified that on the night of Mr. Foster's death, July 20, they told White House officials to take steps to seal his office—requests the White House officials denied. A Secret Service Officer testified that later that night he observed the First Lady's Chief of Staff, Margaret Williams, remove files from Mr. Foster's office;[108] Ms. Williams denied that she removed anything from the office.

This pattern continued on the next day, July 21. Justice Department officials testified that they had reached an agreement with the White House concerning the procedures for searching Mr. Foster's office.[109] Even though the contemporaneous documentary evidence supported the testimony of the Deputy Attorney General and career Justice Department officials,[110] White House Counsel Bernard Nussbaum and his associates denied the existence of any such agreement allowing law enforcement to examine the documents in Mr. Foster's office.[111]

The Special Committee heard more of the same concerning the events of July 22. Ignoring a peculiar pattern of early morning telephone calls involving the First Lady, Ms. Williams and Susan Thomases denied that Mrs. Clinton played any role whatsoever in the decision to bar law enforcement from looking at the documents in Mr. Foster's office. Breaking ranks somewhat, Mr. Nussbaum admitted that he was told by Ms. Thomases that unspecified "people" were concerned about the upcoming search—presumably, the First Lady, since Ms. Thomases was widely known for speaking with Mrs. Clinton's authority. Finally, Stephen Neuwirth, a lower level counsel, admitted that Mr. Nussbaum told him that Mrs. Clinton and Ms. Thomases were concerned about giving law enforcement "unfettered access" to Mr. Foster's office.[112]

This pattern continued later in the day on July 22, when Ms. Williams denied that she was bringing documents from Mr. Foster's office to the White House Residence for the Clintons to review. Instead, she offered an implausible story to explain her decision to bring the documents to the Residence.[113] Ms. Williams' account was contradicted by a young White House staffer, Thomas Castleton, who testified that Ms. Williams told him that "the President or the First Lady had to review the contents of the boxes to determine what was in them."[114]

Beyond this, there is the curious discovery of Mr. Foster's note on July 26. Thomas Spafford, a lawyer for the Foster family, testified that, on July 22, he overheard Clifford Sloan tell Mr. Nussbaum on July 22 that there were scraps at the bottom of the briefcase. Messrs. Sloan and Nussbaum denied this.[115]

As set forth below in the Findings of this Report, the Committee concludes that four persons—Margaret Williams, Susan Thomases, Bernard Nussbaum and Webster Hubbell—provided incomplete and inaccurate testimony to the Committee in an apparent effort to conceal the intimate involvement of Mrs. Clinton in the events following Mr. Foster's death.

The Office of the White House Counsel was misused to impede ongoing investigations and to serve the purely personal legal interests of the President, Mrs. Clinton and their associates

Every citizen is entitled to mount a defense to civil and criminal charges. The President is no different. He is not entitled, however, to use the power of his office to gain a defense of his private legal affairs not available to other Americans. The White House Counsel's Office is supposed to serve the President in his official executive capacity. These lawyer are paid by the taxpayers to serve the public interest.

In the matter of Mr. Foster's death, the Office of the White House counsel served, in effect, as the Clintons' personal defense law firm. This service extended beyond Mr. Foster's employment as the Clinton's personal attorney to the use of the White House Counsel's Office in the days following his death to interfere with and hinder several ongoing federal investigations into Mr. Foster's death and the handling of documents in Mr. Foster's office at the time of his death. Instead of cooperating with law enforcement officials, the Office of the White House Counsel impeded the investigations of the Park Police and the Department of Justice. The White House lawyers ignored and, in some cases, intentionally violated established procedures that would have ensured the proper handling of documents in Mr. Foster's office.

The impropriety of these and other actions—actions that prompted the Deputy Attorney General to ask Mr. Nussbaum, "Bernie, are you hiding something?"—is compounded when one recognizes that these actions were taken by members of the Office of the White House Counsel. These were government lawyers who were supposed to protect the public interest in proper investigations and faithful execution of the laws, not to do the private bidding of the President and First Lady.

The Special Committee concludes that the White House Counsel's Office was misused in the aftermath of Mr. Foster's death to interfere with and to obstruct various federal investigations. This pattern of abuse by the White House Counsel's Office is not limited in time or scope, but rather has recurred throughout the Special Committee's investigation into other matters authorized by Senate Resolution 120. These include efforts to obtain improperly confidential law enforcement information from the RTC and from the Small Business Administration, all while coordinating with private attorneys representing the Clintons as subjects of investigation.

The Special Committee recommends that steps be taken to insure that such misuse of the White House Counsel's Office does not recur in this, or any future, Administration.

Taken as a whole, the events described in this Report and summarized in this conclusion, reveal a concerted effort by senior White House officials to block career law enforcement investigators

from conducting a thorough investigation of a unique and disturbing event—the first suicide of a very senior U.S. official in almost fifty years. Unquestionably, the Department of Justice and Park Police were authorized to conduct this investigation, and White House officials owed them a duty to cooperate. Instead, law enforcement officials were confronted at every turn with concerted efforts to deny them access to evidence in Mr. Foster's office. Strikingly, the Counsel to the President carried out the wishes of the First Lady by breaking his earlier agreement with the Deputy Attorney General of the United States. And law enforcement officials were forced to sit still as White House lawyers conducted a charade of a search. Only after the duly appointed investigators had departed, did the White House Counsel and the First Lady's Chief of Staff begin the real search, which resulted in the transfer of documents to the White House Residence; the removal of Mr. Foster's Travel Office notebook; and the disappearance of important document indices that would have reflected the full contents of his files.

The actions of the White House are especially serious because the Special Committee has discovered that the files shielded from the Department of Justice contained evidence relevant to two investigations that touched on the Clintons' personal interests: the criminal referral into Madison S&L, and the anticipated investigation, by Congress and others, into the Travel Office firings. As demonstrated in this Report, the White House, including Mrs. Clinton, were on notice that these investigations were either ongoing or imminent. As it happens, both of these investigations were of sufficient weight to be now under the jurisdiction of an Independent Counsel.

Against this background, the actions of the White House during the week after Mr. Foster's death must be judged. These White House actions were highly improper; they were deliberate; and they adversely affected ongoing investigations by career law enforcement officials. The American people will never be sure of the contents of Vincent Foster's office at the time of his death. Their uncertainty and doubts, however, clearly are the direct result of the wrongful action by the White House.

BACKGROUND

The death of any senior U.S. official is sure to be a matter of public concern. But Mr. Foster's death swelled into a substantial controversy because of two additional factors. First, Mr. Foster had a very close and long-standing personal and professional relationship with the President and Mrs. Clinton. As a prominent lawyer in Arkansas and then as Deputy White House Counsel, he provided legal counsel to them on a number of sensitive personal matters. Questions therefore arose as to whether concerns about any of these matters, including the Whitewater and Travelgate affairs, contributed to Mr. Foster's death. Second, senior White House officials, particularly members of the Office of the White House Counsel, took actions in the days following Mr. Foster's death to search and to review the contents of Mr. Foster's office while preventing law enforcement officials from doing the same. These actions raised serious questions about whether, in the wake of Mr. Foster's death, the Office of the White House Counsel was misused to serve the

purely personal legal and political interests of the President, the First Lady and their associates.

I. MR. FOSTER'S INVOLVEMENT IN THE CLINTONS' PERSONAL MATTERS

Vincent Foster was born on January 15, 1945 in Hope, Arkansas. He attended kindergarten with future President William Jefferson Clinton and future White House Chief of Staff Thomas "Mack" McLarty. Mr. Foster graduated from Hope High School in 1963 and from Davidson College in 1967. Mr. Foster graduated first in his class from the University of Arkansas School of Law in 1971, and passed the bar exam later that year with the highest score in the state. He then joined the Rose Law Firm in Little Rock, Arkansas, and became a full partner two years later, in 1973. Mr. Foster's partners included future First Lady Hillary Rodham Clinton, future Associate Attorney General Webster Hubbell, and future Associate White House Counsel William Kennedy.

Messrs. Foster and Hubbell participated in efforts during the 1992 presidential campaign to control damage arising from the Whitewater matter and, specifically, to Mrs. Clinton's representation of the Madison Guaranty Savings and Loan Association. James and Susan McDougal, the Clinton's partners in the real estate venture at the heart of the whitewater affair, owned and controlled Madison. On May 28, 1996, James McDougal was convicted of eighteen federal felonies and Susan McDougal was convicted of four federal felonies. These convictions related both to the operations of Madison and the Whitewater real estate investment. During the 1992 campaign, Mr. Hubbell improperly removed from the Rose Law Firm its files concerning its representation of Madison. Messrs. Hubbell and Foster also reviewed Rose Law Firm billing records relating to Rose's representation of Madison.[116] These records were found in the White House Residence in August 1995 and finally turned over to investigators in January 1996, more than two years after they were first subpoenaed. The records contain handwritten questions from Mr. Foster to Mrs. Clinton; it is not possible to date when these questions were put to Mrs. Clinton.

In January 1993, President-elect Clinton asked Mr. Foster to become White House Deputy Counsel. Mr. Foster's office on the second floor of the West Wing of the White House was in the same suite as that of White House Counsel Bernard Nussbaum. The Counsel's suite was located right next to the West Wing office suite of the First Lady.

As Deputy Counsel, Mr. Foster worked on many sensitive legal and political matters for the Clintons. In May 1993, Mr. Foster assigned his former law partner, Associate White House Counsel William Kennedy, to investigate allegations of mismanagement and misappropriation of funds in the White House Travel Office. On May 19, 1993, the White House fired seven career employees of the Travel Office. Almost immediately, the White House came under intense criticism for its handling of these firings. According to press reports, less than a month after President Clinton's inauguration, Catherine Cornelius, the President's cousin, wrote a memorandum proposing that the White House dismiss the career employees of the Travel Office and that she run the operation.[117] The memorandum cast doubts on the administration's claim that the seven ca-

reer employees were fired for financial misconduct. In addition, Harry Thomason, a close friend of the Clintons, reportedly had attempted to steer the White House's lucrative charter business to an aviation company that he partly owned.[118] Rebuffed by the career employees of the Travel Office, Mr. Thomason reportedly accused them of wrongdoing.[119]

As public criticism mounted, the White House asked a senior FBI official, John Collingwood, to attend a "political strategy session" with senior presidential advisers on how to deal with the growing scandal.[120] On the same day, the White House took the highly unusual step of releasing a confidential FBI statement confirming that the bureau was investigating possible criminal misconduct in the Travel Office.[121]

Thus, in addition to allegations of cronyism underlying the firing of the career employees, the White House came under fire for misusing the FBI, an independent investigative agency, for its own political ends, a charge that would surface time and again as the White House attempted to contain and manage embarrassing and potentially incriminating information through contacts with federal investigative agencies. Protocols required that White House contacts with the FBI go through the Department of Justice, and "[b]y calling on the FBI to help save the Administration from embarrassment, the White House appeared to be deviating from two decades of efforts to insulate the law-enforcement agency from even the appearance of Presidential manipulation."[122] The FBI conducted an internal inquiry into contacts between its agents and the White House, and the White House initiated its own investigation into the matter. On July 2, 1993, the White House released the report of its internal review, which sharply reprimanded Mr. Kennedy and others. Although Mr. Foster was not formally reprimanded, he felt personally responsible for the affair and insisted that Mr. Nussbaum allow him to shoulder the blame.[123] Mr. Foster's secretive files on the Travel Office controversy were in his briefcase at the time of Mr. Foster's death, together with a torn-up note purportedly discovered six days later. The note listed Mr. Foster's troubles and concerns, many of which dealt with the Travel Office controversy.

The Travel Office affair apparently weighed heavily on Mr. Foster's mind at the time of his death.[124] Many colleagues, confidantes, and friends of Mr. Foster stated to investigators that "the single greatest source of his distress was the criticism he and others within the Counsel's office received following the firing of seven employees from the White House Travel Office."[124] However, according to a FBI report of an interview with Susan Thomases, who "got to know Vince Foster fairly well" from her work with the Clinton campaign, transition, and administration,[126] "[h]is death came as a complete shock to her and she can offer no reason or speculation as to why he may have taken his life."[126] According to the FBI report, Ms. Thomases last saw Mr. Foster on "Wednesday or Thursday before his death," when "they had lunch together with some people in Washington."[128]

Ms. Thomases has made subsequent statements that contradict the FBI report of her interview. In Blood Sport, an account of the Whitewater affair, author James Stewart reported that Ms.

Thomases last saw Mr. Foster on the Wednesday evening before his death.[129] Their last meeting was not a public luncheon, as the FBI report recorded, but was at the Mansion on O Street, a private hotel frequented by Ms. Thomases. Ms. Thomases had suggested the location after Mr. Foster asked to speak to her "off the campus."[130] According to Blood Sport, Mr. Foster confided in Ms. Thomases during that last meeting, telling her about his personal and professional troubles. Mr. Foster reportedly did not want to "let the president and Hillary down" and, in particular, referred to the Travel Office affair. Mr. Foster reportedly stated to Ms. Thomases that "he didn't trust David Watkins, who he feared might fabricate or embellish the facts to cover himself—possibly at the expense of the first lady."[131]

When asked about the apparent discrepancy between her FBI statement and her interview with Mr. Stewart, Ms. Thomases told the Committee that she told the FBI agent about her last meeting with Mr. Foster at the Mansion on O Street.[132] She offered no explanation as to why the agent failed to record this significant fact. Ms. Thomases admitted that she spoke to Mr. Stewart in connection with Blood Sport, but claimed, "I don't believe that I said that that's what happened with [Mr. Foster] that night. I think [Mr. Stewart] probably put together different pieces of a different conversation."[133] Ms. Thomases maintains that her statement to the FBI that "she can offer no reason or speculation as to why he may have taken his life,"[134] was correct, because "I still do not feel that I'm ready to speculate on why he took his life."[135]

During his brief tenure as Deputy White House Counsel, Mr. Foster handled a number of sensitive personal matters for the President and the First Lady—continuing, even though he was now on the public payroll, his Arkansas role as personal lawyer to the Clintons.[136] For example, among the files in Mr. Foster's office at the time of his death were the following:

1. Whitewater Development[137]
2. Clinton Exploratory Committee[138]
3. Clinton Fund Raiser "Dream Team" Reception[139]
4. Clinton Physician[140]
5. Arkansas Home[141]
6. HRC: Personal & Confidential[142]
7. HRC: Financial[143]
8. Clinton Financial Statements[144]
9. 1992 Income Tax Returns[145]
10. First Family—1993 Income Tax Returns[146]
11. Clintons: 1992 and 1993 Projected Income Taxes[147]
12. WJC Passport[148]
13. Personal—Clinton Campaign '92 Correspondence[149]
14. Personal—Clinton Papers[150]
15. Personal—Clinton—Legal[151]
16. First Family—1994 Income Tax Returns.[152]
17. First Family—General[153]
18. HRC—CLE/Arkansas Law License[154]
19. First Couple—Blind Trust[155]
20. First Family—Arkansas Home[156]

Perhaps the most sensitive matter that Mr. Foster handled for the Clintons concerned their investment in Whitewater. In 1978,

the Clintons and James and Susan McDougal jointly purchased 233 acres in the Arkansas Ozarks. Neither the Clintons nor the McDougals contributed any equity into the purchase. Instead, Jim McDougal and Bill Clinton, then Attorney General and the Governor-elect of Arkansas, borrowed $20,000 from Union National Bank. Mr. McDougal's loan officer at Union National Bank, Harry Denton, would later become the chief lending officer at Mr. McDougal's Madison Guaranty S&L. The rest of the purchase money was financed by a mortgage of $182,611.20 from Citizens Bank of Flippin, a loan in which Union National Bank took a 50 percent participation.

In June 1979, the Clintons and McDougals formed Whitewater Development Company, Inc. ("Whitewater") and eventually transferred ownership of the land to the new corporation. The Clintons and McDougals intended to subdivide the property into lots for sale as vacation property. Slow sales at lower than anticipated prices, however, resulted in a cumulative loss of $193,189 for Whitewater by the end of 1986. Although the McDougals and the Clintons purportedly were equal partners in the project, their contributions to the company to cover its losses were greatly disproportionate. Of the $194,493 that the shareholders contributed to Whitewater, the McDougals and their companies contributed $158,523, while the Clintons advanced only $35,970.

When Bill Clinton ran for President in 1992, the Whitewater investment and his relationship with James McDougal became a source of political embarrassment. Over the years, the Clintons took a series of questionable deductions on their federal income tax returns related to their investment in Whitewater.[157] And, in March 1989, federal regulators closed Madison Guaranty S&L. Madison's insolvency ultimately cost federal taxpayers over $60 million.[158]

On March 8, 1992, the front page of the New York Times carried this headline: "Clintons Joined S&L Operator In An Ozark Real-Estate Venture." The article, written by Jeff Gerth, reported the ties between the Clintons and the McDougals, focusing attention on their investment in Whitewater and the questionable tax deductions taken by the Clintons in 1984 and 1985. The Times report suggested that Whitewater may have been used as a conduit to funnel money to the Clintons or to Bill Clinton's political campaigns.

Ms. Thomases played a key role in responding to the Times inquiries about Whitewater. She and Loretta Lynch, another attorney working for the Clinton campaign, gathered information relating to Whitewater and, specifically, to Mrs. Clinton's representation of McDougal's Madison Guaranty before state regulators.

Mr. Hubbell and Mr. Foster compiled information from the Rose Law Firm to help the response effort. According to Mr. Hubbell, "the issue then, way back when, was did Mrs. Clinton ever have any contact with the Arkansas Securities Department. When we went back to the bills, that was the only, I believe, indication on the bills of a direct contact with the Arkansas Securities Department, so I underlined that—probably gave that to Vince."[159]

Indeed, in notes taken during the 1992 campaign, Susan Thomases recorded a February 24, 1993 conversation with Webster

Hubbell about the Rose Law Firm's representation of Madison. According to the notes, Mr. Hubbell told Ms. Thomases that Mrs. Clinton did all the billing for the Rose Law Firm to Madison, and that she had numerous conferences with Jim McDougal, Madison President John Latham, and Rick Massey, then a junior associate at the firm.[160] The notes also indicated that Mrs. Clinton had reviewed some documents and that she had one telephone conversation with Beverly Bassett Schaffer in April 1985.[161] Ms. Thomases recorded in the margin of her notes at this point: "Acc. to time Rec." She testified that "[t]his is my notation for according to time records,"[162] which is what Mr. Hubbell had indicated to her.[163] Ms. Lynch confirmed that Mr. Hubbell reviewed timesheets and billing records relating to the Rose Law Firm's representation of Madison.[164]

The billing records mysteriously disappeared after the 1992 campaign. Despite four subpoenas from separate federal investigations for over two years, the billing records were not disclosed until they were "discovered" in the third floor of the White House Residence, next to Mrs. Clinton's office in the private quarters.

Eventually, the Clinton campaign released a report on the Whitewater investment authored by James Lyons, a Colorado attorney retained by the campaign. The Lyon's report stated that, rather than gaining an illicit profit from their association with Mr. McDougal, the Clintons actually lost $68,900 on their investment in Whitewater. Mr. Lyons apparently prepared two versions of his report. In a confidential letter to the Clintons on April 10, 1992, he enclosed a "complete report" on Whitewater by Patten, McCarthy & Associates, an accounting firm he had retained to study Whitewater. Mr. Lyons wrote:

> Please note the enclosed complete report discusses such things as the $9,000 interest deduction taken by you in 1980 (paragraph 4, page 5), lot 13 and borrowings associated with it (paragraph 5, page 5), and the sale of 24 lots in 1985 to Ozark Air for assumption of the mortgage and an airplane (paragraph 6, page 6). None of these items is set out in the summary report which was released to the press.[165]

Mr. Lyons advised the Clintons that there are only three copies of the complete report, and wrote that "it is my recommendation to you that you maintain the complete report in strictest confidence and do not waive either the attorney/client or accountant/client privilege which attaches to the enclosed report."[166] Mr. Foster assisted Mr. Lyons in preparing the report.[167]

The Lyons report temporarily quelled the media interest in the Whitewater story, but Clinton advisors remained worried over legal and political implications of this investment. Among the documents in Mr. Foster's office at the time of his death was his handwritten note: "Get out of White Water."[168] To that end, Mr. Foster, Mr. Hubbell and others in the Clinton organization met with Mr. Lyons on November 24, 1992, two weeks after Mr. Clinton was elected President.[169]

The point man for the Clinton team in this effort was James Blair, General Counsel of Tyson Foods and a longtime friend and

advisor to the Clintons. Mr. Blair had also known Mr. McDougal for over 30 years and had contacted Mr. McDougal in early 1992 when questions arose about Whitewater.[170] Mr. Blair called Mr. McDougal's attorney, Sam Heuer, and told him that "the Clintons and the McDougals needed to be totally separated over the Whitewater thing."[171] According to Mr. Blair, he suggested that Mr. McDougal pay a nominal amount to buy the Clintons' interest in Whitewater.[172] "I think we settled on a thousand dollars as an appropriate nominal amount."[173] There was one problem: "McDougal doesn't have a thousand dollars."[174] Mr. Blair then told Mr. Heuer, "[W]ell, what the heck, I will loan him the thousand dollars. I'll just Fed Ex you a check to your trust account. And I believe that's what I did."[175] Mr. McDougal has never repaid Mr. Blair.[176]

On December 22, 1993, Mr. McDougal and the Clintons executed the transaction to get the Clintons out of Whitewater. Mr. Blair then assigned Mr. Foster the task of contacting the accountants and preparing the Clintons' tax returns.[177] The issue facing Mr. Foster in the months preceding his death was how to treat the $1000 sale on the Clintons' 1992 tax returns. The basic dilemma stemmed from the Clintons' claim, bolstered by the publicly released Lyons report, that they had incurred significant losses on their investment in Whitewater. The problem with declaring the loss on the Clintons' tax return was the lack of a proper basis with which to calculate the cost of the venture to the Clintons. Despite their claim that they were 50% partners in the venture, the Clintons had contributed less than 25% of the funds used to cover Whitewater's losses.

Among the documents in Mr. Foster's office at the time of death were his notes of conversations with the Clintons' accountant, Yoly Redden.[178] The notes, in Mr. Foster's hand, identified the tax problem as a "can of worms you shouldn't open."[179] His notes in the file outlined the basic tax issues the Clintons faced in connection with Whitewater:

> "(1) What was nature of deductions: A. How deduct interest/principal payments for corp?
> (2) Can you use contribution which predated incorporation?
> (3) Contribution/advancements of $68,900 to the McD
> (4) Inability to utilize $8000 capital loss"[180]

Mr. Foster's objective was to avoid calling attention to Whitewater during the annual audit of the President and Mrs. Clinton's tax returns by the Internal Revenue Service audit.[181] One approach was simply to report a wash, that is, to show no loss and no gain from the venture, thereby obviating the need for any tax treatment. The problem with such treatment, however, was that it would have bolstered the allegation that the Clintons were insulated from Whitewater losses and thus the company was a vehicle for Mr. McDougal to channel funds to the Clintons. In notes titled "Discussion Points," Mr. Foster wrote:

> (1) An argument that they were protected against loss:
> A) wash is consistent with this theory[182]

But Mr. Foster did not a have a proper cost basis with which to calculate the Clintons' true losses or gains. His discussion points continued:

> (2) Improper to reduce basis by improper tax benefit.
> (3) Computation of economic loss was based, in part, on assumptions Whereas computation of tax gain or loss must be defensible in audit.[183]

Therein lay the problem. To claim a loss based on economic assumptions, as the Lyons' report did, was one thing.[1] But to claim a loss on the Clintons' 1992 tax returns without proper support and documentation increased the likelihood of calling attention to Whitewater during the IRS audit—of opening the can of worms that Mr. Foster and the Clintons' accountant wished to keep sealed.[184] Mr. Foster's notes summarized the options as follows: "10 Options $1000 basis so no tax effect but is arbitrary & still risks audit vs. 0. basis w/$1000 gain avoids any audit of issue."[185]

In a letter to Mr. Foster days before the tax returns were due, Ms. Redden, the accountant the Clintons hired to handle Whitewater tax issues, wrote: "Because of the numerous problems with Whitewater records and the commingling of funds with other companies and individuals, I believe many explanations may have to be made if we claim a loss."[186] This letter, addressed to Mr. Foster, was not among the documents in Mr. Foster's office that the White House produced to the Special Committee. It was obtained by the Special Committee through another source.[187] Ms. Redden testified that after the Clintons were in the White House she had a number of discussions with Mr. Foster concerning tax issues related to Whitewater.[188] The main focus of these numerous communications was the tax basis for the Clintons' contributions to Whitewater and how to treat the $1000 payment.[189]

The Clintons' final tax returns for 1992 reported a capital gain of $1000 from the sale of stock to Mr. McDougal.[190] According to Ms. Redden, "I think we need to claim no gain or a loss."[191] Mr. Foster did not follow her advice, however, because he was also consulting with another accountant, and "[a]t the end we compromised what we were going to put in the return in connection with Whitewater."[192]

For reasons unknown, on June 16, 1993, Mr. McDougal called Mr. Foster at the White House. Unable to reach Mr. Foster, he left a message with his secretary: "re tax returns of HRC, VWF and McDougal."[193] It is unclear whether Mr. Foster returned Mr. McDougal's telephone call, and it is unclear why Mr. McDougal contacted Mr. Foster about Mr. Foster's tax returns.

Mr. Foster also worked with Ricki Seidman, then Deputy Assistant to the President and Deputy Director of Communications, on the Whitewater matter in the first half of 1993. In June 1994, Ms. Seidman told the FBI the following about her relationship with Mr. Foster and her involvement in Whitewater:

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[1] Elsewhere in his notes, Mr. Foster wrote:
A. Colo analysis was of economic loss
(1) did not take into account interest deductions
(2) calculation included some items for which there were no canceled cks.Williams & Connolly Document DKSN000517. "Colo analysis" was an apparent reference to the Lyons report.

> Seidman was asked about FOSTER's involvement with Whitewater. She said the only Whitewater issue she could recall was in April, 1993 in connection with the CLINTONs tax returns. The tax returns show that the CLINTONs had divested themselves of their interest in Whitewater. SEIDMAN's involvement was from a "communications perspective". The Whitewater issue had surfaced during the campaign, interest had then ended, and it was believed the tax returns would bring the Whitewater issue into the "public domain again". SEIDMAN said there was discussion regarding the "soundest way" to seek closure to the issue. The options considered were (1) declare a loss; (2) declare an even split; and (3) declare the Clintons received a $1000 gain. SEIDMAN said she and FOSTER were discussing these options. She remembered attending meetings at WILLIAMS and CONNOLY [sic] on the issue.[194]

The Clintons' Whitewater investment created other problems that occupied Mr. Foster's time as Deputy White House Counsel. Among the documents found in Mr. Foster's office following his death were campaign disclosure forms, required by law, accounting the personal finances of the Clintons and of their campaign organization.[195] On January 10, 1992, the Clinton for President campaign filed a disclosure form that failed to disclose that the Clintons had personally guaranteed a loan to the Whitewater Development Corporation.[196] Yoly Redden, the Clintons' accountant, testified that she assisted the campaign in preparing the disclosure statements.[197] According to Ms. Redden, there were discussions about the Clintons' Whitewater investment, and a decision was made to omit it from the statements. "We were told, it was our understanding that the Whitewater investment was worthless, they were not going to get anything out of it at that point in time."[198]

On April 6, 1992, after the New York Times article detailing the Clintons' Whitewater investment, the campaign revised the statement to disclose the Clintons' personal liability for the Whitewater loan.[199] The revision, however, did not deal with the more troublesome issue concerning disclosure: how to treat the McDougals' disproportionate share of Whitewater losses? By assuming more than 50 percent of Whitewater losses, the McDougals had in effect given money to the Clintons, their supposed equal partners in Whitewater. This transfer could be treated as a gift, a loan, or income. Although the Clintons would incur a tax liability only if the transfer was considered income, campaign laws required disclosure of all three categories, a requirement that had not been met with respect to the McDougals' contributions to Whitewater. At one point, Mr. Foster complained to his friend and the Clintons' confidant, Susan Thomases, about the poor condition of the Clintons' Whitewater records.[200]

Mr. Foster was working on another matter involving the Clintons' financial investments in the months and days preceding his death. On June 18, 1993, USA Today published an article on Hillary Clinton's investment in a limited partnership named Value Partners, managed by Smith Capital Management of Little Rock, Arkansas.[201] The article noted the success of the investment for

Mrs. Clinton, but erroneously reported that Mrs. Clinton's "investments are now held in a blind trust."[202] A copy of the article was found in Mr. Foster's office following his death. Mr. Foster personally circled two places where the article asserted that Mrs. Clinton's assets had been placed in a blind trust. He sent copies of the article to Lisa Caputo, Mrs. Clinton's press secretary, Ricki Seidman, White House Deputy Communications Director,[2] and Margaret Williams, Mrs. Clinton's Chief of Staff. His handwritten comments identified a problem: "The assets are not yet in a blind trust. The document has been approved but is not signed yet, pending working out some details."[203] The article apparently bothered Mr. Foster enough to prompt him to complain immediately to Bill Smith, the head of Smith Capital Management. Smith replied apologetically that his company does not talk to the press about the First Lady's investment, "particularly during the recent flurry of articles and interviews regarding the holdings of health care stocks in Value Partners."[204]

The "flurry of articles" concerned the strategy of Value Partners to profit by selling stocks "short." A short-seller borrows stocks from his broker to sell at current market price, anticipating that the value of the stock will fall. When the price does fall, the short-seller buys the lower-priced stock to return to his broker, profiting from the difference in price. On May 31, 1993, the Wall Street Journal disclosed that Value Partners actively sold short several health care stocks.[205] At this time, Mrs. Clinton was directing the administration's efforts to reform the nation's health care system. The Administration's proposal depressed the value of health care stocks.[3] Value Partners was structured as a limited partnership, and no evidence exists that Mrs. Clinton directed or reviewed the fund's investment decisions. However, Mrs. Clinton's investment amounted to nearly $100,000 in a fund that dedicated 13% of its $1.3 million portfolio to short positions in health care stocks.[206] Mrs. Clinton thus came under media criticism for personally benefiting from her high-profile public campaign.

In addition to an appearance of impropriety, the investment in Value Partner posed a potential legal problem. Title 18, Section 208 of the United States Code exposes an executive officer or employee to felony liability for participating "personally and substantially" in a "particular matter" in which he is aware of a financial interest. Mr. Foster apparently had advised Mrs. Clinton that she need not be concerned by this criminal statute because she was not an officer or employee of the executive branch.[207] In reaching this conclusion, Mr. Foster apparently did not consult with the Office of Legal Counsel of the Department of Justice, and ignored a contrary opinion issued by that office 17 years earlier.[208]

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[2] In a later interview with the FBI, Ms. Seidman acknowledged that she worked with Foster on "accusations concerning shorted health positions taken by HILLARY CLINTON in connection with Value Partners." II Hearings, p. 1794.

[3] See, e.g., Stefan Fatsis, Stocks Sink on Clinton Economic Plan, Associated Press, Feb. 16, 1993 ("Pharmaceutical stocks led yesterday's decline. Clinton week accused drug companies of price gouging and made them a prime target of health care reform efforts"). A detailed University of Michigan study concluded that the public pronouncements of the Clintons criticizing pharmaceutical firms depressed stock prices of those firms by as much as 27 percent. S. Craig Pirrong, Political Rhetoric and Stock Price Volatility: A Case Study, Catalyst Institute Research Project, University of Michigan, November 1993.

Mr. Foster's conclusion that the First Lady was not covered by government ethics laws also conflicted with the position of the White House in *Association of American Physicians and Surgeons* v. *Clinton.*[209] That litigation sought to compel the White House to release the documents and deliberations of Mrs. Clinton's health care task force. The Federal Advisory Committee Act ("FACA") compels such public disclosure if a government agency, like the health care task force, consults advisers who are not government employees.[210] The plaintiffs alleged that Mrs. Clinton is such a nongovernmental adviser and thus the records of the task force were covered by FACA. In order to avoid disclosure, the White House argued that Mrs. Clinton was indeed a federal official and therefore FACA did not apply to the task force. The United States Court of Appeals for the D.C. Circuit agreed with the White House. Recognizing the potential spillover effect of the holding, however, the court cautioned in a footnote: "We do not need to consider whether Mrs. Clinton's presence on the Task Force violates . . . any conflict of interest statutes."[211]

The matter apparently weighed heavily in Mr. Foster's mind. The Wall Street Journal, in a series of editorials, criticized Mr. Foster for his role with respect to the Health Care Task Force.[212] Mr. Foster complained to James Lyons, a Foster friend and former legal adviser to the Clinton campaign, that "the press had been particular vicious in their attacks on members of the Rose Law Firm."[213] In particular, Mr. Foster complained about criticisms for his handling of the *Association of American Physicians and Surgeons* v. *Clinton* litigation.[214] Mr. Lyons told the FBI in an interview:

> FOSTER won a victory for the Task Force (and by association, for HILLARY RODHAM CLINTON) on that matter and the Wall Street Journal accused him of "sharp tactics". LYONS advised that the allegation really bothered Foster.[215]

In the note apparently discovered in Mr. Foster's briefcase six days after his death, Mr. Foster wrote, "The Wall Street Journal editors lie without consequence."[216]

Just before his suicide, Mr. Foster concentrated on finalizing plans to place the First Family's investments in a blind trust, which would have remedied the ethical and legal problems posed by the Value Partners investment. In Mr. Foster's papers was a facsimile from Brantly Buck, a partner of the Rose Law Firm, who had been retained to assist in the creation of the blind trust. The facsimile, dated July 19, 1993, the day before Mr. Foster's suicide, forwarded draft statements of financial objectives for the blind trust. White House phone records indicated that Mr. Buck called Mr. Foster twice on the morning of his suicide.[217]

Mr. Foster's phone log also showed that he received a call from James Lyons, the author of the Whitewater report for the Clinton campaign, at 11:11 a.m. on July 20, 1993, the morning of Mr. Foster's death.[218] When contacted by the Park Police, Mr. Lyons said that he had spoken with Mr. Foster on July 18, and they had agreed to meet for dinner on July 21. According to a Park Police report, "Lyons had told Foster he would call him and let him know

when he would leave Denver and arrive in Washington. This is the reason for the phone message on the morning of July 20, 1993."[219] In a later interview with the FBI, Mr. Lyons provided more detail into his scheduled dinner with Mr. Foster. Mr. Foster was very concerned about the Travelgate affair and regarded himself and Bill Kennedy as potential witnesses in the matter. According to the FBI report, Mr. Foster "felt strongly that White House should hire outside counsel to be handling the Travelgate matter for this reason. He also believed that he would be needing a personal attorney to represent him in the matter."[220] It was to seek personal representation that Mr. Foster purportedly scheduled dinner with Mr. Lyons. Mr. Foster, however, also complained to Mr. Lyons about the extent to which he and other members of the Counsel's office were handling personal matters for the Clintons:

> FOSTER believed that private sector attorneys should be handling many of the matters they [White House Counsel's office] were handling, both for ethical and workload reasons. The CLINTON administration had called for a 25 percent cut. Under the BUSH administration the Counsel's office had 18 to 20 lawyers at its peak and when CLINTON took office there were only 6 or 7.[4] There were many discussions about the composition and character of the associates in the Counsel's office and everybody was spread incredibly thin.[221]

Linda Tripp, Mr. Nussbaum's executive assistant, testified that she approached Mr. Nussbaum and questioned him, based on her experience in the previous administration, about the inordinate amount of time that Mr. Foster seemed to spend on the Clintons' personal matters. Ms. Tripp believed that Mr. Foster worked mostly on personal matters for the Clintons. According to Ms. Tripp, "I questioned the role of the deputy counsel in the Clinton Administration as opposed to what I had perceived it to be in the Bush Administration."[222] Indeed, C. Boyden Gray, President Bush's White House Counsel testified that, under President Bush, "[p]ersonal, what I would call personal work, taxes, blind trusts, problems involving his residence, his house in Maine, for example, those matters would be handled by his private counsel. How to deal with the book royalties from Mrs. Bush's book, for example; they would be handled by his personal lawyer."[223] When asked why, Gray explained that "I don't think the taxpayers should pay for personal matters, I suppose, is the short way to answer it."[224]

II. THE TRADITIONAL INDEPENDENCE OF THE WHITE HOUSE COUNSEL'S OFFICE

The Office of the White House Counsel originated from presidential custom. The Reorganization Act of 1939,[225] which author-

[4] In reality, the number of lawyers in the Bush administration was about 14, the same as under President Reagan. Jeremy Rabkin, "At the President's Side: The Role of the White House Counsel in Constitutional Policy," Law and Contemporary Problems, Volume 56, Autumn 1993, at 63, 71 n. 39. Although the official directory of the Clinton White House lists, in addition to the Counsel and his deputy, only several Associate Counsels, the staff actually includes about 13 lawyers. Id. at 71, n. 39. According to one commentator, "Official listings of the White House staff never give the full number of lawyers because extra lawyers are usually 'detailed' from departments to circumvent congressional restrictions or concerns about excessive size of the full time staff." Ibid.

ized the modern White House staff, did not mention a legal adviser to the President. The first such legal adviser came to the White House under President Franklin Delano Roosevelt. When Roosevelt was governor of New York, he had a close personal adviser in Samuel Rosenman, who held the title of "Counsel to the Governor."[226] Upon his election as President, Roosevelt prevailed on Mr. Rosenman, then a judge on New York's highest court, to join his staff. President Roosevelt wanted to give Mr. Rosenman the title of "Counsel to the President," the Washington equivalent of his title in Albany. However, Attorney General Francis Biddle objected, "'on the grounds that such a title would undercut the role of the Attorney General as the President's chief legal adviser.'"[227] Consequently, Mr. Rosenman was given the title of "Special Counsel to the President."

Despite its origins in the personal, rather than institutional, needs of the President, the Counsel's office has become firmly established within the White House.[228] The role of this office has varied from administration to administration. Mr. Rosenman, consistent with the practice in Albany, served not just as President Roosevelt's legal counselor, but as one of his key advisers. He was the principal speech writer and spent most of his time drafting the President's public statements—a task for which he recruited Clark Clifford as his assistant.

Mr. Clifford continued the tradition as special counsel to President Truman. He later recounted that his job was to do "[w]hatever the President wanted." Mr. Clifford saw his role "as an adviser or counselor, and not as an administrator or bureaucrat."[229] His advice to President Truman was not strictly legal, but often political. Secretary of State Marshall complained to President Truman about Mr. Clifford's participation in White House discussions on U.S policy toward Palestine: "I fear that the only reason Clifford is here is that he is pressing a political consideration with regard to this issue. I don't think politics should play any part in this."[230]

Similarly, Theodore Sorenson, special counsel to President Kennedy, and Harry McPherson, special counsel to President Johnson, were among the principal policy and political advisers to each president. Both participated fully in the major deliberations of their administrations. In 1985, when organizers of a conference of presidential chiefs of staff discovered that no such position existed in the White House under Presidents Kennedy and Johnson, they invited the two advisers who most closely approximated that role, Mr. Sorenson and Mr. McPherson.[231] Myer Feldman held the post, with the title of "Counsel to the President," for one year between Mr. Sorenson and Mr. McPherson. For reasons unknown, Mr. McPherson retained the old title of Special Counsel. When Richard Nixon became President, he appointed John Ehrlichman as "Counsel to the President." A year later, however, the title was discarded again and three top advisers—Murray Chotiner, Harry Dent, and Charles Colson—held the title of "Special Counsel" simultaneously.

In 1971, President Nixon appointed John Dean as White House Counsel and relied on Mr. Dean primarily for legal advice on particular matters. While Lloyd Cutler, President Carter's White House Counsel, noted that his job primarily concerned the legal aspects of matters that came to the President's attention,[232] he also

played a "Clark Clifford role" in the White House.[233] That means that "I can dispense advice and get involved in any question that interests me."[234] Even with Mr. Cutler, however, it was clear that the modern White House counsel was no longer the equivalent of the chief of staff, as Mr. Sorensen was under President Kennedy. In the Reagan White House, each of the three successive counsels—Fred Fielding, Peter Wallison, and A.B. Culvahouse—reported to the President's respective chiefs of staff—James Baker, Donald Regan, and Howard Baker. Although C. Boyden Gray reportedly enjoyed special influence in the Bush White House stemming from his long-standing relationship with the President, he generally viewed himself not as a political adviser, but as counsel on legal problems.[235]

Against this historical background, President Clinton appointed Bernard Nussbaum to head the Counsel's office. In addition to being Counsel, Mr. Nussbaum held the honorific "Assistant to the President," a title not given to any previous holder of the office. Mr. Nussbaum had worked with Mrs. Clinton—he as the senior lawyer, she as a young law school graduate—on the staff of the House Judiciary Committee Impeachment Inquiry, the Watergate Committee.[236] By his own account, Mr. Nussbaum was among the President's inner circle of advisers and enjoyed free access to the President. "I see the President any time I think it's reasonably necessary. Unfortunately, it's been necessary too many times."[237]

Mr. Nussbaum's background as a private lawyer defined where his loyalty laid as White House Counsel. "When you're down to one client—the President—the only thing that counts is your relationship with that client."[238][5] When Mr. Nussbaum resigned from his office, he wrote to the President:

> As I know you know, from the day I became Counsel, my sole objective was to serve you well as effectively as I could, consistent with the rules of law, standards of ethics, and the highest traditions of the Bar . . . Unfortunately, as a result of controversy generated by those who do not understand, nor wish to understand the role and obligations of a lawyer, even one active as White House Counsel, I now believe I can best serve you by returning to private life.[239]

Mr. Nussbaum has explained elsewhere that "[t]he principal source of that misunderstanding, I think, is the failure to appreciate . . . that fact that the president's lawyer is a lawyer, and that every lawyer—even one representing the president in his official capacity—has an obligation to represent his client faithfully and zealously."[240] Those who criticized his conduct in office "have it exactly backward: The problem is not that lawyers who are in the public arena are too zealous in representing their clients; it is that

[5] It is illustrative to compare Mr. Nussbaum's vision of the White House Counsel with that of his successor, Lloyd Cutler, who said upon his appointment: The Counsel is supposed to be counsel for the President in office and for the Office of the Presidency. . . . When it comes to a President's private affairs, particularly private affairs that occurred before he took office, those should be handled by his own personal private counsel and, in my view, not by the White House Counsel."

Remarks Announcing the Appointment of Lloyd Cutler as Special Counsel to the President and an Exchange with Reporter, 30 Wkly Comp. Pres. Document 462, 465 (Mar. 8, 1994).

they—and others in the public arena—are often not zealous enough, because of a fear of appearances, of negative publicity and, consequently, of unpopularity, of loss of position." [241]

Whether or not Mr. Nussbaum is correct in his ethical vision or his assessment of the public interest, the mandate of Resolution 120 requires the Special Committee to answer a more immediate question: whether, in their zeal to serve and protect their clients, President and Mrs. Clinton, Mr. Nussbaum and other White House officials engaged in any improper conduct in handling the papers in Mr. Foster's office following his death.

SUMMARY OF THE EVIDENCE

I. THE CONTENTS OF VINCENT FOSTER'S OFFICE AT THE TIME OF HIS DEATH

The full contents of Mr. Foster's office at the time of his death will perhaps never be known. That is so because Mr. Nussbaum, in cleaning out the files in Mr. Foster's office following his death, did not prepare an inventory of materials reviewed or removed. Stephen Neuwirth did prepare an inventory of certain files in Mr. Foster's office, but only after Mr. Nussbaum and Margaret Williams had removed certain files to President and Mrs. Clinton's private quarters on the third floor of the White House Residence.

Deborah Gorham, Mr. Foster's secretary, testified that, in her first trip into Mr. Foster's office after his death, she opened the drawer containing the Clintons' personal documents. "I saw Pendaflex folders and file folders, and I did not see an index that normally would have been there listing the names of the files." [242] According to Ms. Gorham, she maintained "indexes for all file drawers, that I recall, and it listed the content, the names of each of the folders in each drawer." [243] She did not see the index in the drawer, where she normally kept it.

The Special Committee took steps to locate this missing index. The White House produced three indices of files in Foster's office. A six-page index is dated July 22, 1993, on the first page. The final page of the index contained the following listing: [6]

First Family—SF 278
First Family—1994 Income Tax Returns
First Family—General
HRC—CLE/Arkansas Law License
First Couple—Blind Trust
First Family—Arkansas Home
POTUS—Arkansas Office
WJC—Passport
WJC—Papers
First Family—SF 278 pre-POTUS [244]

The White House represented to the Special Committee that this index "was in a box identified by Tom Castleton as containing documents from Cabinet I of Mr. Foster's office." [245] Ms. Gorham, however, testified that the document is not one that she would have created. "Certainly the typeface, the font and the style and the names of the subjects are familiar, but on your first entry where

[6] The remainder of the index was redacted.

it reads 'First Family 1994 Income Tax,' the word 'Returns,' which should be, I believe, a part of that sentence after 'Tax,' has been returned to the left margin."[246] Raising the specter that the index had been altered, Ms. Gorham testified that she would not have formatted her document in such a fashion.[247]

The White House produced yet another six-page index, which was found apparently "in a box identified by Mr. Castleton as containing materials from Ms. Gorham's desk."[248] The last page of this index contained the same list of files as in the first index described above.[249][7] However, the format of the list is different. "First Family 1994 Income Tax Returns" and "HRC—CLE/Arkansas Law License" are each typed on one line, without left returns breaking up the entries—a format consistent with the way Ms. Gorham would have maintained the document. Although the index "is consistent with the typeface and certainly the names of the subjects and the type font that was used," Ms. Gorham was not sure if she had prepared the document.[250] This second index, like the first, was dated July 22, 1993, on the first page. Ms. Gorham testified that "on the White House system, that date would have had to have been manually entered."[251] Ms. Gorham also testified that she would not have revised the index after Mr. Foster's death,[252] and that she did not revise the index on July 22, 1993.[253]

Neither index contained any reference to a file on Whitewater Development Corporation. According to Ms. Gorham, she created her index file in the first two weeks of April, several months prior to Mr. Foster's death,[254] and the index listed all the files in the drawer containing the First Family's personal documents.[255] She also remembered that the Whitewater file was among those in Foster's office at that time.[256][8]

The third index[257] produced by the White House listed, among other things, the same ten files contained in the other two indices, but in a slightly different order and with an additional notation for certain files:

POTUS—SF 278
First Family—1994 Income Tax Returns (removed)
HRC—CLE/Arkansas Law License (removed)
First Couple—Blind Trust (removed)
First Family—Arkansas Home (removed)
WJC—Papers (removed)
First Family—SF278 pre-POTUS (removed)
Clinton Mansion (removed)
POTUS—Arkansas Office
WJC—Passport[258]

This index, labelled "VWF—Existing Files" on the first page, contained the following line on the last page: "Updated 10/25/93". Like the other two indices, it did not contain any reference to a Whitewater file. At the Special Committee's request, the White House conducted a search of the back-up disks and tapes of Ms. Gorham's files, downloaded when she left the White House in late 1993. The third index was among the files contained in those disks and tapes, and the file directory information indicated that it was

[7] All the other materials on the index, as in the first index, had been redacted.
[8] A file labelled "WHITEWATER DEVELOPMENT, Personal and Confidential VWF" was transferred from Foster's office to the Clintons' personal lawyers.

last updated on 10/25/93 at 2:14 p.m. The first and second indices, however, were not among the files in Ms. Gorham's computer at the time it was downloaded. An analysis of latent data on the computer's hard drive by an FBI expert yielded no additional useful information.[259]

Ms. Gorham testified that she did not see the index she maintained for the Clintons' personal files in Foster's office on July 22, nor anytime thereafter.[260] The Committee was never able to ascertain what happened to this index—a critical piece of evidence concerning the contents of Mr. Foster's office at the time of his death.

When Mr. Nussbaum reviewed documents in Mr. Foster's office on July 22 before Justice Department officials, he did not identify every document in the office, even generically, for the law enforcement officers. His scatter-shot identification process frustrated the officers.

The following colloquy occurred at the Special Committee's August 1, 1995, hearing:

> Mr. Giuffra: Do you believe that Ms. Nussbaum described every document in Mr. Foster's office?
>
> Mr. Markland: No, sir, I don't.
>
> Mr. Giuffra: So he only identified some of the documents that were contained in Mr. Foster's office?
>
> Mr. Markland: Yes. Or he would go through a file drawer and just broadly say that they were strictly White House business.[261]

Agent Salter corroborated Mr. Markland's testimony, telling the Special Committee: "No, I don't believe he had looked at everything in the office."[262] Mr. Nussbaum maintained, however, that he described every file in the office, including the Clintons' personal files. "I said these were Clinton personal files. I said these involve investments, taxes, other financial matters and the like. Included was a file on the Clintons' Whitewater real estate investment."[263]

Two persons kept careful notes of the document review on July 22. Michael Spafford took nine pages of handwritten notes apparently listing the files and documents that Mr. Nussbaum called out during the meeting. His meticulous notes listed, for example, paper clips and scotch tape from Vince Foster's left drawers, and the contents of Mr. Foster's trash bag.[264] Likewise, Cliff Sloan took 16 pages of notes during the meeting.[265] The notes taken by Mr. Sloan, which he later typed up,[266] tracked Mr. Spafford's notes, but at times provided some more detail both in the number of items listed and in the description of each item. Neither set of notes recorded the specific name of the files or any description of the documents eventually transferred to the White House residence and later to Williams & Connolly.

Senator Kerry specifically questioned Mr. Nussbaum about files located in Mr. Foster's credenza. Mr. Nussbaum testified that he reviewed all of the files in the credenza and described them to the law enforcement officials. "I said this is a tax file, or this is an investment file, like that. I didn't describe every piece of paper in the file. I would flip through the file to see if there's a suicide note or extortion note, but I would give a general description of the file and I would flip through the file."[267]

Mr. Spafford's and Mr. Sloan's notes of Mr. Nussbaum's review, however, cast doubt on Mr. Nussbaum's testimony. Mr. Nussbaum provided detailed descriptions of a number of items in the credenza, while identifying the Clinton personal files—apparently the bulk of the files in the credenza—generally as "matters re First Family."[268] Following are Mr. Spafford's handwritten notes of what Mr. Nussbaum described in the credenza:

Credensa: on R
matters re First Family
mostly files re GC matters
notebooks on prospective nominees.
supplies
candlesticks
notebook re jud nominees
notebk re St. Justice
magazines
copy of foreword to bk Ron Kennedy
Fed rules of Civ Pro
Bk on Mkt Liberalism
3/18 letter re posters of Pres.
card from friend[269]

Although Mr. Sloan's typed notes did not identify the various locations, the listing was similar to Mr. Spafford's:

Work Orders
Financ disclosure
Various investments matters re: First Family
Judic. Nominations
List of people—prepare book of prospective nominees
Treas. Regs.
WH Mess
Marine Helicopter
"State Justice Institute"
Q_____
Book Pres, would write foreword to
Book on Civ. Pro.
Market Liberalism
WH mil. office
Judic. selection
3/18—letter re: posters—using Pres. likeness next (?)
WH
Card[270]

The files transferred to the White House Residence and eventually taken to Williams & Connolly included a file labelled "WHITEWATER DEVELOPMENT, Personal and Confidential VWF." Law enforcement officials did not recall Mr. Nussbaum mentioning Whitewater during the review of documents in Mr. Foster's office on July 22,[271] and the notes taken by Mr. Sloan and Mr. Spafford contained no reference to a Whitewater file.[9]

[9] Likewise, neither Mr. Spafford's nor Mr. Sloan's notes listed Mr. Foster's personal diary during the transition period—which Park Police investigator John Rolla later reviewed, Rolla, 6/20/95 Dep. p. 96—or Foster's notebook on the Travelgate scandal, White House Documents F000002-F000162, which Mr. Nussbaum apparently removed from Mr. Foster's briefcase on July

Continued

Mr. Nussbaum claimed that he had no knowledge that Mr. Foster was working on any matter involving Whitewater.[272] Mr. Nussbaum emphasized that "[t]he Whitewater matter, which subsequently became the focus of so much attention, was not on our minds or even in our consciousness in July 1993."[273] He repeated that although Whitewater had surfaced briefly during the 1992 campaign, "in 1993, Whitewater was not on my screen, nor, as far as I know, was it the subject of discussion in the White House. And if it was, it was something I would have known."[274]

Evidence obtained by the Banking Committee during the summer of 1994 flatly contradicts Mr. Nussbaum's testimony. Resolution Trust Corporation ("RTC") Senior Vice President William H. Roelle testified that, upon taking office, former Deputy Secretary of the Treasury Roger Altman directed the staff to inform him of all important or potentially high-visibility issues.[275] According to Mr. Roelle, on or about March 23, 1993, he told Mr. Altman that the RTC had sent a criminal referral mentioning the Clintons to the Justice Department.[276]

The White House produced files to the Banking Committee showing that Mr. Altman immediately sent Mr. Nussbaum two facsimiles about Whitewater. The first facsimile, sent on March 23, 1993 with a handwritten cover sheet, forwarded an "RTC Clip Sheet" of a March 9, 1992 New York Times article with the headline, "Clinton Defends Real-Estate Deal."[277] The article reported the responses that Bill Clinton, then a presidential candidate, offered to an earlier Times report detailing the Clintons' investment in Whitewater and their ties to Jim and Susan McDougal.

The second facsimile from Mr. Altman to Mr. Nussbaum, sent the next day, March 24, 1993, forwarded the same article that was sent the day before and portions of the earlier Times report—an article dated March 8, 1992, by Jeff Gerth entitled "Clintons Joined S&L Operator in an Ozark Real-Estate Venture," which originally broke the story in the news media.[278]

According to the report of the Banking Committee on the communications between officials of the White House and the Treasury Department:

> Mr. Altman testified that he did not recall having sent either facsimile to Mr. Nussbaum. Mr. Nussbaum testified that he did not recall having received either facsimile from Mr. Altman. Mr. Altman and Mr. Nussbaum both testified that they had no recollection of having spoken to one another during March 1993 about the articles contained in the facsimiles or the subject of those articles. Nevertheless, Mr. Altman and Mr. Nussbaum both testified that the facsimiles were apparently sent and received by their respective offices.[279]

Before the Special Committee, Senator Bond asked Mr. Nussbaum specifically about the apparent contradiction between his assertion that he had no knowledge of Whitewater at the time of Mr. Foster's death and the existence of Mr. Altman's facsimiles. Mr.

22, 1993, and kept in a safe until March, 1994. Letter from Abner J. Mikva, Counsel to the President, to Hon. William F. Clinger, Chairman, House Committee on Government Reform & Oversight, August 30, 1995, p. 1.

Nussbaum maintained that he did not know of the facsimiles.[280] He testified that he first heard of Whitewater in late September 1993.[281] "So, in July of 1993, I had no knowledge and no memory of receiving a fax from Roger Altman, and Whitewater, as I said in my statement, was not on my mind nor, do I believe, on anyone else's mind in the White House in July of 1993."[282]

There is further evidence, however, that Mr. Foster was not the only White House official working on personal matters for the Clintons involving Whitewater. Until July of 1993, Ricki Seidman was Deputy Assistant to the President and Deputy Director of Communications. She reported to the FBI in 1994 that she and Mr. Foster had worked together on Whitewater issues before his death:

> Seidman was asked about FOSTER's involvement with Whitewater. She said the only Whitewater issue she could recall was in April, 1993 in connection with the CLINTONs tax returns. The tax returns show that the CLINTONs had divested themselves of their interest in Whitewater. SEIDMAN's involvement was from a "communications perspective".[283]

Ms. Seidman explained that she discussed various options with Mr. Foster for treating the transaction on the Clintons' 1992 tax returns. Ms. Seidman confirmed notes found in Mr. Foster's office at the time of his death summarizing the three options under consideration: (1) report a loss on the Whitewater investment; (2) not report any gains or losses; or (3) declare a $1000 gain to the Clintons from their transfer of all Whitewater stock to Jim McDougal in December, 1992.[284]

In addition, SBA Associate Administrator Wayne Foren testified that, in early May 1993, he briefed Erskine Bowles, the new SBA Administrator about the agency's ongoing investigation of David Hale's Capital Management Services because the case involved President Clinton.[285] Shortly thereafter, Mr. Bowles told Mr. Foren that he had briefed White House Chief of Staff Mack McLarty about the case.[286] Although Mr. Bowles did not recall being briefed by Mr. Foren about Capital Management[287] or talking to Mr. McLarty about the case,[288] Mr. Foren's account was corroborated by his deputy, Charles Shepperson.[289] Mr. McLarty's calendar indicated that Mr. Bowles had two meetings with Mr. McLarty at the White House in early May 1993.[290]

When asked why Mr. Nussbaum prevented law enforcement officials from looking at documents in Mr. Foster's office on July 22, Detective Markland replied: "In my mind, at this time, I believe he was afraid we would have uncovered some indication of the Whitewater situation and other things that Mr. Foster was involved with that are just now coming to light."[291]

Mr. Nussbaum claimed that he did not seek to conceal damaging information about the Whitewater matter. In his view, the groundswell of interest in the handling of documents after Mr. Foster's death resulted from "the unfair linkage of two separate, disparate events,"[292] the way he reviewed and handled documents in Mr. Foster's office and the emergence of the Whitewater investigation in late 1993.[293]

Yet, as early as the spring 1993, White House officials expected the then-dormant Whitewater issue to reemerge in the media. According to the FBI report of Ms. Seidman's interview, in April 1993, "it was believed the tax returns would bring the Whitewater issue into the 'public domain again'. SEIDMAN said there was discussion regarding the 'soundest way' to seek closure to the issue."[294] [10] In addition to Ms. Seidman's sworn statement, common sense casts doubt on Mr. Nussbaum's testimony that Whitewater was not on the White House's radar screen in 1993. Whitewater was a major issue in the 1992 campaign, and the Clintons went to the extraordinary step of retaining an outside attorney to issue a report on the matter. The "unfair linkage," in Mr. Nussbaum's words, so obvious when investigations relating to Whitewater were reported later in 1993, was never made in the weeks following Mr. Foster's death precisely because Mr. Nussbaum concealed any mention of Whitewater from law enforcement officials. There is little doubt that Mr. Nussbaum foresaw the embarrassment and political liability of such a linkage between Mr. Foster's death and Whitewater when he examined the documents in Mr. Foster's office. It is against this backdrop of motive that the events and actions following Mr. Foster's death must be examined.

II. JULY 20, 1993

A. The discovery of Mr. Foster's body

At about 5:30 p.m. on July 20, 1993, the driver of a white utility van stopped at Fort Marcy Park off the George Washington Parkway in Virginia to relieve himself.[295] The man parked his car next to a white two-door Honda with a blue interior and Arkansas plates.[296] He walked about 200 yards away from the parking lot. As he was urinating, the man noticed the body of a white male wearing a white dress shirt and grey pants.[297] Traces of blood were visible on the man's face, and the right shoulder was stained light purple.[298]

The man then returned to his van to find a telephone.[299] He drove to nearby Turkey Run Park, where he found two uniformed

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[10] Like Mr. Nussbaum, the President and Mrs. Clinton have denied knowledge of Foster's work involving Whitewater. Following are excerpts from a deposition of President Clinton by former Special Counsel Robert Fiske:

Q: Was he [Foster] during this period of time working on any matters for you personally?

A: Yes, I believe that he was trying to handle the transition of our assets into a blind trust. I think that's all he was doing.

Q: Were you aware that he was also doing some work in connection with the preparation and filing of the tax returns for Whitewater for '90, '91, and '92?

A: I don't recall that I was aware of that, no.

Fiske received the same testimony from the First Lady:

Q: Was he [Foster] doing any personal work for you or the President other than the blind trust?

A: Not that I'm aware of, no. Oh, wait. The only thing I would add to that is I think he also did some personal advising, or at least was in some way involved in the tax returns when they were being finalized for '93, but that was part of the blind trust work, as I recall.

Q: Your own tax returns?

A: Yes.

Q: Was he doing work, to your knowledge, with respect to the filing of the Whitewater tax returns?

A: Not that I know of, no.

It is unclear whether Mrs. Clinton's answer to Mr. Fiske's question encompassed Mr. Foster's work on the Clintons' personal returns relating to their tax liability for Whitewater. In her interview with the FBI, Ms. Seidman reported that she attended meetings with the Clintons' personal lawyers at Williams & Connolly on the treatment of the 1992 sale of Whitewater on the Clintons' 1993 tax returns.

Park Service employees.[300] He told the Park Service employees that he had found a body and asked one of them to call the police.[301] One of the Park Service employees walked to a nearby telephone and called the police.[302]

The Fairfax County Public Safety Communications Center received a 911 call at approximately 6:00 p.m. on July 20, 1993, reporting a dead body lying near a cannon in Fort Marcy Park.[303] The dispatcher relayed this information to the Park Police and the Fairfax County Emergency Response Team.[304] Park Police Officer Kevin Forshill responded to the call from his post in Langley, Virginia.[305] Officer Forshill and two medical technicians searched the area near the two cannons, while another group of medical technicians searched elsewhere in the park.[306] Near the second cannon, Officer Forshill found the body.[307] He then notified the dispatcher and requested detectives to be at the scene.

Park Police investigators Renee Apt, Cheryl Braun, and John Rolla responded to Officer Forshill's call at 6:35 p.m.[308] Sergeant Braun, the senior investigator, assigned Detective Rolla to investigate the death scene while she examined the parking lot. Their preliminary view was that Mr. Foster's death was a suicide.[309] Under standard procedure, however, the Park Police treated the investigation as a possible homicide. The Park Police continued to treat the investigation as a possible homicide until August 10, 1993, when the Park Police officially ruled Mr. Foster's death a suicide.[310]

In a death investigation, standard procedures called for investigators to define the crime scene and to prevent any unauthorized access to the area.[311] In the case of a suspected suicide, the investigators considered relevant "the person's home, their office, their car, places where they frequent would be relevant; any place where they would leave information about them, their state of mind, a place for them to leave their note, if they leave a note."[312] As a necessary precaution, such places should be preserved "as a matter of routine police procedure" in order to ensure the integrity of the evidence.[313] Sergeant Braun thus immediately requested that the main gate of the fort be closed to prevent entries into the area.[314]

When Detective Rolla arrived at the death scene, the area around Mr. Foster's body was taped off.[315] The officers who first arrived on the scene briefed Detective Rolla and gave him several Polaroid photographs of the scene.[316] Detective Rolla then made a careful visual examination of the body and conducted a thorough inventory of the physical evidence on the body.[317] Detective Rolla then took his own Polaroid pictures of the crime scene and, when the Fairfax County Medical Examiner arrived, helped him move the body for a preliminary examination.[318]

Sergeant Braun interviewed a couple whose car was parked near Mr. Foster's Honda, and another officer canvassed the area for other witnesses.[319] All the items in Mr. Foster's car were catalogued: a wallet with $300 in cash, his White House identification, and a piece of paper with the names and telephone numbers of three doctors; two empty beer bottles, a canvas bag, a folded map of Washington D.C., and cassette tapes in the car interior; Mr. Foster's daughter's college papers and textbooks in the trunk; and sunglasses and empty cigarette boxes in the glove compartment.[320]

With the discovery of Mr. Foster's White House identification, Sergeant Braun considered the case a high priority investigation and proceeded with heightened caution.[321] After Sergeant Braun finished examining Mr. Foster's car, it was sealed with tape and towed to the Anacostia Station of the Park Police.[322] A Park Police officer accompanied the car to the station to ensure that its contents would not be disturbed.[323]

B. The Park Police notify the White House and the Foster family

After Sergeant Braun and Detective Rolla finished their investigation at the scene, the shift commander asked them to call the White House. The investigators contacted White House Security Chief Craig Livingstone and White House Associate Counsel William Kennedy, both of whom went to the hospital to identify Mr. Foster's body. After Mr. Kennedy confirmed Mr. Foster's identity at the hospital, he called White House Chief of Staff Mack McLarty, Counsel Bernard Nussbaum, and Associate Attorney General Webster Hubbell.[324]

Sergeant Braun and Detective Rolla made plans to notify the Foster family and were requested to pick up David Watkins, Assistant to the President for Management and Administration, to assist in the notification.[325] They arrived at the Foster residence between 10:00 p.m. and 10:30 p.m.[326] A few minutes later, Webster Hubbell, his wife, and Mr. Foster's sisters, Sharon Foster and Sheila Anthony, arrived at the Foster home.[327] While the friends and relatives waited on the lawn, Sergeant Braun and Detective Rolla informed Mrs. Foster and her daughter Laura of Mr. Foster's death.[328] The friends rushed to console the visibly upset family.

Park Police investigators were still attempting to continue their investigation. Typically, the death notification involves an attempt to determine whether there was evidence of foul play and to ask the family about the victim's finances, mental state, domestic relations, health problems, and use of medication.[329] After a brief interview yielded no useful information,[330] Detective Rolla asked Mrs. Foster to look for a note or anything out of the ordinary and to contact the police if she found anything.[331] At approximately 11:00 p.m., President Clinton arrived at the Foster residence. Feeling that they would get no further information from the family, Sergeant Braun and Detective Rolla left shortly thereafter, at about 11:10 p.m.[332]

C. The White House ignores repeated Park Police requests to seal Mr. Foster's office

As Sergeant Braun was leaving the Foster residence after the President arrived on July 20, she pulled David Watkins aside and asked him to seal Mr. Foster's office. Because the investigators did not find, at Fort Marcy or at the Foster home, a note or any other evidence indicating why Mr. Foster might have taken his own life, they considered Mr. Foster's White House office, the last known place where he was seen alive, to be a part of the overall crime scene.[333] Sergeant Braun testified that, from the investigation of the death scene and the interviews with the Foster family, the Park Police "did not get any information that would confirm that Mr. Foster was depressed or had even discussed the possibility of

committing suicide with any of his friends or relatives."[334] Mr. Foster's office, therefore, became highly relevant to the investigation. "So I felt that that may be a place where Mr. Foster may have left a note, would be at his office, maybe for his co-workers to find rather than for his wife."[335] Detective Rolla agreed with Sergeant Braun: "And then, having not been able to get any information as to his state of mind from the family, no knowledge that they had found a note or anything, his place of business becomes the next logical place to go, as I said earlier."[336] The Park Police believed that Mr. Watkins, who had provided the officers with a White House business card indicating that he was "Assistant to the President for Management and Administration,"[337] possessed the authority to direct that Mr. Foster's office be sealed.[338]

Once the Park Police determined that the focus of their investigation should shift to Mr. Foster's office, the police sought "to preserve [the office] in the condition that he left it."[339] According to Sergeant Braun, Mr. Watkins agreed to secure Mr. Foster's office.[340] Detective Rolla corroborated Sergeant Braun's recollection:

> She asked him to secure the office because we knew the situation was that we weren't going to be able to be in there that night. And just to have things maintained, we wanted it secured until such time as higher officials could get in there and be gone through properly.[341]

Mr. Watkins denied that the Park Police asked him to take steps to seal Mr. Foster's office.[342]

Major Robert Hines of the Park Police learned of Mr. Foster's death at approximately 9:45 p.m. on July 20.[343] Lieutenant Gavin, the shift commander, called to request that Major Hines contact Deputy Assistant to the President William Burton.[344] Major Hines then called Mr. Burton and requested that he seal Mr. Foster's office. "We needed to go into the office and look for any kind of reasons or intention that Mr. Foster may have to commit suicide."[345] To ensure that such a search would be fruitful, the office should not be contaminated. "I would expect when we said seal the office, that the office would be closed, it would be secured and no one would be entering the office."[346] Sylvia Mathews, a White House aide, confirmed that she overheard a conversation between Mr. Burton and the Park Police that evening.[347] Following the conversation, Mr. Burton asked Mr. Nussbaum to seal Mr. Foster's office.[348] Ms. Mathews' contemporaneous notes of the evening stated: "At that point, Bill said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10:00 p.m. I don't remember who told Bernie, but he went up and locked the office."[349]

Notwithstanding the testimony of Major Hines and Ms. Mathews, Mr. Burton and Mr. Nussbaum denied that they had been asked to seal Mr. Foster's office.[350]

Both Webster Hubbell's wife and Marsha Scott, a White House official and a friend of the Hubbells, remembered that Mr. Hubbell called either David Watkins or Mack McLarty on the night of Mr. Foster's death to request that his office be sealed.[351] In a press briefing several days later, Dee Dee Myers identified Mr. McLarty as the person who directed that Mr. Foster's office be sealed.[352]

David Gergen testified that, after leaving the Foster residence, he went to the White House at around midnight.[353] In the White House kitchen, he and Mr. McLarty discussed sealing Mr. Foster's office.[354] Mr. Gergen then spoke by telephone with Mark Gearan, the White House Communications Director. He asked Mr. Gearan, who was in his office on the first floor of the West Wing, whether the office had been sealed. According to Mr. Gergen, Mr. Gearan checked, and "[h]e came back to me and said, yes, the office has been sealed."[355] Mr. Gearan testified that, when Mr. Gergen asked him whether Mr. Foster's office was locked, he asked Mr. Burton about it. Mr. Burton told Mr. Gearan that the office was locked, and Mr. Gearan relayed this information to Mr. Gergen.[356]

Mr. Burton did not recall this conversation.[357]

Even though White House officials had received several requests from law enforcement and an internal White House request, Mr. Foster's office was not sealed on the evening of July 20.

D. Mrs. Clinton learns of Mr. Foster's death and begins to contact close associates

After learning of Mr. Foster's death, Mr. McLarty called Hillary Clinton, who was travelling from Los Angeles to Arkansas that evening. Mrs. Clinton's plane landed in Little Rock at approximately 8:30 p.m. Eastern Daylight Time.[358] Mrs. Clinton then proceeded to her mother's home in Little Rock. Between 9:00 p.m. and 10:00 p.m., a Secret Service agent told Lisa Caputo, Mrs. Clinton's press secretary, that Mr. McLarty was calling by telephone.[359] Mr. McLarty then told Ms. Caputo that he needed to speak privately to Mrs. Clinton. When Mrs. Clinton came on the line, Mr. McLarty informed her of Mr. Foster's death.[360] Mr. McLarty confirmed that he notified Mrs. Clinton some time after 9:00 p.m., after her plane landed in Arkansas.[361]

Margaret Williams, Mrs. Clinton's chief of staff, testified that she received two phone calls from Mrs. Clinton on the evening of July 20. "The first call she was on the plane and said that—she must have called through Signal because I thought she said are you at home. And she said are you going to be there, and I said yes. And she said I will call you when I land."[362] After the plane landed, Mrs. Clinton called Ms. Williams again and informed her of Mr. Foster's death.[363] Telephone records from the Rodham residence confirm that Mrs. Clinton called Ms. Williams on July 20 at 10:13 p.m. Eastern Daylight Time and spoke for 16 minutes.[364] It was the first telephone call that Mrs. Clinton made after learning of Mr. Foster's death.

The Rodham residence telephone records indicate that, after talking with Ms. Williams, Mrs. Clinton called the residence of Harry Thomason and Susan Bloodworth-Thomason in Carpinteria, California, for four minutes.[365] Mr. Thomason, a long-time friend of the Clintons, was involved in the Travel Office affair that apparently weighed heavily on Mr. Foster's mind at the time of his death. Mrs. Clinton next called Susan Thomases in New York and spoke for 20 minutes. Ms. Thomases, who had played a key role in Whitewater damage control during the 1992 presidential campaign, testified that she and Mrs. Clinton commiserated each other about

Mr. Foster's death, and that they did not discuss the handling of papers in Mr. Foster's office.[366]

E. Mrs. Clinton calls the White House on an unlisted trunk line

Mrs. Clinton next called the number 202–628–7087 and spoke for 10 minutes.[367] The Committee was forced to go to considerable lengths to identify to whom Mrs. Clinton placed this call. Counsel for Mrs. Clinton and the White House represented to the Special Committee that, despite undertaking every effort available, they were unable to determine the identity of the person whom Mrs. Clinton called at 202–628–7087. The telephone company also could not identify the person or entity registered to that number.[11]

On November 30, 1995, the Special Committee then issued a set of interrogatories to Mrs. Clinton, exploring her knowledge and recollection of the identity of the person or persons she called at 202–628–7087.[12] On December 7, 1995, Mrs. Clinton submitted a sworn affidavit to the Special Committee, attesting that "I do not remember calling the number 202–628–7087 that evening. I understand that the number is an auxiliary White House switchboard number. It would not surprise me to learn that I had placed a call to the White House that evening."

On December 7, 1995, the White House advised the Special Committee that "the telephone number (202) 628–7087 was an unlisted trunk line that rang on the White House switchboard. . . . The number was also used as a means to get through to the White House when the switchboard was overloaded, and may have been provided to certain individuals for the purpose."

The White House further advised that "we understand that Bill Burton remembers receiving a call in the Chief of Staff's office from Mrs. Clinton on the evening of July 20 and speaking with her about Vincent Foster's death." Tellingly, Mr. Burton had omitted this conversation when he first testified before the Committee. In his second appearance, Mr. Burton testified with a refreshed recollection:

> I was in Mr. McLarty's private office most of the evening, and at some point that night I received a call from the First Lady. I don't remember if I answered the phone or if Ms. Mathews answered the phone and transferred the call in to me or if someone else answered the phone and transferred the call into me. I don't remember who called.

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[11] The Special Committee on September 15, 1995, issued a subpoena to Bell Atlantic requesting identification of the person or entity registered to that number. On September 27, 1995, the phone company replied with records indicating that the number was not registered as in service on July 20, 1993. After additional review, Bell Atlantic advised the Special Committee on November 28, 1995, that it was unable to determine to whom 202–628–7087 was registered in July 1993. Representatives of the telephone company speculated that the number may have been an auxiliary number for which it did not maintain separate billing records, or that the number may have been confidentially assigned to the White House for secured use. Similarly, the White House advised the Special Committee on November 15 and November 28, 1995, that it was unable to identify the person whom Mrs. Clinton called on July 20, 1993.

[12] On December 5, 1995, Chairman D'Amato wrote to the White House that "[t]he Special Committee now has reason to believe that the number may have been used by the White House Communications Agency as a secure telephone line."

> It was the First Lady, and we had a personal conversation about Mr. Foster's death, and it lasted about 10 or 15 minutes to the best of my recollection.[368]

Sylvia Mathews, who was in the Chief of Staff's office with Mr. Burton, did not recall observing Mr. Burton speaking on the telephone with Mrs. Clinton, nor did he discuss with her at any time about his conversation with Mrs. Clinton. She testified that "I was away from the desk, as we discussed previously, several times."[369]

After calling the White House, Mrs. Clinton called Carolyn Huber.[370] Ms. Huber, Assistant to the First Lady and Director of White House Correspondence, was the former administrator of the Rose Law Firm and would later discover in the White House Residence the long-missing Rose Law Firm billing records reflecting its work for James McDougal's Madison Guaranty. Mrs. Clinton spoke with Mrs. Huber for four minutes, and then called a family member in Washington, D.C.[371] In her seventh and final call of the night, Mrs. Clinton called the President at 1:09 a.m. in the White House Residence and spoke to him for 13 minutes.[372]

F. Helen Dickey's telephone call to the Arkansas governor's mansion

Helen Dickey worked for Governor Clinton in Arkansas as the assistant to the governor's mansion administrator.[373] She became staff assistant to the White House Social Secretary.[374] Between January 1993 and November 1994, Ms. Dickey lived in a suite of rooms in the northeast corner of the third floor of the White House Residence.

Ms. Dickey testified that, on July 20, 1993, she returned to the White House Residence some time between 6:00 p.m. and 8:00 p.m. and went to her rooms.[375] Records maintained by the Secret Service indicate that Ms. Dickey entered the White House Residence at 7:32 p.m.[376] She left her suite at some point to go to the solarium, also on the third floor, to watch the President's appearance on Larry King Live. The show started at 9:00 p.m.[377] At some point during the show, John Fanning, a White House doorman, entered the solarium and told Ms. Dickey that Mr. Foster had committed suicide.[378]

Ms. Dickey, visibly shaken, went to the second floor kitchen and called her mother from the kitchen telephone. After talking with her mother for two to three minutes, Ms. Dickey called her father, who lived in a suburb of Atlanta, Georgia.[379] She then went back up to the third floor and, at some point, returned to the second floor kitchen to find the President, who had finished his interview with Larry King.[380] The President told Ms. Dickey that "Vince Foster had shot himself in a park."[381] After her two to three minute conversation with the President, Ms. Dickey returned to the third floor. Ms. Dickey made three calls from the telephone in the hallway of the third floor of the Residence. One call went to Ann Stock, Ms. Dickey's former supervisor as the Arkansas Governor's Mansion administrator, and another went to Ann McCoy, her supervisor as the White House Social Secretary.[382] She talked to each for no more than five minutes.[383]

Ms. Dickey then placed the third telephone call to the Arkansas Governor's Mansion at 501-376-6884.[384] Roger Perry, an Arkansas State Trooper on duty at the mansion, answered the telephone. Ms.

Dickey testified that she stated to Trooper Perry: "I called just to let you know that Vince Foster has committed suicide. I just wanted you all to know before you heard it on the news."[385] According to Ms. Dickey, Trooper Perry "showed signs of being shocked and being very sad."[386] The entire conversation lasted approximately two to three minutes.[387] Her best estimate of the time of the call to the Governor's Mansion was 10:30 p.m. Eastern Daylight Time.[388]

During its investigation, the Special Committee received an affidavit from Roger Perry. In relevant part, the affidavit stated:

> On the 20th day of July, 1993, I received a telephone call from a person known to me as Helen Dickey. I was working in the security detail at the Arkansas Governor's mansion in Little Rock, Arkansas at that time. Dickey advised me that Vincent Foster, well knew [sic] to me had gotten off work and had gone out to his car in the parking lot and had shot himself in the head. I do not recall the exact time of this telephone call but am fairly certain it was some time from about 4:30 p.m. to no later than 7:00 p.m. [Central Daylight Time]

The Special Committee also received affidavits from Larry Patterson and Lynn Davis, also of the Arkansas State Police. Trooper Patterson stated that he had received a telephone call from Trooper Perry on July 20, 1993. Trooper Perry told him that Ms. Dickey had called and said Vincent Foster "had gotten off work and had gone out to his car in the parking lot and shot himself in the head." Trooper Patterson did not recall the exact time of Trooper Perry's telephone call but was "fairly certain it was some time before 6:00 p.m." Central Daylight Time. Captain Davis likewise stated in his affidavit that Trooper Perry called him on July 20, 1993, to say that Ms. Dickey had called him and said that Vincent Foster "had gone to his car on the parking lot and had shot himself in the head." According to Captain Davis, "I estimate the time as being no later than six o'clock, Central Standard [sic] Time."

To resolve the discrepancy between Ms. Dickey's testimony and the sworn affidavits of Messrs. Perry, Patterson and Davis, the Special Committee attempted to obtain records of telephone communications between the White House and the Arkansas Governor's Mansion on July 20, 1993. The White House advised that "no such call was made from the private telephone lines in the Executive Residence."[389] The call may have been placed, however, through the White House or Signal switchboard. Ms. Dickey testified that she recalled placing the call through the White House operator.[390] On October 13, 1995, White House advised that "[w]e have obtained records of long-distance calls placed through the Signal switchboard, and have confirmed that no call to the Governor's Mansion was made through the Signal switchboard on July 20, 1993."[391] The White House also advised that Sprint, the provider of long distance service through the White House switchboard, did not retain records of individual long-distance telephone calls.[392]

After additional inquiries, the Special Committee discovered that the White House was mistaken. Sprint indeed retained some records of individual telephone calls placed through the White

House switchboard. The Special Committee thus issued a subpoena on November 20, 1995, to obtain such records and was initially advised that the records reflected the destination number to which a telephone call was placed, but not the extension in the White House from which the call originated.[393] Sprint subsequently advised that its records only reflect the first six digits of the destination number, that is, the area code and prefix, and not the last four digits of the destination number.[394] Because the Governor's mansion does not have an exclusive prefix, it is not possible to determine from the records produced by Sprint to the Special Committee when Ms. Dickey placed the phone call.

After further inquiry by the Special Committee, however, the White House advised that "[w]e have confirmed that a call to Ms. Dickey's father's telephone number in Georgia was made at 10:06 p.m. on July 20, 1993, from one of the private lines in the Residence."[395] Ms. Dickey testified that she called her father before calling the Arkansas Governor's mansion.[396] Ms. Dickey also denied that she told the troopers that Vincent Foster had gone to his car in the parking lot and shot himself in the head. According to Ms. Dickey: "That's absolutely not true. . . . I never heard that, I never would have said that because that's not the facts as I knew them at that time. I'm absolutely positive of the timing of this."[397]

G. The handling of trash and burn bags in Mr. Foster's office

During the course of the evening, Sylvia Mathews determined that she should retrieve the trash from Mr. Foster's office in case it contained evidence relevant to his death. According to Ms. Mathews, "I consulted with senior staff around and said should we examine the contents and was told—I don't remember the exact words or who said what, but generally encouraged to go ahead and look through the trash."[398] Ms. Mathews specifically recalled Bill Burton being present for this discussion.[399] The trash had already been collected by the cleaning staff, but Ms. Mathews retrieved it. After locating what she believed to be Mr. Foster's trash, Ms. Mathews prepared an inventory and found nothing significant.[400] At Bill Burton's request, she placed the trash in the office of Roy Neel, the Deputy White House Chief of Staff.[401] Mr. Nussbaum testified that Ms. Mathews asked him if she should recover the trash from Mr. Foster's office. He then told her to go ahead and to store the trash in Roy Neel's office.[402]

Ms. Mathews also wanted to recover Mr. Foster's burn bag. The burn bag, a receptacle used for sensitive materials to be destroyed, is collected daily by the Secret Service. Secret Service officer Henry P. O'Neill was responsible for emptying the individual burn bags into a larger burn bag to be processed.[403] Officer O'Neill testified that he brought this co-mingled burn bag, which contained the papers of several offices, to the Chief of Staff's suite and gave it to Ms. Mathews. Officer O'Neill believed that this bag did not contain anything from the White House Counsel's suite or from Vincent Foster's office.[404] When he had gone to empty the burn bags in the counsel's suite with the cleaning staff earlier that evening, he had been interrupted by Bernard Nussbaum entering the suite.[405] Officer O'Neill never had a chance to empty the burn bags, because the suite was occupied that evening.

Bill Burton then instructed Ms. Mathews to check with Mr. Nussbaum before examining the contents of the co-mingled burn bags.[406] Mr. Nussbaum told Ms. Mathews that Mr. Foster's office did not have a burn bag.[407] Mr. Nussbaum instructed Ms. Mathews to return the burn bag because it contained materials co-mingled from other offices in the White House.[408] Ms. Mathews then returned the bag to Officer O'Neill and told him to proceed as usual.[409] Mr. Nussbaum did not recall discussing the burn bag with Ms. Mathews.[410]

H. Senior White House officials conduct a late-night search of Mr. Foster's office

Even though the Park Police made two requests to seal Mr. Foster's office, three White House senior officials conducted a search of his office on the night of July 20.

Patsy Thomasson, David Watkins' deputy, received the following message on her pager at 10:34 p.m. on July 20: "PLEASE PAGE DAVID WATSKINS [sic] WITH YOUR LOCATION".[411] Ms. Thomasson was at Sequoia Restaurant, minutes from the Foster residence in Georgetown. When Ms. Thomasson reached Mr. Watkins, he told her that Mr. Foster was dead.[412] Ms. Thomasson then asked him, "[I]s there anything I can do to help? Do I need to be where you are? What do I need to do?"[413] Rather than asking Ms. Thomasson to take steps to seal Mr. Foster's office, as the Park Police had specifically requested Mr. Watkins to do, he instructed Ms. Thomasson to go into Mr. Foster's office at the White House to look for a suicide note.[414] Ms. Thomasson arrived at the White House at 10:48 p.m.[415]

White House Counsel Bernard Nussbaum was finishing dinner at Galileo's, a restaurant several minutes from the White House, when he was paged by the White House on July 20. When he returned the page, Mark Gearan told him that Mr. Foster was dead.[416] Mr. Nussbaum went directly to the White House,[417] where he encountered the President and Mack McLarty on their way to the Foster residence.[418] According to Mr. Nussbaum, he then went to his office to make telephone calls to notify his staff of Mr. Foster's death. At about 10:45 p.m., Mr. Nussbaum reached the White House Counsel's suite, where both his office and Mr. Foster's office are located. On his way there, "it occurred to me that perhaps Vince left a note telling us why he had taken his life."[419]

Margaret Williams, Chief of Staff to the First Lady, testified that she received the news of Mr. Foster's death from Mrs. Clinton. Telephone records indicated that this call came at 10:13 p.m. Eastern Daylight Time and lasted 16 minutes. When she hung up with Mrs. Clinton, Ms. Williams called her mother[420] and Evelyn Lieberman, her assistant.[421] Ms. Lieberman, who lived near Ms. Williams, went to Ms. Williams' house and drove her to the White House. Ms. Williams did not recall why she went to the White House beyond the fact that "I just knew everybody else would be there."[422] When the two arrived at the White House, Ms. Williams asked Ms. Lieberman to remain in the foyer of Mrs. Clinton's office to answer the phones. Ms. Williams went to Mr. Gearan's office to review a press statement and then went to her own office, which

was down the hall from Mr. Foster's office, to get a copy of Mrs. Clinton's schedule.

> All evening, I had been avoiding looking in the direction of Vince's office as I entered and left the First Lady's suite. But in a strange way, when I saw the light on in his office, I had this hope, albeit irrational, that I would walk in and I would find Vince Foster there and we would have a chat sitting on his couch, as we have done so many times before.[423]

Ms. Thomasson, Mr. Nussbaum, and Ms. Williams all admitted that they entered Mr. Foster's office on the evening of July 20. Their stories fall apart after that. Each provided testimony that was inconsistent with the other two. And, their testimony was contradicted the testimony of career Secret Service officer Henry P. O'Neill, the watch officer for that evening, and contemporaneous Secret Service records.

Ms. Thomasson testified that, after placing her personal belongings in her office, she went to the second floor on the West Wing of the White House.[424] There, she encountered Mr. Nussbaum in the hallway and told him that Mr. Watkins had asked her to look for a suicide note in Mr. Foster's office.[425] She and Mr. Nussbaum then walked together into Mr. Foster's unsecured office.[426] The cleaning lady was leaving the suite as Mr. Nussbaum and Ms. Thomasson entered.[427] Ms. Thomasson then did a quick search for a note. "I sat at Vince's desk, opened the drawers to the desk to see if there was anything that looked like a suicide note. I looked in the top of his briefcase, which was sitting on the floor. I didn't see anything."[428] According to Ms. Thomasson, Mr. Nussbaum walked out for a moment, and Ms. Williams came in and began to cry on the couch.[429] After a few minutes Ms. Williams left the office. Mr. Nussbaum then came back in the office and suggested that they "probably should get out of here at that point."[430] Ms. Thomasson and Mr. Nussbaum then left Mr. Foster's office together.[431] She then paged Mr. Watkins, at 11:36 p.m., to report that she had found no note in Mr. Foster's office.[432]

Mr. Nussbaum offered a markedly different recollection. When he reached the Counsel's suite at around 10:45 p.m., the door was open. He did not arrive with Ms. Thomasson, as Mr. Thomasson has claimed. Instead, Ms. Thomasson and Mr. Williams were already in Mr. Foster's office. Ms. Williams was sitting on the sofa crying, and Ms. Thomasson was sitting behind Mr. Foster's desk. They told Nussbaum that they had just arrived, and Ms. Thomasson told Mr. Nussbaum that she was searching for a suicide note. According to Mr. Nussbaum, "Patsy and I checked the surfaces in Vince's office. We opened a drawer or two looking for a note. . . . The three of us then left the office.[433] He claimed that the search lasted no more than ten minutes,[434][13] and that the three then left Mr. Foster's office together.[435] Mr. Nussbaum then went next door to his office to make some phone calls.[14] When he

[13] However, a Park Police report of an interview with Mr. Nussbaum on July 22, 1993, noted that Mr. Nussbaum stated the search for a suicide note with Patsy Thomasson lasted from 2200 hours to 2400 hours. Park Police Document 29.

[14] Mr. Nussbaum testified that although he does not remember, he "might have gotten up and walked out and come back." Nussbaum, 7/12/95 Dep. p. 38.

left about an hour later, he locked and alarmed the Counsel's suite.[436]

Ms. Williams contradicted the testimony of both Ms. Thomasson and Mr. Nussbaum. She testified that when she entered Mr. Foster's office, Ms. Thomasson was already sitting at Mr. Foster's desk. Ms. Williams sat on the couch and commiserated with Ms. Thomasson. Mr. Nussbaum entered the office later, obviously upset.[437] After a brief time in the office, Mr. Nussbaum left, and Ms. Williams followed shortly thereafter.[438] According to Ms. Williams, Ms. Thomasson remained in the office after both Mr. Nussbaum and Ms. Williams left.[439]

Ms. Thomasson, Mr. Nussbaum, and Ms. Williams thus differed as to the critical sequence of entries into and exits from Mr. Foster's office on the evening of July 20. Ms. Thomasson testified that she entered and exited Mr. Foster's office together with Mr. Nussbaum and suggested that at no time was she alone in the office.[15] Mr. Nussbaum testified that he entered Mr. Foster's office after Ms. Thomasson and Ms. Williams; the three left the office together; and, after stopping by his office to make some phone calls, Mr. Nussbaum locked and alarmed the suite. Ms. Williams testified that she entered after Ms. Thomasson and before Mr. Nussbaum, and that she exited shortly after Mr. Nussbaum, leaving Ms. Thomasson alone again in the office.

I. Secret Service Officer Harry O'Neill observes Margaret Williams remove documents from Mr. Foster's office

Henry P. O'Neill joined the Secret Service Uniformed Division in 1977 and has been assigned to the White House since May of that year. On the evening of July 20, 1993, he arrived at work at 6:30 p.m., several hours before his scheduled shift at 10:30 p.m., in anticipation of some voluntary overtime hours. He made his regular rounds with the cleaning staff.[440] He accompanied the cleaning staff to the White House Counsel's suite and disarmed the alarm at 10:42 p.m.[441] As he reached the door of the suite, Officer O'Neill made a radio call to the uniformed division control center. The center acknowledged the call, and Officer O'Neill unlocked the door and entered.[442] "I flip the light switch on in the reception area. Then I walk to the right into Mr. Foster's—at that time, the deputy counsel's office, and behind the doorway there's an alarm switch, and you just flip the switch into access or open."[443] He then let the cleaning crew in.

Officer O'Neill proceeded into Mr. Nussbaum's office and checked the burn bag.[444] He did not check Mr. Foster's office for a burn bag because as he walked back into the reception area, "I recognized Mr. Nussbaum as I turned to the right. He walked into his office, and just about the same time I noticed other figures walk in behind him and I heard women's voices. And so I directed the cleaning ladies to exit the suite, and I left the suite also."[445][16] Officer O'Neill could not identify exactly who, or how many people were accompanying Mr. Nussbaum into the suite. He was certain, however,

[15] The only possible exception may be the brief moment when, according to Ms. Thomasson, Ms. Williams left and Mr. Nussbaum entered the office for the second time.

[16] The standard procedure for the cleaning staff was to exit whenever a White House staff member enters his or her office. S. Hrg. 7/26/95 p. 13.

that he heard women's voices and that Mr. Nussbaum was not alone as he entered the suite. The Secret Service officer then left the Counsel's suite and walked to the legislative affairs office. He was on his way back to alarm the Chief Counsel's suite when he ran into Howard Pastor, the Assistant to the President for Legislative Affairs, who informed him of Mr. Foster's death. As Officer O'Neill approached the Counsel's suite he saw Ms. Lieberman, Ms. Williams' assistant, leaving the suite.[446] She asked Officer O'Neill to lock up the office. He replied that he would take care of it.[447] Officer O'Neill then rode the elevator with Ms. Lieberman down to the ground floor to inform his supervisor of Mr. Foster's death. While he was on the phone, he overheard Ms. Lieberman asking Officer James Shea to ensure that the Counsel's suite was locked.[448] Officer O'Neill told Shea that he knew of the request and would secure the office.[449]

When Officer O'Neill returned to secure the White House counsel's suite, he found Patsy Thomasson sitting behind Vince Foster's desk.[17] He "stopped in the doorway immediately walking into the office because as I looked to the left there was a woman sitting at the desk."[450] Officer O'Neill went back to the first floor. He returned to the Counsel's suite for a third time and again saw Ms. Lieberman coming out of the counsel's suite. She asked him again to lock Mr. Foster's office. According to Officer O'Neill:

> And then a few seconds after I saw her [Lieberman] come out, Mr. Nussbaum walked out behind her and walked through the hallway towards the stairs, past the elevator, and within a few more seconds I saw Maggie Williams walk out of the suite and turn to the right in the direction that I was standing.[451]

As Ms. Williams walked past Officer O'Neill to her office Ms. Lieberman told him "'that's Maggie Williams; she's the First Lady's chief of staff.'"[452]

Officer O'Neill observed Ms. Williams carrying file folders out of the Counsel's suite when he saw her on the night of Mr. Foster's death:

> She was carrying what I would describe in her arms and hands, as folders. She had them down in front of her as she walked down to her—in the direction of where I was standing.
>
> She walked past me, and she continued on down the hallway. It's only about 20 feet at the most. And she started to enter her office, and she had to brace the folders in her arm on a cabinet, and then she entered the office and came out within a few seconds and locked the door.[453]

The folders were of "some weight, 3 to 5 inches."[454] Officer O'Neill was certain that he saw Ms. Williams carrying folders out of the Counsel's suite that evening.[455] After leaving the folders in her office, Ms. Williams joined Ms. Lieberman outside of the counsel's suite.[456] Officer O'Neill then locked and alarmed the suite and joined the two women on the elevator.[457]

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[17] Officer O'Neill initially did not know who Ms. Thomasson was, but later identified her. O'Neill, 7/26/95 Hrg. p. 19.

Ms. Lieberman, Ms. Williams and Mr. Nussbaum each denied removing any documents, or seeing anyone removing documents, from Mr. Foster's office on the night of his death.[18]

Mr. Nussbaum testified that after he left Mr. Foster's office together with both Ms. Thomasson and Ms. Williams, he proceeded to his office to make some telephone calls and then locked and alarmed the Counsel's suite when he left. This testimony was contradicted by the White House alarm logs maintained by the Secret Service for July 20, 1993, which showed that Officer O'Neill alarmed the counsel's suite at 11:41 p.m.[458] [19]

Curiously, after Ms. Williams left the White House, she called Mrs. Clinton in Little Rock at 12:56 a.m. on the morning of July 21, and they spoke for 11 minutes. Ms. Williams claimed that she did not tell Mrs. Clinton about her search of Mr. Foster's office.[459] Although Ms. Williams testified that she did not recall talking to Susan Thomases on the evening of Mr. Foster's death,[460] telephone records obtained by the Special Committee indicated that, upon ending her conversation with Mrs. Clinton, Ms. Williams called Ms. Thomases at 1:10 a.m., and they spoke for 14 minutes.[461] Of her conversation with Ms. Williams, Ms. Thomases testified: "I don't recollect speaking with her that night. That's not to say that she didn't call me back and I didn't speak to her, but I have no independent recollection of having spoken with her that night."[462]

III. JULY 21, 1993.

A. Mr. Foster's office is finally sealed

When Associate Attorney General Webster Hubbell woke up on July 21, 1993, he immediately called William Burton, Deputy Assistant to the President, and asked him to lock Mr. Foster's office.[463] In the middle of the night, "one of the things that kept me awake is saying we ought to make sure Vince's office is locked."[464] Mr. Hubbell wanted to make sure that the office was secured and that its contents were documented and handled in a "professional" manner.[465] When Mr. Hubbell reached Mr. Burton at the White House, some time between 7:00 a.m. and 8:00 a.m., Mr. Burton assured Mr. Hubbell that White House Chief of Staff Mack McLarty had taken steps to seal the office on the previous night.[466] Mr. Burton did not recall discussing sealing the office with Mr. Hubbell,[467] although his undated, handwritten notes listed "1) Secure office"

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[18] Ms. Williams' attorney submitted an affidavit stating that he "arranged to have Ms. Williams polygraphed" by a private polygrapher. Anderson, 7/31/95 Dep. Exh. 1. The affidavit represented that this private "examination confirmed that Ms. Williams was truthful in her assertion that she did not remove any documents from Mr. Foster's office on the night of his death." Anderson, 7/31/95 Dep. Exh. 1. After receiving the favorable results from her private polygrapher, Ms. Williams then offered to submit to a polygraph examination on the same subject by the Office of the Independent Counsel. According to Ms. Williams' attorney, the Independent Counsel's polygrapher advised him at the conclusion of the test that "Ms. Williams was truthful in her assertion that she did not remove any documents from Mr. Foster's office on the night of his death." Anderson, 7/31/95 Dep. Exh. 1.

[19] Mr. Nussbaum explained that, although he locked and alarmed the suite, he did not remember calling the Secret Service to report that he had done so. Thus, "you can lock the office and turn on the alarm without making that call. And if you do it without making that call, they may get, the Secret Service log may get the wrong name." Nussbaum, 8/10/95 Hrg. p. 125. This explanation is unpersuasive. It fails to explain why Officer O'Neill was identified on Secret Service logs as the person who set the alarm in the Counsel's suite—a position consistent with Officer O'Neill's testimony.

near the notation "Webb" and Mr. Hubbell's home and office phone numbers.[468]

Betsy Pond, Bernard Nussbaum's secretary, arrived at the White House early in the morning of July 21, at around 7:00 a.m.[469] She then entered Mr. Foster's office, which had not been sealed. She followed the routine procedure to disarm the alarm for the Counsel's suite.[470] Once inside Mr. Foster's office, she looked at documents on the coffee table and the desk, turned the documents over, and "smushed them together in a pile."[471]

Associate Counsel to the President Stephen Neuwirth testified that when he arrived at the White House Counsel's suite on July 21, he saw Ms. Pond in Mr. Foster's office. Ms. Pond told him that she was straightening out the office, and Mr. Neuwirth told her that she should not be in Mr. Foster's office.[472] Mr. Neuwirth testified that he "didn't think it was appropriate for an assistant to Mr. Nussbaum to be in the office at that time."[473] Ms. Pond then left Mr. Foster's office and called Mr. Nussbaum at home. According to Ms. Pond, she told Mr. Nussbaum that she had been in Mr. Foster's office, and Mr. Nussbaum told her not to let anyone in the office.[474] Mr. Nussbaum confirmed this conversation.[475]

Linda Tripp, Mr. Nussbaum's executive assistant, testified that Ms. Pond told her that she went into Mr. Foster's office to search for a note:

> She said, "Well, I just went in there but just to straighten papers." And, I said, "Betsy, why would you have gone in there to straighten papers? We never go into Vince's office to straighten anything." She then admitted that she was hysterical, and she was very, very overwrought, and that she had actually been in there looking for a note but that no one was to go in there; and, those were Bernie's strict instructions.[476]

At 8:00 a.m., the White House senior staff, which included, among others, Messrs. Burton, Gergen, and Nussbaum, attended a daily meeting in Mr. McLarty's office.[477] Although those present at the meeting were fairly certain that they discussed Mr. Foster's death,[478] none could recall the specifics of the discussion. Nor could anyone remember a discussion of the investigation into their colleague's death,[479] other than "that the Park Police would be looking into it."[480] And, no one recalled any discussion of sealing Mr. Foster's office and preserving its contents.[481]

Instead, Mr. Nussbaum testified that, after the daily meeting of the White House Counsel's Office at 9:00 a.m., he talked with Mr. Neuwirth and Associate Counsel to the President Clifford Sloan about securing Mr. Foster's office. Mr. Nussbaum realized that "there would be investigations obviously with respect to Vince's death. And under those circumstances, it would be best to make sure that the office was secure in connection with those investigations."[482] According to Mr. Nussbaum, Mr. Neuwirth and Mr. Sloan, the three lawyers concluded that Mr. Foster's office should be sealed,[483] and they proceeded to call the Secret Service.[484]

While the lawyers deliberated, Linda Tripp had independently contacted the Secret Service to arrange for the office to be sealed. "When I first came in the morning and saw that it was not secured

and Betsy was reacting to her situation, I said, 'Why is this not secure? Why is there no tape? Why is there no guard?' She said, 'No one has done that yet?' "[485] Ms. Tripp testified that her professional background led her to recognize the need to seal the office. "I've worked on the covert side of the Department of Defense. . . . And, instantly, to me, that made—it made little sense to do anything else but ensure that we were not violating—I mean, it was obvious a history-making situation that would come to if not this end then at least a very visible end. It just didn't occur to me not to do that."[486]

So when one of the lawyers emerged from the meeting in Mr. Nussbaum's office and said, '"Someone better arrange to have an agent posted,'" Ms. Tripp had already made such arrangements.[487] Donald Flynn, a Secret Service supervisor, confirmed that Ms. Tripp had called the Presidential Protective Division to request that an officer be posted outside Mr. Foster's office.[488] Mr. Flynn forwarded the request to the uniformed division of the Secret Service and, at about 10:10 a.m., took up position outside Mr. Foster's office until he was relieved by the uniformed officer.[489]

Even after a uniformed officer was posted at the door, White House personnel still had access to Mr. Foster's office. As Detective Markland testified, "I came to find out that it wasn't exactly sealed but posted, which meant that people had access to the office but their comings and goings would be recorded by a Secret Service agent."[490] Because the White House Counsel's office did not specify that access should be limited, Secret Service Agent Flynn instructed the uniformed officers not to impede access but simply to record entries into the office.

> There really was no understanding as to whether or not people could enter the office or not. I mean, I'll offer this on my own and that was that I instructed the officer that came up there to relieve me that if anyone did enter the office, to jot down the time and the name of who it was and what the purpose was for them going in the office, and then to relay the information to me.[491]

Thus, the log indicated that at 11:10 a.m., Mr. Nussbaum entered the office and removed a small black and white photograph.[492] Although Thomas Castleton, an intern in the White House Counsel's office, testified that he entered Mr. Foster's office with Mr. Nussbaum, Castleton's entry was not recorded in the log book.[493]

B. The White House impedes initial Park Police efforts to search Mr. Foster's office

Based on their various requests the previous night, the Park Police assumed that Mr. Foster's office had been sealed. Sergeant Braun was under the impression that the office had in fact been sealed.[494] Similarly, Major Robert Hines had spoken with Mr. Burton on the night of July 20 and requested that he seal the office, following "a normal procedure that our investigators would ask the Secret Service to do."[495] Thus, when Major Hines and Park Police Chief Robert Langston briefed White House officials on their investigation at a 10:00 a.m. meeting on July 21, both Major Hines and Chief Langston thought that Mr. Foster's office had already been

sealed.[496] In fact, Chief Langston testified that, during the 10:00 a.m. briefing, White House officials assured him that the office had been sealed the night before, even though it was not.[497] "There was acknowledgement, somewhere in that meeting, that the office had been sealed and that investigators would be conducting interviews of the staff up there that morning."[498]

The two Park Police investigators, Captain Hume and Detective Peter Markland, arrived at the White House just as Major Hines and Chief Langston finished briefing White House officials. Detective Markland, who replaced Sergeant Cheryl Braun on the case, found out upon his arrival at the White House that a uniformed officer had not been posted at Mr. Foster's office until the morning following Mr. Foster's death, despite contrary assurances to the Park Police. He had a brief discussion with Secret Service Inspector Dennis Martin and Mr. Nussbaum, and "even though they were different times and there was confusion as to what time somebody was posted and who ordered it posted, both of them agreed they had not been posted until that morning at some point."[499] Given the importance of the office to his investigation, Detective Markland was upset at the news. "I was under the impression that it was posted the night before, after Mr. Foster was identified. So I was upset about that."[500] Detective Markland and Captain Hume complained to Chief Langston about the White House's failure to secure the office. "[T]hose were comments that were just made by Hume or Markland at the time that it had not been sealed or wasn't sealed properly, or people had been allowed access, or something like that; that they had great concerns at the time."[501] Those concerns prompted Chief Langston to call Robert Bryant, the special agent in charge of the Washington field office for the FBI, to request an FBI agent to assist the Park Police investigators.[502]

The Park Police investigators were not permitted to enter Mr. Foster's office to search for evidence on July 21. According to Secret Service Agent Flynn, he understood that Captain Hume and Detective Markland "were coming over with the intent of going into Mr. Foster's office to look for a suicide note."[503] Secret Service Inspector Martin was assigned to escort the investigators "wherever they needed to go."[504] However, when Agent Flynn encountered the trio later in the day, Agent Martin appeared to be "baby-sitting" the Park Police investigators.[505] "They were waiting with him for a time to determine when they could go in Mr. Foster's office."[506] The investigators had not been allowed access to Mr. Foster's office to search for evidence because "[t]hey were waiting for approval from Mr. Nussbaum."[507] They waited through the afternoon.[508]

C. The White House Counsel and Deputy Attorney General agree on a search protocol for the documents in Mr. Foster's office

Associate Attorney General Webster Hubbell was among those who attended the Park Police briefing at the White House in the morning of July 21. As they were walking out of the meeting, Mr. Hubbell told Mr. Nussbaum that "he ought to think about staying out of this."[509] Mr. Hubbell testified that he advised Mr. Nussbaum to recuse himself from the investigation because "I knew that there had been issues regarding the travel office and whether there should be an independent counsel to represent the White House

with regard to the travel office investigation."[510] Mr. Nussbaum replied that he wanted to talk to Mr. Hubbell about that later.[511] They never talked.[512]

Some time that afternoon, Mr. Nussbaum spoke with other senior officials at the Justice Department. Shortly after the Park Police briefing, Mr. Nussbaum decided to ask the Justice Department to coordinate the investigation into Mr. Foster's death.[513] He then called either Attorney General Janet Reno or Deputy Attorney General Philip Heymann to make the request. According to Mr. Nussbaum, the Justice Department replied that the FBI would assist with the investigation. For a coordinating function, however, "they may get other people involved."[514] Other than this quick response to Mr. Nussbaum's request for assistance, Mr. Nussbaum did not recall any conversation with anyone about documents in Mr. Foster's office until officials from the Justice Department arrived at the White House later in the afternoon.[515]

Mr. Heymann had a more detailed and markedly different recollection of the conversation. Mr. Heymann did not remember who initiated this conversation, but suspected that he telephoned Mr. Nussbaum after the White House contacted Attorney General Reno and she delegated the matter to Mr. Heymann. He was immediately aware of the sensitive nature of the investigation, based on his experience in the Justice Department.[516]

According to Mr. Heymann, important legal, political and ethical considerations must be balanced in an investigation into the death of a senior administration official:

> Number one is I know there's going to be a serious problem with documents because there are serious issues of executive privilege and there are serious issues of law enforcement and they aren't easily reconciled. Number two, I know that there are going to be political attacks and political allegations of cover-up and I know that there's going to be conspiracy theorists. I've been through that regularly and I know that they're out there. . . . That difficulty of reconciling the three, number one and number two, leads to the third, and that is I worry a lot about the Department of Justice retaining the appearance and the reality of absolutely unbiased law enforcement.[517]

Because of these competing considerations, Mr. Heymann believed that any review of documents had to be undertaken jointly by law enforcement officials and the White House. "So we can't make the judgment completely ourselves as to what's relevant. On the other hand, I don't think it's wise or desirable for the White House counsel to decide on his own what is executive privilege and what isn't."[518]

On the afternoon of July 21, Mr. Heymann and Mr. Nussbaum agreed on an appropriate procedure to review the documents in Mr. Foster's office. "I agreed with Mr. Nussbaum on what I think, and continue to think, is an entirely sensible plan for reconciling these competing interests."[519] Career Department of Justice officials would review the documents jointly with Mr. Nussbaum, but the officials would be allowed to see each document to determine its relevance to the ongoing investigation:

> I would send over career prosecutors of unimpeachable reputation and rectitude and they would, with him, look at every document in the office. They would look at the heading of its and maybe the first couple of lines, in order to see whether it had any likely relevance or any possible relevance, to Vince Foster's death.[520]

Although "agreed" did not mean that he and Mr. Nussbaum entered into a binding contract, Mr. Heymann was certain that he and Mr. Nussbaum had reached a meeting of minds on July 21 on the appropriate review procedure.[521] "I understood it to be that we both thought that this was the right way to handle what would otherwise be a very difficult and sensitive problem."[522] He described this procedure to Captain Charles Hume of the Park Police that afternoon. According to Captain Hume: "My first impression was that the documents would be looked at by the Justice Department attorneys."[523]

Mr. Heymann selected two respected career prosecutors to go to the White House to review the documents—Roger Adams, Counsel to the Deputy Attorney General, and David Margolis, Associate Deputy Attorney General. Mr. Adams, who had been the principal ethics official for the criminal division, was, in Mr. Heymann's words, "unbiasable."[524] Mr. Margolis, who had been chief of the Department's organized crime section, "sort of epitomizes the most highly respected career prosecutor at this time. There's no more highly respected career prosecutor at this time."[525]

That afternoon, Mr. Heymann sent Mr. Adams and Mr. Margolis to the White House to begin to carry out the document review procedure to which he and Mr. Nussbaum had just agreed. "I know we agreed and I know that because I know I sent Adams and Margolis over and I even thought the process was going to start that afternoon."[526] Mr. Margolis corroborated Mr. Heymann's recollection:

> To give it the full background, he had called me up from a meeting, and he said, "I want you to go over to the White House with Roger Adams." He said, "Vince Foster is dead. There's an investigation of it." I had seen the headline of that in the newspaper that morning. He said he had reached a tentative agreement with Mr. Nussbaum that Roger and I were to go through at least the first page or two of each document in order to determine whether they were relevant to our investigation. . . . Phil told me that he believed he'd had an agreement in principle with Bernie Nussbaum to do it that way, so I should go finalize it and then begin the search process.[527]

D. The White House finalizes the agreement on the search protocol

When Messrs. Adams and Margolis arrived at the White House in the late afternoon, at around 5:00 p.m., they went to the White House Counsel's suite. There, they met with Mr. Nussbaum, other members of the White House Counsel's office, an attorney for the Foster family, and officials of the FBI, Park Police, and Secret Service.[528] The purpose of the meeting was to discuss the procedures for the review of documents in Mr. Foster's office.

Mr. Margolis testified that, at the meeting, he and Mr. Nussbaum finalized the agreement on how to conduct the search the following morning. "When I got there, I discussed it with Mr. Nussbaum. And I believed then and I believe today that we finalized that agreement and that we both agreed to it."[529] Roger Adams confirmed that Mr. Nussbaum agreed that the Justice Department officials would review the documents for relevance and, if the documents were relevant, for possible claims of privilege.[530] Mr. Adams was certain that an agreement had been reached. "I am not sure how the conversation went, but the procedure that I have just outlined was what was clearly agreed upon at that meeting on Wednesday the 21st."[531]

The recollection of the Justice Department officials was corroborated by a contemporaneous FBI report.[20] After summarizing how the FBI became involved in the investigation on July 21, the report stated:

> An initial meeting was held with the White House Counsel Bernard Nussbaum at which time it was agreed that the Victim's office, which is located adjacent to Mr. Nussbaum's would continue to be sealed by the U.S. Secret Service (USSS) until 10:00 A.M. on 7/22/93, at which time Margolis and Adams would conduct a preliminary examination of documents within the office.[532]

When, near the end of the meeting, Mr. Neuwirth stated that Mr. Nussbaum alone would review each document for relevance, Mr. Adams and Mr. Margolis immediately objected. Mr. Nussbaum then intervened, correcting Mr. Neuwirth and stating that the Justice Department attorneys would review the documents. According to Mr. Margolis:

> When we finished, Mr. Neuwirth on his staff, as I recall, attempted to restate the agreement, and got it what I believe was exactly wrong, and said, "The way we're going to do it is that Bernie will go through the documents, and he'll give you what is both relevant and non-privileged to review." I said that's exactly wrong. We just agreed to the other procedure. And it was my recollection then, and it's my recollection today, that Mr. Nussbaum agreed with me that Mr. Neuwirth was wrong, and that we had that other agreement.[533]

Mr. Adams recollected the same incident.[534]

At Mr. Heymann's request, Roger Adams typed up notes summarizing the activities of the Justice Department in connection with the Foster investigation. Those notes, prepared the following week, confirmed Mr. Margolis' recollection:

> At the Wednesday meeting there was agreement that the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by

[20] The report was written and submitted to the Director of the FBI on July 22, 1993. Although it is not possible from the time stamp on the document to determine whether the report was received at around 9:00 in the morning or in the evening of July 22, the text of the report makes clear that it was written prior to any FBI activity at the White House on July 22.

> the Park Police or FBI. We would not read the documents or make notes, but merely examine them long enough to determine if they were covered by the attorney-client privilege or possibly executive privilege. As an example of the clarity of this agreement, Mr. Neuwirth at one point, apparently trying to summarize it, said that "Bernie would look at each document and determine privilege. If he determined no privilege, it could be shown to the law enforcement officers." He was immediately corrected and Mr. Nussbaum agreed that the Justice Department representatives would see the documents to determine privilege.[535]

The recollection of Mr. Nussbaum and his associates contradicts the testimony of the career Justice Department officials and, most importantly, the only contemporaneous document—an FBI report—recording what occurred at the meeting.

Mr. Nussbaum conceded that the search of Mr. Foster's office was discussed,[536] but maintains that no agreement was reached as to the procedure for reviewing documents. "In my—to the best of my recollection, and I do have a recollection about this, there was no agreement. I think my recollection is supported by Mr. Neuwirth of my office who was there, by Mr. Sloan of my office who was there."[537] Mr. Nussbaum acknowledged, however, that a misunderstanding may have occurred:

> If the Justice Department officials believe that we reached an agreement after our July 21 meeting, then a misunderstanding and a miscommunication occurred, and I may be responsible for that. But I do not believe, nor, as you have heard, do my colleagues in the White House counsel's office believe, who were present at those meetings, that we reached any agreement on July 21 or that we in any way misused the Department of Justice.[538]

Mr. Neuwirth and Mr. Sloan corroborated Mr. Nussbaum's testimony that the exact protocol for the search was not resolved at the end of the July 21 meeting.[539]

When Mr. Adams and Mr. Margolis returned to the Justice Department after the meeting, Mr. Margolis reported to Mr. Heymann that Mr. Margolis had finalized Mr. Heymann's agreement with Mr. Nussbaum.

> I told him along the lines that he had thought that he had reached a tentative agreement with Bernie Nussbaum; that Roger and I would review at least the first couple, first page or two of each document, to determine whether it might contain something along the lines of an extortion note or a suicide note. So it was the agreement that he had reached.[540]

Mr. Heymann confirmed this testimony:

> Mr. Heymann: That is what they reported to me when Mr. Margolis and Mr. Adams returned that evening, the evening of Wednesday the 21st, to the Justice Department.
>
> Senator Shelby: What do your notes reflect, I was paraphrasing them?

> Mr. Heymann: It said they discussed the system that had been agreed upon, I just described to you. BN, that stands for Mr. Nussbaum, agreed. SN, that stands for Neuwirth, said no. We shouldn't do it that way. The Justice Department attorneys shouldn't have direct access to the files. David Margolis, the Justice Department attorney, said it's a done deal and Mr. Nussbaum at that point said yes, we've agreed to that.[541]

During the meeting, everyone agreed that, given the lateness of the hour, the search of Mr. Foster's office would not take place until the following day.[542] It was then decided that the Secret Service would place a secure lock on Mr. Foster's office door, the keys to which would be kept by agent Flynn of the Secret Service.[543] The lock was installed at approximately 8:00 p.m. on July 21.[544]

IV. JULY 22, 1993

A. The White House Counsel's office interferes with Park Police interviews of White House staff

The next morning, July 22, at about 9:00 a.m., Detective Markland and Captain Hume of the Park Police returned to the White House to interview White House staff. Two Associate White House Counsels attended each of the interviews. Deborah Gorham, Mr. Foster's secretary, testified that members of the White House staff attended a meeting on the afternoon of July 21 with Mr. Sloan, Mr. Neuwirth, and Mr. Nussbaum. Mr. Neuwirth, according to an electronic mail message from Linda Tripp to Ms. Gorham, "briefed us on comportment and interrogation."[545]

During this meeting on July 21, Ms. Gorham told Mr. Nussbaum that Mr. Foster had "placed shredded remnants of personal documents"[546] in his briefcase. Ms. Gorham wrote to Ms. Tripp in an e-mail that "I told Bernie in front of everybody that shredded remnants were in the bag,"[547] an exchange that Ms. Tripp recalled.[548]

Captain Hume and FBI special agent Dennis Condon interviewed Betsy Pond, Mr. Nussbaum's secretary, in Mr. Sloan's presence. According to Captain Hume's report of the interview, Mr. Sloan took notes during the entire interview. At one point, "Bernard Nussbaum burst into the room and demanded, "is everything all right?"[549] After being reassured, Mr. Nussbaum left. Captain Hume asked Ms. Ponds whether she had been coached:

> When I questioned her if she had been told how to respond to our questions, she stated that Clifford Sloan (who was present during our interview) and Steve Neuwirth, both associate counselors, had called them all together on Wednesday evening and told them they would be questioned by the police and for them to tell the truth.[550]

While Captain Hume and Agent Condon interviewed Ms. Pond, Detective Markland and FBI agent Scott Salter interviewed Deborah Gorham in the presence of Mr. Neuwirth.[551] Mr. Neuwirth interjected at the end of the interview and "took Ms. Gorham out of the room to speak to her."[552] They returned a short time later, "and Ms. Gorham stated that there was one thing she thought may be important that she recalled."[553] Ms. Gorham then told the in-

vestigators that in the previous week, Ms. Gorham had, at Mrs. Foster's request, asked the White House credit union to credit Mr. Foster's pay on a weekly, rather than biweekly, basis to avoid overdrawing the family account.

A similar incident occurred later in the day, after the Park Police had completed their interview with Ms. Gorham:

> At approximately 1450 hours, immediately after the inventory of Mr. Foster's Office by White House Counsel (reference report under this case file number by Capt. Hume), Detective Markland and S/A Salter were asked to remain and were ushered into Mr. Nussbaum's office by Mr. Neuwirth. Ms. Gorham was brought in and she stated that she had just remembered some conversations that she thought were important to our investigation.[554]

Ms. Gorham then told the investigators that Mr. Foster's son and wife had called within the last two weeks to ask about Mr. Foster's mood.[555]

Detective Markland testified that he believed the attorneys from the White House counsel's office attended the interviews in order to "report back to Mr. Nussbaum what was being said in the interviews."[556] Because the White House lawyers were present, "[t]he atmosphere of those interviews made it impossible to establish any kind of relationship with the people being interviewed."[557] The lawyers created an "intimidating situation" and therefore the interviews were not very productive.[558] According to Detective Markland: "It was my belief that the staff members that we were interviewing had been briefed beforehand and would say no more than what they were told they should tell us."[559] "Everyone I interviewed on this day up there I felt had been talked to by Mr. Nussbaum or his staff and knew exactly what they were going to say, nothing more, nothing less. And that was it. They all came off very rehearsed."[560]

B. The First Lady, Margaret Williams, Susan Thomases and Bernard Nussbaum conduct a series of early morning telephone calls

At 7:44 a.m. Eastern Daylight Time (EDT) on July 22, Margaret Williams, the Chief of Staff to the First Lady, called Mrs. Clinton at her mother's house in Little Rock.[561] They talked for seven minutes. This call set off a chain reaction of further calls.

At 6:57 a.m. Central Daylight Time, or 7:57 a.m. EDT, Mrs. Clinton called the Mansion on O Street,[562] a small hotel where Susan Thomases usually stayed in Washington, D.C.[563] The call lasted three minutes.[564] Ms. Thomases, a New York lawyer, is a close personal friend of President and Mrs. Clinton. She has known the President for 25 years and Mrs. Clinton for almost 20 years.[565] She was an adviser to the Clinton 1992 presidential campaign on the Whitewater issue, and remained in a close circle of confidants to the Clintons after the election.[566] Susan Thomases was the third person Mrs. Clinton called after she learned of Mr. Foster's death, and they talked for 20 minutes.[567]

After her conversation with Mrs. Clinton, at 8:01 a.m. EDT, Ms. Thomases paged Bernard Nussbaum at the White House, leaving

her number at the Mansion on O Street.[568] After Mr. Nussbaum answered the page, Ms. Thomases and Mr. Nussbaum both agree that they talked about the upcoming review of documents in Mr. Foster's office.[569]

Associate White House Counsel Stephen Neuwirth, who was formerly an associate at Mr. Nussbaum's law firm in New York City, testified that Mr. Nussbaum told him that Ms. Thomases and Mrs. Clinton were concerned about investigators having "unfettered access" to Mr. Foster's office. "Again, while I don't remember his exact words, in a very brief discussion, my understanding was that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office."[570] Mr. Neuwirth thought that the conversation occurred on July 22, before the scheduled document review with law enforcement officials.[571]

Ms. Williams initially did not tell the Special Committee about her early morning phone call to the Rodham residence.[572] After obtaining her residential telephone records documenting the call, the Special Committee voted unanimously to call Ms. Williams back for further testimony. When presented with these records, Ms. Williams testified: "If I was calling the residence, it is likely that I was trying to reach Mrs. Clinton. If it was 6:44 in Arkansas, there's a possibility that she was not up. I don't remember who I talked to, but I don't find it unusual that the Chief of Staff to the First Lady might want to call her early in the morning for a number of reasons."[573]

Ms. Thomases testified that she did not give instructions to anyone about the search of Mr. Foster's office:

> While my memory is not perfect—I just don't remember every person that I spoke to during those days. But I do know that I never, I say never, received from anyone or gave to anyone any instructions about how the review of Vince Foster's office was to be conducted or how the files in Vince's office were to be handled. I want to repeat that. I never received from anyone or gave to anyone any instructions about how the review of Vince Foster's office was to be conducted or how the files in Vince's office were to be handled.[574]

She acknowledged paging Mr. Nussbaum on the morning of July 22, but maintained that "I was not looking for Bernie to talk about the review of documents in Vince Foster's office. I was really trying to reach him to talk to about how he was feeling and how he was doing."[575]

Ms. Thomases did offer that she talked to Mr. Nussbaum about the review of documents in Mr. Foster's office, but only because Mr. Nussbaum initiated the subject:

> He obviously was very focused on the documents at that time, where I was not, and he proceeded to tell me not to worry, that he had a plan, that he was going to take care of him. He was kind of, as I said in my deposition, he was sort of venting. He seemed to have a very clear sense that he was on top of it; he was going to handle it; he was going to give Vince's documents to the Clinton's lawyers, and that he was going to protect all the Presidential papers.[576]

She told Mr. Nussbaum that his procedure "sounds good to me."[577] Ms. Thomases testified that she did not express any view to Mr. Nussbaum that the police should not have unfettered access to Mr. Foster's office.[578] Ms. Thomases maintained: "I don't remember ever having a conversation with Hillary Clinton during the period after Vince Foster's death about the documents in Vince Foster's office."[579]

After Ms. Thomases' initial testimony, the Special Committee obtained telephone records documenting that she talked with Mrs. Clinton for three minutes immediately prior to paging Mr. Nussbaum on July 22. The Special Committee voted unanimously to call Ms. Thomases back for further testimony. When presented with the new records, Ms. Thomases testified that "I know you think there is a relationship between those two calls."[580] She maintained, however, that the two calls were not related. She testified that her early-morning conversation with Mrs. Clinton was about "the possibility that I didn't feel well enough to go to Little Rock" for Mr. Foster's funeral.[581] According to Ms. Thomases, she called Mr. Nussbaum because "I was worried about my friend Bernie, and I was just about to go into a very, very busy day in my work, and I wanted to make sure that I got to talk to Bernie that day since I had not been lucky enough to speak to him the day before."[582]

Mr. Nussbaum had a markedly different recollection of his conversation with Ms. Thomases on July 22. He testified that Ms. Thomases—not he—initiated the discussion about the procedures that he intended to employ in reviewing documents in Mr. Foster's office. "The conversation on the 22nd was that she asked me what was going on with respect to—what was going on with respect to the investigation or the examination—the examination of Mr. Foster's office."[583]

Beyond this, Mr. Nussbaum testified that Ms. Thomases "said people are concerned about whether I was using the correct procedure or whether the procedure was—people were concerned or disagreeing, something like that, whether a correct procedure was being followed, whether I was using the correct procedure, whether it was proper to give people access to the office at all something like that."[584] According to Mr. Nussbaum, Ms. Thomases never specified who the mysterious "people" were to whom she was referring,[585] nor did Mr. Nussbaum understand who they were.[586]

Mr. Nussbaum claimed that he resisted the overtures of the First Lady's close advisor:

> But I said Susan—she wasn't in the White House—at least I didn't know she was in the White House—I said I'm having discussions with various people. As far as the White House is concerned, I will make a decision as to how this is going to be conducted. It's going to be done the right way. It will balance out the various interests. It's going to be done the way I think it should be done.[587]

And, Mr. Nussbaum further testified that Mrs. Clinton did not convey to him, directly or indirectly, her views on how to conduct the search of Mr. Foster's office.[588] Mr. Nussbaum did not recall telling Mr. Neuwirth that Ms. Thomases and Mrs. Clinton were

concerned about the police having unfettered access to Mr. Foster's office.[589]

Apparently, Ms. Thomases did not give up easily. In the late morning of July 22, senior White House officials, including Mr. Nussbaum and Mr. Neuwirth, met in the office of Chief of Staff Thomas McLarty to discuss the upcoming review of Mr. Foster's office.[590] At about the time of this meeting, between 10:48 a.m. and 11:54 a.m., Ms. Thomases called Mr. McLarty's office three times and Ms. Williams' office three times.[591]

When asked about the coincidence of these telephone calls, Ms. Thomases testified that she "never actually remember[ed] speaking with Mack McLarty at his number during this period."[592] With respect to the repeated calls to the office of the Chief of Staff to the First Lady, Ms. Thomases testified that she probably was attempting not to reach Ms. Williams but rather to be transferred to someone else in the White House.[593] Although she testified that July 22 was "a very, very busy day in my work,"[594] Ms. Thomases suggested that she also may have been put on hold during these lengthy calls, for as long as nine minutes.[595]

Ms. Williams testified that she could not recall talking with Ms. Thomases and suggested that she was at home in the morning of July 22.[596] This explanation was contradicted by Secret Service records indicating that Ms. Williams had entered the White House at 8:10 a.m. that morning.[597]

C. The White House breaks its agreement with the Justice Department: "A terrible mistake"

By the time senior Justice Department attorneys David Margolis and Roger Adams arrived at the White House at 10:00 a.m. on July 22, 1994, Mr. Nussbaum had a change of heart. He "announced that he had decided to change the procedure for the search or inventory of the office. He said that he alone would look at each document to determine relevance and privilege, and that we would not be doing that."[598]

According to Roger Adams, the Justice Department officials "pointed out that that was completely inconsistent with the agreement of the day before, and we argued with Mr. Nussbaum. We said this was not what we had agreed to, that he was making a mistake, and we were going to have to call our boss, the Deputy Attorney General."[599] According to Mr. Margolis, Mr. Nussbaum said that there had been a change of plans, "that he would look at the materials to determine whether they were relevant, make the first cut, and determine the privilege issues and the sensitivity issues. And then anything that met all his standards along those lines, if we still wanted to see, he would show us."[600]

Upset, Mr. Margolis immediately called Mr. Heymann from Mr. Nussbaum's office phone.[601] "I called Mr. Heymann and explained this change to him. And we discussed it. We were both dead set against it."[602] Both were surprised by Mr. Nussbaum's new plan, which they thought was wrong. According to Mr. Margolis, "We were very concerned as to how this would appear to the public in terms of law enforcement, and in terms of whether we were running a credible investigation."[603] Mr. Heymann testified that "Mr. Margolis told me that Mr. Nussbaum had said to me that they had

changed the plan, that only the White House counsel's office would see the actual documents."[604] Mr. Heymann then asked to speak to Mr. Nussbaum.

When Mr. Nussbaum got on the telephone, Mr. Heymann warned him sternly that "this was a terrible mistake":[605]

> I remember very clearly sitting in the Deputy Attorney General's conference room picking up the phone in that very big room. I remember very clearly being very angry and very adamant and saying this is a bad—this is a bad mistake, this is not the right way to do it, and I don't think I'm going to let Margolis and Adams stay there if you are going to do it that way because they would have no useful function. It would simply look like they were performing a useful function, and I don't want that to happen.[606]

According to Mr. Heymann, Mr. Nussbaum was surprised at Mr. Heymann's reaction and wanted to check with unspecified others before making a final decision. "[H]e was taken aback by my anger and by the idea that I might pull out the Justice Department attorneys and he said I'll have to talk to somebody else about this or other people about this, and I'll get back to you, Phil."[607]

Mr. Nussbaum feared that the Justice Department officials would not attend the document review. He specifically told Mr. Heymann: "don't call Adams and Margolis back to the Justice Department. I'll get back to you."[608] Notwithstanding this explicit promise, Mr. Nussbaum never called Mr. Heymann back.[609]

The nearly contemporaneous notes[21] of Cynthia Monaco, Special Assistant to the Deputy Attorney General, confirmed Mr. Heymann's testimony:

> The next day [July 22] was a disaster. I first realized there was a problem when I saw Phil Heymann on the phone with Bernie Nussbaum. I walked into the conference room and sat down. This was probably about 10:30 or 11 in the morning when he should have been in the Crime Bill pre-meeting in room 4118. Phil was on the phone with Bernie Nussbaum and he said: "you are messing this up very badly. I think you are making a terrible mistake." And what I took it to mean, in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents.[610]

Mr. Nussbaum denied having this conversation with Mr. Heymann.[611]

After Mr. Heymann and Mr. Nussbaum finished their conversation, Mr. Margolis returned to Mr. Nussbaum's office and spoke with Mr. Heymann.[612] Mr. Margolis thought that even if Mr. Nussbaum did not change his mind, the Justice Department attorneys should remain at the White House because "we really had no choice. Walking away was not really an option, because we had no sense of when the search would be conducted by Mr. Nussbaum, and what the parameters would be, and just what would happen, although we agreed we had to push with all our might to try to

[21] The notes were dictated in July 1993 and typed up later. Monaco, 7/6/95 Dep. pp. 26–27.

change it around. And that's what we did."[613] Mr. Margolis thought that Mr. Heymann agreed with this course of action.[614]

Mr. Heymann, however, assumed from his conversation with Mr. Nussbaum that Mr. Nussbaum, after his consultations, would call Mr. Heymann back to let him decide what to do. "And I also thought that I had an understanding that nothing would happen without my at least being informed and having an opportunity to react."[615] Mr. Heymann believed that the search would not go forward until Mr. Nussbaum called him back.[616]

After he got off the telephone with Mr. Heymann, Mr. Margolis tried again in vain to convince Mr. Nussbaum that the new procedures were "a big mistake."

> I explained to Mr. Nussbaum that to do it his way would be a big mistake. I said, "It was your mistake if you do it this way, but it is a big mistake." I think it was at that point when I also said to him, "You know, if this were IBM that we were talking about, I would have a subpoena duces tecum returnable forthwith with these documents. But I recognize this is not IBM." And he made a facetious comment about, if this were IBM rather than the White House counsel's office, a smart lawyer would have removed the documents before the subpoena ever got there. That I took as a facetious comment. Anyway, he wasn't talking about what he would do.[617]

Mr. Margolis stressed the importance of maintaining the public perception of a credible and thorough investigation.[618] He believed that law enforcement officials must have a substantive role in the review process and not be "excess baggage," as they would be under Mr. Nussbaum's new plan; "I might as well go back to my office, and he could mail the results of the search back to me."[619]

According to Mr. Margolis, Mr. Nussbaum conceded that having the investigators attend the review was mostly out of concern for "show and appearances."[620] Fearing that the lawyers would leave, Mr. Nussbaum insisted that they wait in the White House lobby:

> He made it very apparent that he would be really appreciative if we didn't leave in the interim. I think I have said something about, "Maybe in any event I'll go back to the office while you're thinking about it, and I can always get back here in 15 minutes if I decide to and I want to and if I have to." But he very much requested that we just wait.[621]

Mr. Adams and Mr. Margolis then waited in the lobby of the White House.[622] At one point, the Justice Department attorneys went outside. Believing that Mr. Adams and Mr. Margolis had left the White House, the White House lawyers went out to look for them. "Bernie had said he had thought, when he couldn't find us in the lobby, that we might have left and he was concerned about that."[623] Mr. Nussbaum did not remember Mr. Margolis threatening to leave the White House.[624]

The notes of Adams of the morning's events confirmed Mr. Margolis' recollection:

> The next morning [July 22], however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide privilege issues himself. The Justice Department attorneys pointed out that that was inconsistent with the previous day's agreement and would cause problems. We stated that the Counsel's Office would be better off to allow the Department attorneys to decide or at least help decide privilege issues, because that would allow the White House to say that the issue was considered independently. Moreover, we stated that we had been asked to undertake this particular assignment in part because we had reputations of not talking to the press or "leaking." Mr. Nussbaum did not immediately begin the search but waited for about two and one half hours—during which time he said he was considering whether to allow us to see the documents—before deciding that only he and Associate Counsels Neuwirth and Sloan would see the documents.[625]

Mr. Nussbaum admitted that he discussed with various people how to conduct the search on July 22.[626] But he did not recall a specific discussion with Mr. Margolis in the morning during which Mr. Margolis and Mr. Adams objected to his proposed procedure.[627] And, he did not recall Mr. Margolis or Mr. Heymann telling him that he was making a mistake.[628] Although Mr. Nussbaum could not remember speaking with the Justice Department officials, he did acknowledge conversations with a number of senior White House officials who were concerned about the search.[629]

In particular, John Quinn, then Chief of Staff and Counselor to the Vice President and now Counsel to the President, advised Mr. Nussbaum that only White House officials should be allowed access to Mr. Foster's office.[630] "He thought it was a terrible mistake and stressed it very firmly."[631] According to Mr. Quinn:

> I wanted to be sure that somebody with the appropriate level of security clearance and who was privy to the attorney-client relationship first went through the office in order to ascertain if national security materials or privileged communications were present and, if so, to take steps to segregate them.[632]

D. The window-dressing review of the documents in Mr. Foster's office

After lunch, at about 1:15 p.m., Mr. Nussbaum summoned the law enforcement officials to attend the review of the contents of Mr. Foster's office.[633] Mr. Nussbaum then announced that he alone—and no law enforcement official—would review the documents in his now deceased deputy's office. According to Mr. Margolis:

> So we ate, we came back in, and that's when Bernie told us he had given due consideration to our arguments, he thought they were good arguments, but he was sticking with doing it his way, which was he would review the documents, tell us generically what they were, if there wasn't a problem with them and if they had any sense of being germane, let us look at them.[634]

Mr. Nussbaum testified that the career law enforcement officials initially resisted his plan, but then "went along."[635] After Mr. Nussbaum indicated that law enforcement officials would not be allowed to review Mr. Foster's papers, Mr. Margolis said, "'It's a mistake * * *. But it's your mistake. So, okay.'"[636] Mr. Margolis also told Mr. Nussbaum, "You know, if this were IBM that we were talking about, I would have a subpoena duces tecum returnable forthwith for these documents. But I recognize this is not IBM."[637]

The group entered Mr. Foster's office to observe Mr. Nussbaum conduct the review. Present were Mr. Nussbaum, Mr. Burton, Mr. Sloan, and Mr. Neuwirth from the White House; Captain Hume and Detective Markland from the Park Police; Agents Salter and Condon from the FBI; Messrs. Margolis and Adams from the Justice Department; Paul Imbordino and Paul Flynn from the Secret Service; and Michael Spafford, a private attorney who represented the Foster family.[638]

During the document review, according to Mr. Adams, "Mr. Nussbaum was seated at Vince Foster's desk. Standing behind him were Steve Neuwirth and Cliff Sloan. Mr. Margolis and myself and the law enforcement officers were seated in what I describe as a rough semicircle around the desk in sort of rough rows. Standing off to one side was the Foster family's attorney Mr. Spafford."[639]

According to Captain Hume's report of the review: "The eight law enforcement officers were gathered on the opposite side of the desk and room in a position where we couldn't examine any documents."[640] Detective Markland confirmed that the law enforcement officers were specifically placed where they could not see the documents as Mr. Nussbaum was reviewing them.[641]

Mr. Nussbaum then reviewed the documents in Mr. Foster's office. He briefly described the documents and placed them into three categories. Mr. Margolis and FBI agent Adams believed that one pile consisted of personal materials that were going to the Foster family; the second pile consisted of official White House documents that were to be distributed to other White House attorneys; and the third consisted of the Clintons' personal documents, which were to be sent to the Clintons' personal lawyer.[642] The Park Police detectives described the three categories as follows: (1) documents of potential interest to law enforcement; (2) documents concerning White House business with no relevance to the investigation; and (3) personal papers of either the Clintons or the Foster family.[643] Mr. Spafford, the Foster family attorney, wrote in a contemporaneous memorandum: "The documents were separated into three groups: personal matters, documents of potential interest to the investigators, and matters of no apparent interest."[644]

Mr. Nussbaum provided a brief and generic description of the documents he reviewed.[645] Captain Hume reported that "Bernard Nussbaum did the actual review of the documents in a very hurried and casual fashion."[646] According to Mr. Adams:

> As best I can recall, with most of the documents he made just sort of a generic description, something like this is personal; this is going to the family of the—this is something that Vince has been working on; it's relevant to work of the White House counsel's office; it's going to be distributed to other lawyers in the office.

> Another thing he would say is this is something he had been working on for the President personally. This is going to the President's outside attorney. Now, there were occasions where some documents he would describe a little bit more—a little bit more definitely than that, but it's my recollection that, in general, it was just a generic description of them.[647]

Mr. Margolis recalled essentially the same rushed procedure:

> [Nussbaum] went through the items on and in and around Mr. Foster's desk and announced what they were, generically, like, "This file is a file of nominations that Vince was working on for the President. It's not germane. This is a matter that Vince was working on for the first family in their nonofficial capacity. It's not germane." Things like that.[648]

At different times during the review, Mr. Margolis renewed his objections to Mr. Nussbaum's review. In fact, Mr. Margolis specifically objected to the fact that Mr. Nussbaum's descriptions were so generic that they were of little assistance to the investigators.[649] He remarked that "it gave me a bit of deja vu all over again of dealing with the CIA * * * ."[650] FBI Agent Salter had a similar view: "At one point, I recall that Mr. Nussbaum described documents as he went through, and declared that they were not pertinent to the investigation, and I know Mr. Margolis responded by saying how do we know if they're pertinent or not if we don't get to look at the documents."[651] Mr. Adams recalled that, at some point, "Mr. Margolis again interposed an objection to the procedure. He said, the best I can recall, that this was a mistake and that Mr. Nussbaum might as well conduct the review himself and mail us the results or mail Mr. Margolis the results."[652]

Mr. Nussbaum took what the law enforcement officials thought were "extreme" positions to shield documents from their review. According to the Park Police report:

> There was some conversation between Nussbaum and Margolis as to what constituted privileged communication. Nussbaum carried his interpretation of what was considered privileged to the extreme; one example was when he picked up a xeroxed copy of a newspaper article and declared that it was privileged communication even though it had been in the newspapers.[653]

At no time during the approximately one-and-one-half hour period of the review did Mr. Nussbaum allow the law enforcement officials to examine any documents.[654]

The White House lawyers expressed concern—to an unreasonable degree—that the law enforcement officials might sneak a peak at Mr. Foster's documents. According to the Park Police report: "At one point Special Agent Scott Salter got up to stretch and Clifford Sloan challenged him and asked him if he was standing up in an attempt to get a look at the documents."[655] Agent Salter described the incident as follows:

> I was seated at the end of the sofa next to detective Pete Markland from the Park Police, and I think there was a

> third person seated at the opposite end from me. And I think the review of documents had been going on for about 30 minutes with the three of us seated on the couch. There wasn't a lot of room. After about 30 minutes, I stood up and stood at the end of the couch, and in front of me was Mr. Margolis and then the desk.
>
> After standing there for just a few minutes, Mr. Cliff Sloan looked at me and said, excuse me, agent, you aren't standing there so you can see the documents on Mr. Nussbaum's desk, are you? And at that point I merely said that—I told Mr. Sloan that I think he's getting carried away, and then Mr. Nussbaum interjected and said of course, we're all on the same side here, words to that effect. And that was the end of the incident.[656]

Mr. Adams indicated that "the remark was (to put it charitably) extremely offensive."[657] Mr. Margolis testified that he may have muttered an expletive after Mr. Sloan's remark.[658] "I was bothered by that. So, a minute later when Cliff was looking over Bernie's shoulder at some document that Bernie was looking at, I said, 'Hey, Cliff, you're not looking over Bernie's shoulder so you can read the documents that he is looking at, are you?'"[659] Mr. Sloan acknowledged the incident and apologized before the Special Committee, stating that his comment "was the wrong thing to say to a law enforcement official, or any person trying to do his or her job."[660]

Toward the end of the review, Mr. Nussbaum announced that he would give Mr. Foster's personal papers and effects to Mr. Spafford, the Fosters' personal attorney. Mr. Margolis objected, wanting to maintain the chain of custody within the government.[661] The Park Police officers later told Mr. Margolis: "we feel strongly that we would rather have the files go to Mr. Spafford and Mr. Hamilton because we would rather deal with them in the future than with White House counsel's office."[662] Agent Salter confirmed Mr. Margolis' testimony: "I think we all agreed it would be easier for the Park Police to have access to them if the family's attorney took them and they could be reviewed outside of the west wing of the White House."[663]

During the review, the law enforcement officials requested that Mr. Nussbaum turn on the computer in Mr. Foster's office and examine its contents.[664] According to Mr. Adams, Mr. Nussbaum refused because the computer might contain privileged information.[665] Mr. Adams' memorandum about the review described the incident as follows:

> We asked to have the computer in Mr. Foster's office turned on. Mr. Nussbaum said he did not know how to do so and, in any event, he would not do so in our presence in case there were privileged documents on the computer. He said he would have a staff member examine the contents of the computer later after we left. (Press reports in the morning newspapers of that day had stated, without attribution, that no suicide note had been found on his computer.)[666]

Mr. Spafford's handwritten notes of the meeting confirmed that Mr. Margolis asked Mr. Nussbaum to review the computer.[667] Mr.

Sloan's notes of the meeting listed the computer with an asterisk next to it.[668]

Mr. Foster's burn bag was also in the office at the time of the search. According to Agent Salter, Mr. Nussbaum looked in the burn bag and "said that there was nothing that was pertinent to the investigation."[669] Mr. Spafford's notes listed the burn bag and indicated that it was picked up everyday. Its contents were described as "h/w notes re GC [General Counsel] issues/all wk related". Mr. Sloan's notes, however, contained a more detailed inventory of the contents of the burn bag:

Burn bag
—lists
—background investigations [?]
—references to jobs
—arbitration of claims
—nothing personal
—campaign stuff[670]

On July 27, after Mr. Neuwirth apparently discovered a handwritten note in Mr. Foster's briefcase, Linda Tripp sent the following electronic mail message to Deborah Gorham:

> it seems that whatever was uncovered by [Neuwirth], who summoned our boss, who then summoned BB, who then summoned H—and whatever it was provoked a need for notetaking—and had to do I presume with the burn bag—I can't imagine that anyone as meticulous as this individual was, would have left anything he did not intend to be found.[671]

Ms. Tripp testified that "this individual" referred to Mr. Foster.[672] Ms. Gorham replied to Ms. Tripp's message with the following: "What provoked COS [Neuwirth[673]] to call BWN [Nussbaum] was the briefcase. Once BWN arrived, I forgot who went into VWF's office to get the Burn Bag. But they must feel like a slapstick comedy by not returning the burn bag along with the briefcase."[674] In another message on the same day, Ms. Gorham wrote to Ms. Tripp: "On Wednesday, I told Bernie that VWF had placed shredded remnants of personal documents in the bag. On Thursday, I told Bernie in front of everybody that shredded remnants were in the bag."[675] Ms. Tripp replied: "I recalled the shredded talk, because when we spoke to [Neuwirth] and he briefed us on comportment and interrogation, you mentioned that—that was on Wednesday evening, right? So it took until MONDAY to figure out it should be looked at? Christ. And we're the support staff."[676]

E. Mr. Nussbaum's failure to search properly Mr. Foster's briefcase

Under any view, Mr. Nussbaum's effort to search Mr. Foster's briefcase was seriously deficient. At the time of Mr. Nussbaum's review, the briefcase was located on the floor next to Mr. Foster's desk.[677] Mr. Adams testified that Mr. Nussbaum "picked up the briefcase, announced that this was Vince's briefcase and he would proceed to inventory the items in the briefcase in the same manner as he had inventoried the items on the desk and credenza, and he proceeded to take files and documents from the briefcase and de-

scribe them as he described the other documents in the office."[678] Agent Salter confirmed Mr. Adams' description.[679]

Although notes taken by Mr. Spafford and Mr. Sloan indicated that the briefcase contained a copy of the White House Travel Office Management Review, Mr. Nussbaum did not disclose to investigators that most of the contents of the briefcase pertained to the Travelgate controversy.[680] Among the contents was a notebook in Mr. Foster's hand relating to the entire Travel Office matter. According to Mr. Spafford's notes, Mr. Nussbaum described the notebook as "Notebook of notes of meetings, GC [General Counsel] issues"; Mr. Sloan's notes similarly identified the notebook simply as "Notes re: meeting".[681] After the review, Mr. Nussbaum removed Mr. Foster's notebook and other Travelgate files from the briefcase and kept it in his office until his resignation in March 1994.[682] The notebook and documents in Mr. Foster's briefcase were not turned over to the Independent Counsel until April 5, 1995.[683]

The notebook and documents were never disclosed to Justice Department officials and FBI agents then investigating Travelgate and the handling of documents in Mr. Foster's office. In fact, the Justice Department official responsible for the investigation, Office of Professional Responsibility Counsel Michael E. Shaheen, Jr., found out about the existence of Mr. Foster's notebook through a press report in July 1995. Mr. Shaheen, enraged at Mr. Nussbaum's concealment of the notebook, wrote a memo to Mr. Margolis on the subject. It stated in part:

> We were stunned to learn of the existence of this document since it so obviously bears directly on the inquiry we were directed to undertake in late July and August 1993, by then DAG Philip Heymann—that is, to review the conduct of the FBI in connection with its contacts with the White House on the Travel Office matter and to determine what Vince Foster meant by the statement in his note that "the FBI lied in their report to the AG."
>
> In a July 13, 1993 letter, President Clinton informed then Congressman Jack Brooks that the Attorney General was in the process of reviewing matters relating to the Travel Office, "and you can be assured that [she] will have the Administration's full cooperation in investigating those matters which the Department wishes to review." While these may have been Mr. Clintons' views, the White House personnel with whom we dealt apparently did not share his commitment to full cooperation with respect to our investigation. The recent disclosure of the Foster notebook confirms this.[684]

Mr. Shaheen, after outlining specific instances of noncooperation by the White House, concluded, "The fact that we have just now learned of the existence of obviously relevant notes written by Mr. Foster on the subject of the FBI report is yet another example of the lack of cooperation and candor we received from the White House throughout our inquiry."[685]

Mr. Nussbaum testified that he did not recall, during the course of his review on July 22, ever picking the briefcase up off the floor[686] or looking into the briefcase as he was pulling out the

files.[687] Agent Salter testified, however, that Mr. Nussbaum picked up the bag, opened it by the handles, tilted it, and looked inside.[688] Mr. Adams,[689] Agent Condon,[690] Agent Flynn,[691] Captain Hume,[692] Detective Markland[693], and Mr. Spafford[694] all confirmed that Mr. Nussbaum picked up the bag.

Detective Markland testified that Mr. Nussbaum told the law enforcement officials that the briefcase was empty:

> He would reach down, take papers out of the briefcase, put them on the desk, go through them, put them in the appropriate piles. When he got done, he said that's it, it's empty. After that he picked up the briefcase with both hands, spread it apart a little bit, tilted it, put it back down and shoved it to the back of the room. I could see the briefcase lifted off the floor by him and tilted, put it down, said it was empty two times and moved it back.[695]

Detective Markland was certain that Mr. Nussbaum had looked in the bottom of the briefcase. "He had a clear view of the briefcase on the floor so that he had it spread open with both hands and was looking down into the briefcase."[696]

Agent Salter similarly confirmed that Mr. Nussbaum "stated that it was empty and he turned and placed it behind him against the wall." Mr. Margolis likewise testified that "he did take files out of it, a number of files out of it, and then he told us, I don't remember the exact language, but told us that that was it, that there was nothing more."[697]

Mr. Nussbaum contended that he did not recall the process described by Detective Markland,[698] and his White House colleagues concurred in Mr. Nussbaum's testimony that he did not state that the briefcase was empty.[699]

The general impression of those at the review was that the briefcase was empty when Mr. Nussbaum was finished. Thus, when Mr. Burton found out that Mr. Neuwirth had discovered a note in the briefcase, he said, "Well, you've really got to explain this because I saw Bernie empty it. How could it have been in that briefcase?"[700]

The law enforcement officials present at the review agreed with Mr. Burton's assessment. After the note was discovered, Captain Hume was skeptical that Mr. Nussbaum would not have seen a note in the briefcase on July 22. Major Hines agreed with Captain Hume that "our oldest, blindest detective would have found the note."[701] Detective Markland likewise testified that it was impossible for Mr. Nussbaum to miss a torn up note in the briefcase because "he is looking for documents, he has a co-worker and friend who is dead. One of the things he may be looking for could presumably be ripped up, he is not a stupid person. And he physically picked up the briefcase at one point and tilted it and I saw it come off the floor and tilt, and then he put it down and said it is empty."[702] Detective Markland was blunt in his testimony:

> Q: Do you think he [Nussbaum] was lying?
>
> A: Yes, I think it would have been impossible for him to miss that many torn scraps of yellow paper out of a briefcase that he was searching on the 22nd.[703]

F. The Foster Family lawyer overhears discussion of the scraps of paper in Mr. Foster's briefcase

Michael Spafford testified that, at the end of the review, he remained in the room as the law enforcement officials were leaving. He and Mr. Nussbaum discussed the details of the transfer of Mr. Foster's personal effects to the family. Mr. Sloan then approached Mr. Nussbaum with the briefcase open in his hands:

> At some point in time I was talking to Mr. Nussbaum, and at some point in time Mr. Sloan had the briefcase in his hand. So I didn't see him pick it up. And he made the comment at that point in time that there appeared to be scraps in the bottom of the briefcase.
>
> * * * * * * *
>
> He was standing, and he had it by the handles. And he had it open like this, and he was looking into the briefcase. [704]

According to Mr. Spafford, Mr. Nussbaum's response was dismissive. "Mr. Nussbaum was sitting on the couch or sofa at the time, and his comment was something to the effect that we will get to all that later; we have to look through the materials and we will look through that later." [705] Mr. Spafford had put away his materials and was gathering up Mr. Foster's personal effects at this point, so he was no longer taking notes of the meeting. [706] The following week, right after he found out that Mr. Neuwirth had discovered a note in the briefcase, Mr. Spafford recounted the incident in a privileged conversation. [707]

Mr. Nussbaum and his associate Mr. Sloan both testified that they did not recall this incident. According to Mr. Sloan, "I have no recollection of anything remotely like that incident, and I think that I would recall it if it had happened. Mr. Spafford and I have an honest difference in recollection on this point." [708]

Mr. Spafford's testimony casts a cloud of doubt on the White House's assertions that the note in Mr. Foster's hand was actually "discovered" on July 26. As Mr. Margolis testified to the Special Committee:

> I thought I had this figured out, that the torn-up scraps of paper were not in the briefcase the day that Mr. Nussbaum did the search in our presence. That's what—that was the explanation I came up with, and that somebody—that it had never been there before and somebody put it in afterward or it had been there, somebody took it out and then decided they better put it back because there was public speculation of, you know, where is the suicide note.
>
> So, in my own mind, I speculated that must be what happened. But then, when I picked up the paper one day and saw that Mr. Spafford said that the note had been in there when the search was conducted, I am at a loss now. I just have no explanation. I don't know. [709]

The Justice Department and the FBI did not have the information Mr. Spafford provided to the Special Committee when the FBI

closed its investigation into the circumstances surrounding the discovery of the note.

G. The secretive, real review of the contents of Mr. Foster's office

At the conclusion of Mr. Nussbaum's review of the contents of Mr. Foster's office, the office was again locked, and the key given to Mr. Nussbaum.[710] Detective Markland thought that the office would remain sealed: "It was my understanding that the office would be again posted and left undisturbed."[711]

Although the law enforcement officials understood that Mr. Nussbaum would go through some of the documents again,[712] Mr. Nussbaum did not notify them that he intended to conduct a second search of the office, almost as soon as they left, with Margaret Williams, Chief of Staff to the First Lady.[713]

The circumstances surrounding this second search remained mysterious for some time. The White House did not disclose that Ms. Williams was involved in the review and removal of documents from Foster's office. At a press conference on April 22, 1994, Mrs. Clinton was asked whether Ms. Williams was among those who removed documents from Mr. Foster's office. Mrs. Clinton replied, "I don't think that she did remove any documents."[714] On August 2, 1994, Press Secretary Dee Dee Myers echoed Mrs. Clinton's statement: "I think that it is true that Maggie didn't remove any documents from Vince's office; they were removed by Bernie Nussbaum."[715]

The evidence demonstrates that the foregoing White House statements were false. Mr. Spafford testified that Mr. Nussbaum told Mr. Sloan at the end of the meeting that they would look through the materials again later.[716] Mr. Sloan's notes of the meeting ended with the following: "get Maggie—go through office—get HRC, WJC stuff,"[717] but he testified that "I did not have contemporaneous knowledge of anything beyond what's in my notes on this."[718]

At 3:05 p.m. on July 22, William Burton called Ms. Williams and left a message for her to call back.[719] Twenty minutes later, Stephen Neuwirth called Ms. Williams and left the same message.[720] Ms. Williams testified that she had no independent recollection of these calls other than from the message slips produced to the Special Committee.[721]

Mr. Nussbaum testified that "[s]hortly after the search of Vince's office was completed, I asked Maggie Williams the First Lady's chief of staff, to help me transfer these files to the Clintons and to their personal lawyers."[722] When Ms. Williams got there, "Maggie and I started looking to try to select—making sure we took Clinton personal files rather than any other files."[723] Mr. Nussbaum stated that he and Ms. Williams went through Mr. Foster's office together. "This is Maggie walks in. Let's do this, Maggie. We start doing it. I may walk out to take a call. We complete doing it, but it was done relatively promptly."[724]

Margaret Williams, however, testified that she took no part in the review of the files, that "it seemed pretty much settled" when she entered Mr. Foster's office.[725] Mr. Nussbaum had already selected which files were to be removed.[726] "I can't recall if he had the files boxed that he pointed to or designated as the files that he

wanted me to get to Barnett or whether or not they were just in a stack on the table. But it seemed like whatever he was doing, it was done."[727] She acknowledged, however, that Mr. Nussbaum asked her to "eyeball" the room and see if he had missed something. In this cursory look, Ms. Williams saw a file marked "taxes," picked it up, and placed it among the materials to be removed from Mr. Foster's office.[728]

During this second review, Mr. Nussbaum asked Mr. Foster's secretary, Deborah Gorham, to help locate certain files. Curiously, he specifically asked Ms. Gorham about "the file drawer that contained the President's and First Lady's personal and financial documents."[729] When Ms. Gorham entered, Ms. Williams was in the office with Mr. Nussbaum.[730][22] Ms. Gorham then opened a drawer in Mr. Foster's desk and started reading the names of the file folders. Mr. Nussbaum interrupted her and said that he would take care of this ministerial task himself.[731] She left the office and was called back a bit later.[732] In her second time in the office, she sat down at Mr. Foster's desk and opened his middle desk drawer, where she found Mr. Foster's personal items, "such as checks that were written to Mr. Foster and his life insurance policy."[733]

Mr. Nussbaum testified that he had no recollection of asking Ms. Gorham to point out the Clintons' personal files.[734] Ms. Williams testified that Ms. Gorham was in and out of the office, but that Ms. Gorham did not assist in the review process.[735]

H. The transfer of Clinton personal files to the first family's residence

When Ms. Gorham went into Foster's office at Mr. Nussbaum's request, she saw boxes in the office.[736] Mr. Nussbaum later asked her to have the boxes moved out of Foster's office, and she asked Thomas Castleton, Special Assistant to the White House Counsel, to carry them.[737] According to Ms. Gorham, "Mr. Castleton picked them up and carried them out behind Ms. Williams. The last that I saw of them, noticed them, was in the door just outside of our suite."[738]

Linda Tripp, whose desk was in the same area as Ms. Gorham, testified that she saw Mr. Castleton carry the boxes out of the office. She later learned from Ms. Gorham and Mr. Castleton that the boxes were delivered to the White House residence.[739]

Margaret Williams testified that when Mr. Nussbaum called her earlier in the afternoon, he instructed her to deliver the files to the Clintons' personal lawyers. "[H]e asked me if I would be responsible for getting the personal documents of the President and Mrs. Clinton, which he was compiling, as I understood it, and get them to their personal lawyer, who was at the time Bob Barnett of Williams & Connolly."[740]

Ms. Williams made three calls that afternoon that ultimately determined where the files were moved to. "I called Mrs. Clinton—well, I had three calls. I called Bob Barnett's office. I don't know if I spoke to Bob Barnett or if I spoke to the person who works with him in his office. I called Mrs. Clinton, who was in Arkansas, and

[22] Ms. Gorham actually testified that, to the best of her recollection, this incident occurred the week after Mr. Foster's funeral. Gorham, 8/1/95 Hrg. p. 16.

then I called Carolyn Huber, an assistant to the President who was working in the White House."[741]

In the first call, to Williams & Connolly, Mr. Barnett told her that he would send someone over to pick up the files. "When I had talked to Mr. Barnett after speaking to Mr. Nussbaum, I had indicated that I was going to send some files over as soon as they got together, and he said that he would send someone to get them."[742]

Later in the day, however, Ms. Williams shifted course—for, as she now claims, an innocent reason. She was simply too tired to wait for the messenger to come from a law firm located near the White House:

> And, quite frankly, I was tired. And when I thought about the time it would take—if anyone has tried to get into the White House complex, the time it would take, both to get a messenger, clear them in and actually have them get in and collect the box, I decided I could be at home in that time, and I decided at that point that the sending and the waiting for someone to pick up the documents would have to wait until later.[743]

She then asked Mr. Barnett not to send the messenger.[744]

Claiming to be unsure where to put the Clintons' personal files, Ms. Williams made her second phone call, to Mrs. Clinton in Arkansas:

> I told her that there were personal files that weren't going to get to the lawyer because I was just tired, and I was going to put them in the White House, in the residence, and where did she want them.
>
> * * * * * * *
>
> It was a very short conversation. I know I had three points that I wanted to make. I was tired, the files weren't going, I was going to put them in the residence, where did she want them—four points.[745]

Ms. Williams claimed implausibly not to have previously spoken to Mrs. Clinton about the files. She testified that she did not tell Mrs. Clinton where she was or the contents of the files.[746] According to Ms. Williams, Mrs. Clinton did not ask any questions—not even one, but instead merely told her to call Carolyn Huber.[747] This may seem strange, as it clearly did to the Committee, "but let me suggest to you that I could have told Mrs. Clinton that I was going to put 44 elephants in the White House the day after Vince died and she probably would have said okay."[748]

Ms. Williams then made her third and final telephone call, to Ms. Huber, in order to arrange the transfer of the files to the residence.[749]

Thus, Ms. Williams testified that, because she was tired, she made the independent determination to transfer the files to the residence. "I had determined that I was going to take the files to the residence if they weren't going to the personal lawyer. I made that determination."[750] She claimed to have received no instructions to move the files to the residence, and she called Mrs. Clinton only to ask where the files should be placed.[751]

Mr. Nussbaum had a different—and less convoluted and more plausible—recollection on this key point. He testified that he and Ms. Williams discussed moving the files to the White House residence. "Obviously, I presumed they were going to the residence, and I think Maggie and I probably discussed that. That's the most likely, send them to the residence, and talk to the Clintons and they will be sent from the residence on to their personal attorneys."[752] According to Mr. Nussbaum, he told Ms. Williams to take the files to the residence:

> Simply take the files, give them to the Clintons, which means give them to the Clintons in their residence. . . . And when you get instructions from them as to which personal attorney, although it's probably going to be Williams & Connolly, we'll send it over to Williams & Connolly.[753]

Ms. Williams said okay.[754]

Mr. Castleton had worked on the 1992 Clinton campaign and was serving as a special assistant in the White House Counsel's Office in July 1993.[755] His best recollection is that he picked up "a box or possibly two boxes"[756] in either Margaret William's office or Mrs. Clinton's office.[757] "I believe that the office in which I picked up the box had some dresses, and my recollection is based on having seen her physically carrying them inside the office."[758]

Mr. Castleton and Ms. Williams then took the elevator down to the passage way connecting the offices of the West Wing with the White House residence.[759] They walked through the Palm Room into the residence.[760] They "stopped off for a brief time to pick up a set of keys or a key and proceeded up to the living quarters area of the residence."[761] When they got to the living quarters on the third floor, Mr. Castleton put the box or boxes "in a room off of a passageway" near the elevator.[762]

Ms. Huber had long ties to the Clintons. She served as office administrator for the Rose Law Firm for twelve years and administrator of the Governor's Mansion. Since February 1993, she has been Special Assistant to the President for Correspondence, a position that also called for her to maintain records and files in the residence.[763] She testified that, in the late afternoon on July 22, Ms. Williams "called and said that Mrs. Clinton had asked her to call me to take her to the residence to put this box in our third floor office. We call it an office. And we have a little closet in there where I keep their financial records, so she asked that I would take it up and put it there."[764] Ms. Williams had not previously spoken to Ms. Huber about storing records in the residence.[765]

Ms. Huber told Ms. Williams to call her when she was ready to come over to the residence:

> I would meet them at the elevator that goes up into the residence. I met her and this young man—I do not remember him—Mr. Castleton. We went to the third floor. We went into the room where we have our office. There's a little closet in there. I got the key out of the desk drawer, unlocked the closet and he put the box in.[766]

Ms. Huber then locked the door. She put the key back into the drawer, went downstairs, and left for home.[767] She did not see any dresses.[768]

Although Ms. Huber testified that the boxes were transported between 4:00 p.m. to 6:00 p.m.,[769] records maintained by the Secret Service indicate that Ms. Huber, Ms. Williams, and Mr. Castleton went up to the third floor of the Residence at 7:25 p.m. and came down at 7:32 p.m.[770]

I. The reaction of law enforcement officials to Mr. Nussbaum's search

When Mr. Adams and Mr. Margolis returned to the Justice Department after Mr. Nussbaum's search of Mr. Foster's office, they were angry. Phil Heymann remembered that "they were hurt and felt a little bit less than degraded, but almost degraded by the way it was done. And they were angry. And I remember their telling it to me in a way that they must have known was calculated to make me angry."[771] Mr. Margolis and Mr. Adams complained to Mr. Heymann that the law enforcement officials were not permitted to look at the documents and that they did not have "any role at all to play with regard to decisions made about the documents."[772] Cynthia Monaco's notes confirmed Mr. Heymann's recollection:

> I later heard from David that in fact what had happened was that Bernie looked at the documents and told him that a privilege was asserted or not asserted. This was in contrast to what Phil and Bernie had decided the day before.[773]

Mr. Heymann recalled a specific complaint that Mr. Nussbaum had asserted executive privilege "in a fairly casual way."[774] Because Mr. Nussbaum alone saw the documents, "nobody knows what documents it is that Executive privilege is being asserted as to."[775] Mr. Margolis testified that Mr. Nussbaum would not show him a clipping of a newspaper article on the grounds that it would be "an invasion of the President's deliberative process."[776]

In any event, Mr. Heymann questioned the validity of Mr. Nussbaum's assertion of executive privilege against the Justice Department, the executive agency supervising the Office of the Legal Counsel, which had a primary function in protecting executive privilege. "[T]he people who were going to have access to the documents would be officials of the Department of Justice. . . . It wasn't like this was an outside body to whom there might be more reason to assert Executive privilege."[777] [23]

The Justice Department officials thought that they had been used by the White House to dress up Mr. Nussbaum's search of the office,[778] and they wanted to minimize the perception that law enforcement had actually participated in the search. According to Mr. Margolis: "Phil was troubled by that, and I think that's part of what he was talking about, that the impression was created that

[23] Mr. Heymann's view finds support from independent commentators. See, e.g., Jeffrey K. Shapiro, Bernard Nussbaum's Novel View of Privilege, *Washington Times*, August 30, 1995, p. A15; Lester Brickman, Foster's Paper: What Executive Privilege? *New York Times*, August 2, 1995, p. A19.

the Department of Justice did play a far larger role in the search than in fact it did." [779]

After the search, the press reported that Mr. Foster's office had been searched under the "supervision" of the Justice Department. This report prompted the Justice Department to issue a correction. According to Mr. Margolis: "I worried about something like that, and I remember with Mr. Heymann's permission, telling our press office to correct that, that the search was conducted in the presence of the Justice Department." [780] Mr. Heymann testified that "I directed that the Department of Justice put out a correction that we had not supervised, that we had simply been there as observers while the investigation was carried out—while the search was carried out by the White House counsel." [781]

After talking to Mr. Margolis and Mr. Adams on the evening of July 22 about Mr. Nussbaum's search, Mr. Heymann became very angry. He said to Mr. Margolis, "You know, Bernie was supposed to call me back and he didn't, and I am going to talk to him." [782] Mr. Heymann then went home and called Mr. Nussbaum. "I told him that I couldn't imagine why he would have treated me that way. How could he have told me that he was going to call back before he made any decision on how the search would be done and then not call back?" [783] Mr. Heymann said to Mr. Nussbaum, "You misused us." [784] "I meant that he had used Justice Department attorneys in a way that suggested that the Justice Department was playing a significant role in reviewing documents when they had come back and told me they felt like they were not playing any useful role there." [785]

Exasperated with Mr. Nussbaum's handling of the search, Mr. Heymann asked him: "Bernie, are you hiding something?" [786] According to Mr. Heymann, Mr. Nussbaum assured him that "no, Phil, I promise you we're not hiding something." [787]

Incredibly, Mr. Nussbaum denies recalling this heated conversation with Mr. Heymann.[788]

V. JULY 26, 1995

A. The existence of the torn-up note is finally revealed to law enforcement

The President, Mrs. Clinton, and most of the senior White House staff traveled to Arkansas for Mr. Foster's funeral on Friday, July 23, 1993. On Monday, July 26, 1993, Mr. Nussbaum asked Mr. Neuwirth to prepare an inventory of the remaining contents of Mr. Foster's office.

In the course of preparing the inventory, according to Mr. Neuwirth, he made an unexpected discovery in Mr. Foster's briefcase:

> On Monday the 26th at Mr. Nussbaum's request I was preparing an inventory of the contents of Mr. Foster's office. One of the things that I did in connection with that inventory was to put into a box toward the latter part of my inventory process items that belonged to Mr. Foster personally, like photographs. And in the process of putting materials in that box I saw the brief bag leaning against the back wall of Mr. Foster's office. I understood it to be

> empty. I knew that it belonged to Mr. Foster. I picked it up and brought it to put into the box. I had laid two large—one or two or maybe even three large black and white photographs of Mr. Foster and his daughter with the President on the top of the box, and in an effort to avoid damaging those photographs, I turned the briefcase to fit it or the brief bag to fit it into the box, and in the process of turning it, scraps of paper fell out of the brief bag.[789]

Mr. Neuwirth testified that, after he saw the pieces of paper falling out of the briefcase, he picked them up. At that point, he recognized that "there was handwriting on them that looked like Mr. Foster's handwriting, with which I was familiar."[790] He then looked in the bag for more pieces of paper. Mr. Neuwirth then went to Mr. Nussbaum's office, which was adjacent to Mr. Foster's, and attempted to reassemble the torn up note on Mr. Nussbaum's conference table.[791]

Mr. Neuwirth testified that, after he assembled the note, he went out to the secretarial area of the White House Counsel's suite and asked for Mr. Nussbaum.[792]

Mr. Nussbaum testified that he came back to his office at about 3:00 p.m. and found Mr. Neuwirth sitting at the conference table putting scraps of paper together.[793] Mr. Nussbaum said, "What are you doing?" Mr. Neuwirth replied, "I just found these. I was packing Vince's briefcase to send back along with his other personal effects and I turn over the briefcase and these things floated out. And I looked down and saw handwriting on them so I picked them up to see if I could put them together, and I'm putting them together."[794] When Mr. Neuwirth was done, he told Mr. Nussbaum to look at the assembled note. "[W]e saw that it was in Vince's handwriting, and it was a list of things, reflecting things that were troubling Vince."[795]

Mr. Neuwirth discovered 27 pieces of a single sheet of yellow lined paper, 3-hole punched, which had been torn into 28 pieces.[796] One piece was missing from the bottom third of the page, which appeared to be blank. On the top approximate two-third of the page were written the following:

> I made mistakes from ignorance, inexperience and overwork
>
> I did not knowingly violate any law or standard of conduct
>
> No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the travel office. There was no intent to benefit any individual or any group.
>
> The FBI lied in their report to the AG
>
> The press is covering up the illegal benefits they received from the travel staff
>
> The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation
>
> The Ushers Office plotted to have excessive costs incurred, taking advantage of Kaki and HRC
>
> The public will never believe the innocence of the Clintons and their loyal staff

The WSJ editors lie without consequence
I was not meant for the job or the spotlight of public life in Washington. Here ruining people is considered sport.[797]

Although the note was not signed, the FBI determined that it was written in Mr. Foster's hand.[798] [24]

Mr. Nussbaum then went to White House Chief of Staff Mack McLarty's office to tell him about the note, but realized that Mr. McLarty was not there; he was in Chicago with the President. "So I saw Burton, who was a logical person to talk to in any event because he was the one who had been dealing with me, and I said look, Steve Neuwirth found something, and you should see it and let's go up and see it. And we walked up, and he went over to read it."[799] According to Mr. B: "Mr. Nussbaum came into the chief of staff's reception area asking for Mr. McLarty. We informed him that he was out of town. Mr. Nussbaum asked me to accompany him to his office, and I did that."[800] Mr. Burton went to Mr. Nussbaum's office and read the note in front of Mr. Nussbaum and Mr. Neuwirth.[801]

Deborah Gorham and Linda Tripp were at their desks in the secretarial area of the White House Counsel's suite, right outside Mr. Nussbaum's office, on the afternoon of July 26. Ms. Gorham testified that Mr. Neuwirth came out of Mr. Foster's office with Mr. Foster's briefcase and went into Mr. Nussbaum's office. After Mr. Nussbaum returned with Mr. Burton, according to Ms. Gorham, others came into Mr. Nussbaum's office. "And then I believe Mr. Burton, Bill Burton might have appeared next going into Mr. Nussbaum's office, and then other people, I think, came in straggling, but I don't recall who they were."[802]

Ms. Tripp recalled that she later saw Clifford Sloan in Mr. Nussbaum's office. "It was later in the evening; I was in the reception area. The door to Bernie's office was closed. At one point in time Cliff Sloan came out of Bernie's office and asked me if it was possible to remove one of the typewriters to bring back into Bernie's office."[803] Ms. Tripp asked him why he wanted a typewriter when there were five computers in the suite, and Mr. Sloan replied that he needed a typewriter.[804] There were two typewriters in the office, but Ms. Tripp explained to Mr. Sloan that "the way they were configured and plugged in under all the massive furniture with the taping to the carpet and the commingling of all the myriad cable underneath, that it would be a very difficult endeavor, and then I offered to get him a typewriter—excuse me, from elsewhere."[805] Mr. Sloan then said that he didn't want her to do that, and walked back into Mr. Nussbaum's office. Mr. Nussbaum did not recall wanting a typewriter in his office, although he remembered wanting to transcribe the note.[806] Mr. Sloan testified that he was sure that Ms. Tripp was mistaken, since he did not know of the note until the next day, July 27.[807]

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[24] It has been reported, however, that a panel of experts—including a forensics authority from Oxford University—concluded that the note was not in Mr. Foster's hand. See, e.g., Christopher Ruddy, "Experts Say Foster 'Suicide' Note Forged," Pittsburgh Tribune-Review, Oct. 25, 1995. Because the White House and the Foster family's attorney did not provide the Special Committee with obtain original samples of Mr. Foster's handwriting, the Special Committee was not able to conduct an investigation into this matter.

The next morning, on July 27, Ms. Gorham and Ms. Tripp exchanged a series of electronic mail messages about the peculiar circumstances surrounding the discovery of the note. Ms. Gorham wrote to Ms. Tripp: "Everything from his briefcase is missing. . . . I do not know what else was in there but the bag is totally cleaned out except for one collar stay."[808] In another message to Ms. Tripp, Ms. Gorham wrote: "On Wednesday, I told Bernie that VWF had placed shredded remnants of personal documents in the bag. On Thursday, I told Bernie in front of everybody that shredded remnants were in the bag."(809) Ms. Tripp replied that she remembered Ms. Gorham telling Mr. Nussbaum about the shredded pieces at the meeting on Wednesday, July 21, when the White House Counsel's office briefed the staff about the Park Police interviews. Ms. Tripp's message ended on a note of exasperation: "So it took until MONDAY to figure out it should be looked at? Christ. And we're the support staff."[810]

Ms. Gorham testified that, some time in the evening of July 26 or the morning of July 27, Mr. Nussbaum grilled her about what she had seen in Mr. Foster's briefcase in the previous week:

Ms. GORHAM. Mr. Nussbaum asked me to sit at the chair on the opposite side of his table and asked me if I had seen anything in the bottom of Vince's briefcase. And I told him that I had only seen the color yellow, and I had seen the top of the Goldcraft third cut folder, and that was all I had seen.

Mr. CHERTOFF. When you say a Goldcraft third cut folder, you mean a folder like this, a manila-type folder?

Ms. GORHAM. Yes, sir.

Mr. CHERTOFF. And you told Mr. Nussbaum you had seen that in Mr. Foster's briefcase at an earlier time?

Ms. GORHAM. I told him I had seen the top of that cut of the folder.

Mr. CHERTOFF. And what did Mr. Nussbaum say to you?

Ms. GORHAM. He asked me repeatedly what I had seen. He asked me if the yellow could have been paper. Could it have been lined paper? Could it have been—what it could have been? And I told him repeatedly, numerous times, that all that I had seen out of the corner of my eye was the color yellow and the top of a Goldcraft third cut folder such as you have.

Mr. CHERTOFF. Was there anybody else in the room during this discussion with Mr. Nussbaum?

Ms. GORHAM. Not that I recall.

Mr. CHERTOFF. Have you previously described this as an interrogation?

Ms. GORHAM. That is exactly how I have described and that is how—that is what took place.

Mr. CHERTOFF. And would you agree that he was adamant and very forceful in putting his questions to you?

Ms. GORHAM. Indeed I would.

Mr. CHERTOFF. I take it this experience is still very vivid in your mind?

Ms. GORHAM. Absolutely.[811]

Mr. Nussbaum testified that he had "some kind of a recollection" of questioning Ms. Gorham, but he denies grilling or interrogating her.[812] He did not recall the specifics of his conversation with Ms.

Gorham. He did not recall her mentioning that she saw file folders or yellow paper in the briefcase.[813]

B. The White House's decision not to disclose the note immediately to law enforcement

At one point in the afternoon, Mr. Nussbaum talked with Mr. Sloan and Mr. Neuwirth about what to do with the note. They agreed that the note was not a suicide note, but Mr. Nussbaum knew it was the type of document in which the law enforcement officials would have a strong interest. "So it was not clearly a suicide note and therefore, the issue was raised, is this the kind of thing that we were searching for that day. That was—to me it was clear it was the kind of thing."[814] Mr. Burton suggested that the note was possibly shielded from disclosure by the attorney-client privilege, or other privacy interests.

According to Mr. Nussbaum, Mr. Burton argued that they should research these issues before deciding whether to turn the note over to the authorities.[815] Mr. Burton testified that, although he did not initiate the discussion, he recalled that "an issue of privilege came up with respect to the note in that it was my understanding that counsel's office was going to look to see if there was anything in the note that gave rise to privilege."[816] Although Mr. Nussbaum testified that Mr. Burton wanted to know whether there would be "an obstruction of justice issue" if they did not disclose the note to the authorities, [817] Mr. Burton testified that "[i]t was never considered seriously or trivially or any other way that the note would not be turned over. From the time the note was found, certainly from the time I knew of the existence of the note, that was never in doubt."[818]

Mr. Nussbaum testified that, out of concern for the privacy of Mrs. Foster and respect for the President, he decided to wait until the next day, July 27, before advising the police of the existence of the note. "I don't want Lisa Foster to hear about this on the radio or on TV:"[819]

> Now, I know I can call her up and read it to her on the phone, but I wanted her to see this thing. I wanted her to be able to digest it. And she's in Arkansas. I called Jim Hamilton. I had a concern about Lisa Foster. That was really my primary concern. I had a concern about Lisa Foster, so I called Hamilton, and I discovered—I believe I called Hamilton. I discovered shortly thereafter that Lisa was going to be in the next day. She was coming in to Washington the next day in connection with—she's returning to Washington after the funeral. She's going to be in the next day on the 22nd. The President was out of town. He was to come in late that night. He would be available the next day.
>
> I thought it was common decency, before I turn this over to law enforcement, to let Lisa see it and digest it and let the President see it and digest it, and I didn't see any harm in letting them have that. In the meantime, we could do the research that Burton was talking about, although I didn't expect that research was going to produce anything that would change my decision. So I made the deci-

> sion to show the note the next day to Lisa and to show it to the President if he wanted to see it when he came in the next day.[820]

Mr. Nussbaum and Mr. Burton then called Mack McLarty, who was in Chicago with the President. Mr. McLarty told David Gergen, who recommended that Mr. McLarty tell the President and then promptly turn the note over to the authorities.[821] Mr. McLarty decided, however, to wait until the next day, when the President returned to Washington, D.C., to take any action, including informing the President of the existence of the note.[822]

Mr. Nussbaum assumed, on July 26, that Mr. McLarty would tell President Clinton about the note.[823] Senator Grams questioned Mr. McLarty's decision to wait, even though Mr. Foster was a personal friend of the President and the "apparent suicide of the White House deputy counsel was big news at the time."[824] Mr. McLarty replied:

> When the note or scraps of paper were reported to me by telephone, I was perplexed when I heard of it. We had just put, had the funeral for Vince and were moving forward, and I was perplexed by it. I was in a hotel room in Chicago. I didn't understand it. It did not refer to suicide. Did not have a salutation or a signature. At that point there were issues—there were legal issues that were raised with me that I took seriously, that were raised in a serious way, that Mr. Nussbaum and others wanted to reflect on. There was the issue of notifying the family. And because I was perplexed by the note, I did want to see it, and I simply felt that it was not the correct course at that time to tell the President of a situation that was really not complete, that had not been reviewed and we had no plan of action.[825]

Mr. Gergen took a commercial flight back from Chicago on July 26. The President and Mr. McLarty flew back to Washington together, but Mr. McLarty claims that he did not tell the President about the note during the entire flight.[826] Mr. Nussbaum did not wait at the White House on July 26 for the President's return.[827]

C. Mrs. Clinton and Susan Thomases are told of the "discovery" of the Note

In the afternoon of July 26, while Mr. Burton was still in Mr. Nussbaum's office, Mr. Nussbaum left to get Mrs. Clinton. Mr. Nussbaum recalled Mrs. Clinton's having an emotional reaction when she saw the note. "She walked over and glanced—looked at it. I may have told her—this is the thing. I may have told her look, we found something Vince wrote. I'm not positive of it. I don't have a specific memory of it, but it's something Vince wrote. It's something you should read. So my best memory is she sort of knew what she was going to look at, and she just—[S]he looked at it, and all of a sudden she had some sort of an emotional—she began to read it but she didn't read it. She didn't appear to read it. When she sat down and looked at it, she just said—she had an emotional reaction and she said I just can't deal with this. This is like—I just

can't deal with this. Bernie, you deal with this. And she walked out of my office."[828]

In Mr. Burton's view, however, Mrs. Clinton had a different reaction to the note. According to Mr. Burton, as Mr. Nussbaum was reading her the note, "she interrupted him and questioned her having been brought into the room and left the room."[829] "She explained that she did not understand why she had been brought into the room, that the decisions to be made concerning the privilege issues, notifying the Foster family were other people's decision to make and she left the room."[830]

Mr. Nussbaum testified that Mrs. Clinton did not discuss with him at all the handling of the note.[831]

Susan Thomases testified that, at some point on July 26 and before even the President, the Foster family, the Park Police, or the Department of Justice were notified,[832] Mr. Nussbaum called and told her about the note. "The substance is that a writing had been found and that he was going to wait until the President got back to show it to the President."[833] Mr. Nussbaum denied contacting Ms. Thomases on July 26 about the note.[834]

The Park Police and the FBI later interviewed, among others, Mr. Burton, Mr. Gergen, Mr. McLarty, Mr. Neuwirth, Mr. Nussbaum, and Mr. Sloan about the circumstances surrounding the discovery of the note. None of the reports of these interviews mentioned the fact that Mrs. Clinton and Ms. Thomases were among those who saw or knew of the note before it was disclosed to the law enforcement officials.[835]

Mr. Neuwirth testified that, although he was not asked about it, he told the FBI during his interviews that the Mrs. Clinton had been made aware of the note:

> I remember being asked questions. I remember being conscious of the fact that when they asked me questions about what happened on that night, I had not been asked questions that would have covered the period when the First Lady was present, but I went out of my way at the conclusion of the interview to tell them—when they asked me who else I knew had been told about the note, I went out of my way to point out that the First Lady was one of the people that I knew had been made aware of the note prior to the time that I understood it had been given to law enforcement officials. And I'm very conscious of the fact that I made that effort precisely because I didn't think I had been asked a question earlier in which there would have been an opportunity to talk about the fact that the First Lady had come to look at it that night.[836]

However, the FBI report of Mr. Neuwirth's interview, which summarized his account of the time between the discovery of the note and its disclosure to law enforcement, did not mention that Mrs. Clinton had been told of the note—an important fact that a trained agent would almost certainly include in such a report.[837] The handwritten notes of that interview, taken by Agent Salter, recorded a lengthy narrative by Mr. Neuwirth of the events on July 26 and July 27. But nowhere in the narrative, according to the

notes, did Mr. Neuwirth refer to either Mrs. Clinton or Ms. Thomases.[838]

Mrs. Clinton's schedule for July 27, the day after the discovery of the note, indicated that Mrs. Clinton had a private meeting in her office with Mr. Nussbaum and Mr. Neuwirth from 2:30 p.m. to 3:00 p.m.—several hours before the note was turned over to the authorities.[839] The schedule, however, did not specify the topic of the meeting.

Mr. Burton testified that he does not recall any discussions in the White House about whether the law enforcement authorities should be told that Mrs. Clinton had seen the note.[840] Curiously, Mr. Burton's notes of a staff meeting on July 28, the day after the note was disclosed to the authorities, listed "HRC" with a telling arrow pointing to an adjacent letter "n".[841] Mr. Burton testified that he did not know what his own notes—particularly the reference to the letter "n"—meant.[842]

VI. JULY 27,1993

A. The review and transfer of Clinton personal files from the White House residence to Williams & Connolly

On the afternoon of July 22, and after Mr. Nussbaum's real search, Thomas Castleton, an assistant in the White House Counsel's office, helped Margaret Williams remove boxes from Mr. Foster's office to the White House Residence. As they were walking, Ms. Williams told Mr. Castleton that the boxes had to be taken to the residence for an important purpose: the President or Mrs. Clinton needed to review their contents.[843] According to Mr. Castleton: "What [Ms. Williams] said was that the boxes contained personal and financial records pertaining to the First Family and that we were moving the boxes to the residence for them to be reviewed."[844] Ms. Williams said that the files needed to be reviewed because "they did not know what was in these files and needed to determine whether there was something of a personal nature or not."[845] "She said that the President or the First Lady had to review the contents of the boxes to determine what was in them."[846]

Ms. Williams did not recall any such conversation with Mr. Castleton. Ms. Williams testified that such a conversation would be out of character for her because "it is highly unlikely I would have this kind of discussion with an intern:"[847]

> Well, I would like to say affirmatively I did not say it because I can't imagine why I would have that discussion with an intern about the files going to the President and the First Lady. I know that I told him we were going to the residence because I figured he needed to know where he was going, but I can't imagine that I said more than that. So I do not recall having that discussion with him.[848]

Mr. Castleton took exception with Ms. Williams' characterization of his role at the White House: he was not an intern, but a special assistant to the White House Counsel.[849]

Ms. Williams claimed that no one reviewed the Clintons' personal files while they were stored in the residence. According to Ms. Williams, Carolyn Huber gave Ms. Williams the key after Ms. Huber locked the closet on Thursday, July 22.[850] Ms. Williams put the key

on her key chain and held it through the weekend, taking it with her to Mr. Foster's funeral in Arkansas.[851]

Ms. Huber, however, testified that, after she locked the closet on July 22, she returned the key to its usual keeping place, in an envelope in the desk drawer of the office in the residence.[852] The envelope was marked clearly: "It said 'key to the closet."[853] The drawer was not locked, according to Ms. Huber, and therefore the key was readily available to anyone with access to the residence.[854]

The plot thickens. Although Ms. Williams testified that the files remained undisturbed until she transferred them to Williams & Connolly on July 27, Mr. Nussbaum testified that, a couple of days after the files were removed from Mr. Foster's office on July 22, Ms. Williams returned a Mr. Foster file to him because it should not have been among the Clintons' personal documents. "I'm not quite sure Ms. Williams returned the document. I believe Ms. Williams returned the document. A residence file was returned. There was a file that was returned because we were making an effort to send over solely personal documents which had been used—yes—which were in the White House counsel's office because there was an official purpose."[855] [25]

Mrs. Clinton's official schedule showed that she had two private meetings with Ms. Williams on July 27, one from 9:15 a.m. to 9:30 a.m. and another from 10:30 a.m. to 11:30 a.m.[856] Although the schedule listed Mrs. Clinton's office as the location of the meetings, records of movements within the White House maintained by the Secret Service and the White House Usher's Office indicate that Mrs. Clinton did not leave the White House Residence at all that day.[857] Records maintained by the Secret Service and the White House Usher's office indicated that Ms. Williams was in the White House Residence on July 27 from 10:31 a.m. to 12:05 p.m., 1:35 p.m. to 2:25 p.m., and 3:20 p.m. to 4:43 p.m.[858]

Ms. Williams testified that on July 27, Robert Barnett, a partner at the law firm Williams & Connolly and the Clintons' personal attorney, came to the White House to see Mrs. Clinton. By chance, Ms. Williams claims that she ran into Mr. Barnett while he was on the second floor of the White House Residence talking to Mrs. Clinton.[859] According to Ms. Williams, Mr. Barnett said, "you know what? It would make sense to get those documents over to the office,"[860] referring to the documents that Ms. Williams had moved from Mr. Foster's office to the Residence on July 22. Mr. Barnett then called from the residence for another person from Williams & Connolly to come for the documents. When that person arrived, according to Ms. Williams, she accompanied him to the residence, unlocked the closet with the key on her keyring, and pointed the documents out to him.[861]

Mr. Barnett had a far different and more believable recollection of Ms. Williams' role in the transfer of the files. He testified that Ms. Williams called him specifically to arrange a transfer of the files, and "I spoke with her about picking up the documents."[862] On July 27, he went to the White House to pick up the documents.

[25] After providing this testimony, Mr. Nussbaum consulted with counsel. When the deposition resumed, Mr. Nussbaum revised his testimony: "As I indicated in my testimony, look back at the record, I'm not certain I even had this discussion with Ms. Williams. I'm not positive. It's either Ms. Williams or Mr. Neuwirth I had a discussion with." Nussbaum, 7/13/95 Dep. p. 409.

Capricia Marshall, Ms. Clinton's assistant, met him at the gate, signed him in with the Secret Service, and escorted him to the Second Floor to wait for Ms. Williams.[863] Records show that Mr. Barnett arrived at the White House at 2:57 p.m.[864], registering "First Lady" as his visitee with Secret Service, and entered the White House Residence at 3:03 p.m.[865] About 20 minutes later, Ms. Williams came and escorted Mr. Barnett up to the third floor closet where the files were kept.[866] The box was open, and Mr. Barnett went through the files, briefly examining their contents.[867] When he finished the review, Mr. Barnett asked Ms. Williams for tape and sealed the box.[868]

Mr. Barnett then called Ingram P. Barlow, the comptroller of Williams & Connolly, to come over and pick up the box from the White House.[869] Mr. Barnett gave Ms. Williams Mr. Barlow's name and social security number for her to clear him in with the Secret Service, and left at 4:30 p.m.[870] Mr. Barnett denied seeing Mrs. Clinton while he was in the White House Residence.[871]

Mr. Barlow of Williams & Connolly arrived at the White House Residence at 4:38 p.m.[872] He was escorted to the third floor closet, where he took possession of the box. Consistent with Mr. Barnett's testimony, the box was sealed in packing tape when Mr. Barlow saw it in the closet.[873]

Mr. Barnett called Susan Thomases at her office on July 26, 1993 and left a message.[874] Ms. Thomases did not recall returning Mr. Barnett's call, nor did she recall making plans to go to the White House on July 27.[875] Secret Service records, however, indicate that Susan Thomases entered the White House at 2:50 p.m. on July 27.[876] Because Ms. Thomases had a White House pass at that time, the Secret Service entry records did not list the purpose of her visit or her intended destination. Records maintained at the White House Residence, however, indicated that she entered the Residence at 3:08 p.m., five minutes after Mr. Barnett. Records maintained by the White House Residence Usher's Office further indicate that Mr. Barnett and Ms. Thomases exited the White House Residence together.[877] Mr. Barnett testified, however, that he did not recall seeing Ms. Thomases in the White House Residence.

Although Mr. Barnett testified that he did not recall seeing Mrs. Clinton during his visit on July 27, Ms. Williams testified that she recalled seeing Mr. Barnett talking with Mrs. Clinton when she ran into him in the Residence that afternoon.

Telephone records produced by Ms. Thomases indicate that she called Patricia Solis Doyle, Mrs. Clinton's scheduler, on the evening of July 26, 1993.[878] Ms. Thomases does not recall why she spoke with Ms. Solis, and does not recall whether she called Ms. Solis to schedule an appointment to see Mrs. Clinton.[879]

On the morning of July 27, Ms. Solis called Ms. Thomases in her New York office and left a message. The message read, "HRC wants to see you today."[880] The message contained a check mark, which, according to Ms. Thomases, signified that she had returned the call. Indeed, telephone records indicate that, at 11:33 a.m. on July 27, Ms. Thomases called Ms. Solis from her Washington office and spoke for 10 minutes.[881] Her telephone records further indicate that, in the 40 minutes between 12:20 p.m. and 1:00 p.m. on July 27, Ms. Thomases called the White House four times. Later that

afternoon, at 1:30 p.m., Ms. Thomases received another message from Evelyn Lieberman in the First Lady's office. It stated, "Please call Hillary." [882]

Ms. Thomases testified that as of the end of the day on July 26, she did not have any firm plan or compelling reason to come to Washington the next day, July 27.[883] Her normal day to be in Washington was Wednesday. According to Ms. Solis, it was not customary for Mrs. Clinton to summon Ms. Thomases to Washington on a particular day. "That's not normally the way it works. If Mrs. Clinton wanted to see Susan, she'd ask is she in town, do you know what her schedule is, can she come by." [884]

Interestingly, Ms. Thomases professed that she could not explain why she went to Washington on July 27. Ms. Thomases did not recall scheduling a meeting with or seeing Mrs. Clinton on July 27.[885] Indeed, Ms. Thomases testified that she did not even have a specific recollection of even being in the White House Residence that day. Secret Service records and the White House Residence Usher's logs indicate, however, that Ms. Thomases arrived at the White House at 2:50 p.m. on July 27, and went up to the second floor of the White House Residence at 3:08 p.m.[886] In addition, records indicate that Ms. Thomases made two telephone calls from the White House Residence on July 27, 1993, and charged them to her telephone calling card.[887]

B. White House deliberations about the handling of the note

In the morning of July 27th, after the regular White House staff meeting, Mr. Nussbaum met with Mr. McLarty, Mr. Burton, and Mr. Gergen to discuss how Mr. Foster's note should be handled.[888] Mr. McLarty thought "the note would need to be provided to the authorities, and it eventually would become public knowledge; either we would disclose it or it would become public knowledge." However, there were "issues outstanding" that he wanted to discuss with the other White House officials.[889] According to Mr. Gergen:, the meeting was resolved in favor of disclosing the note to the authorities as soon as possible. "[T]here was a unanimous agreement that the issues that had been raised the night before had been resolved in the minds of those who had raised them, and it was a unanimous agreement to go forward." [890] Mr. McLarty confirmed that at the meeting the "concerns over executive privilege had been settled." [891]

Jim Hamilton, an attorney representing the Foster family, joined the meeting halfway through, at about 11:00 a.m. He introduced a concern that was new to Mr. Gergen:

> He took the position—I do not know whether, I do not know whether he knew about the existence of the note prior to coming in the room, or whether he was told, but he was very strongly of the view that before anything was done with the note, Mrs. Foster needed to be informed of the contents and needed to be informed that there was a note, and he needed to sit down with her and talk about it.[892]

Mr. Hamilton told those at the meeting that Mrs. Foster was flying from Arkansas, and would arrive early in the afternoon, at about

2:30 p.m.[893] Mr. Hamilton said that he agreed that the note should be turned over to the authorities, but he did not know what Mrs. Foster's reaction would be to the note.[894] After consulting with Mrs. Foster, Mr. Hamilton returned to the White House and said that Mrs. Foster assented to turning the note over to the authorities.[895]

White House officials also discussed how to disclose the note to the authorities. "I think there'd been some discussion in our staff meetings about whether it ought to go to the Justice Department or the Park Police," Mr. Gergen said. "There was some uncertainty on the part of the White House about what the appropriate channel was to make sure it got there."[896] The officials discussed whether the Park Police could be trusted not to leak the existence or contents of the note to the press.[897] They also feared that disclosure of Mr. Foster's note might prompt the authorities to reopen investigations into the matters spelled out in the note. "I recall there was some speculation about whether the contents of the note might prompt legal authorities to look further in to the issues raised by the note. In other words, to go beyond the scope of the immediate investigation over his mental state."[898]

The controversy over the White House Travel Office was specifically mentioned.[899] According to Mr. Gergen:

> I believe with regard to the Travelgate matter [he] said the FBI lied. He accused the FBI of lying, I believe—I can't—I don't remember the exact details of this, but there was a discussion within the White House of whether upon receipt of that or once the note was turned over to the authorities—this was discussions I recall we had on Tuesday, on the day when the note was turned over—whether that would prompt or the Attorney General would feel forced, having received that, to launch an investigation about what he was talking about. You know, did the FBI lie? That was the point that I was trying to make in the deposition. Inevitably, there were points raised in the note that were clearly going to prompt a lot of attention by the press and by others, and that particular point was on the one about the FBI lying.[900] [26]

The documents produced by the White House to the Special Committee included two pages of undated, handwritten notes by Bill Burton. At the top the first page, Mr. Burton listed the names of the persons present at the meeting on July 27: Jim Hamilton, Bernard Nussbaum, Bill Burton, David Gergen, Mack McLarty.[901] Further down in his notes, Mr. Burton wrote "2 pts" with an arrow pointing to the following:

> far happier if disc.
> if someone *other* than Bernie
> if worried about usher's office discuss with me.[902]

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[26] After the note was turned over to law enforcement authorities, Mr. Heymann referred it to the Office of Professional Responsibility (OPR) and the Criminal Division of the Justice Department with the following directive:

I would like OPR to review the assertion in the notes dealing with the FBI and to give me its recommendation as to what, if any, further inquiry is necessary and appropriate. I would like the Criminal Division to review the other assertions in the notes and to give me its recommendation as to what, if any, further inquiry is necessary and appropriate.

Justice Department Document D 000057.

On the second page, Mr. Burton wrote the following: "We have disc a personal writing of Mr. Foster reflecting his depressed state. In deference to the family, no further commt."[903] Mr. Burton testified that "disc." on the first page meant "discussed" or "disclosed", and the same notation of the second page was shorthand for "discovered". Senator Grams noted the inconsistency in Mr. Burton's answer and pointed out further that, on the first page, when Mr. Burton meant "discussed" in the last line of the notes, he wrote out the entire word. Mr. Burton explained that he used a variety of abbreviations. "I use some standard Associated Press abbreviations; I use some of my own shorthand. Sometimes d-i-s-c means discussed. Sometimes it means discovered. Sometimes it means disclosed."[904]

C. The President is told of the note

Mr. McLarty called Mrs. Foster's house after the morning meeting and then learned that Mrs. Foster was traveling back from Arkansas to Washington.[905] She arrived in Washington in the afternoon, at about 2:30 p.m. She was then taken to the White House to view the note and agreed to disclose the note to the authorities.[906]

Even though it had been agreed at the morning meeting that the President would be notified as soon as possible so that the note could be turned over to the authorities, Mr. McLarty claims that he did not notify the President until late in the afternoon because the President had a full schedule and because Mrs. Foster had not been notified.[907] At 6:00 p.m.,[908] Mr. McLarty, Mr. Gergen, and Mr. Nussbaum went into the Oval Office to tell the President about the note. According to Mr. McLarty, Mr. Nussbaum explained to the President the existence of the note and either "read him the note or outlined what was in the contents." The three men explained to the President that Mrs. Foster had already been notified, or would be shortly, and that they intended to turn the note over to the authorities. Mr. McLarty testified that the President accepted their report, and "he said do with it as you think is right, give it to the authorities; and that was about it."[909]

Mr. Gergen testified that the President did not indicate that he knew about the note before the 6:00 p.m. meeting, although Mr. Gergen "couldn't tell from his reaction whether he knew."[910] By then, Mrs. Clinton had known of the note for over 24 hours. Senator Grams observed that "[i]t seems kind of strange knowing that this was one of his best friends and all of the speculation surrounding looking for a suicide note that night, and then finally when something was found, he didn't—wasn't inquisitive; he didn't inquire about it; he didn't seem to want to know more information except for to say you handle it the best way you know how."[911]

D. The White House finally turns the note over to law enforcement

Some time in the afternoon, Mr. McLarty called Attorney General Janet Reno and asked her to come to the White House that evening, at about 7:00 p.m.[912] Deputy Attorney General Heymann recalled accompanying Attorney General Reno to the White House:

> I rode over with the Attorney General on the evening of Tuesday the 27th. We had a 7:00 meeting. We had not been told what it was about, though. I thought it was prob-

> ably about the Foster matter. We were shown into Mr. McLarty's office. The only—I think at first only Mr. Gergen, David Gergen was there. Then Mr. Nussbaum came in and Mr. Burton, I believe, and certainly Mr. McLarty. There had been some small talk before that.[913]

Mr. Nussbaum began the meeting by informing Attorney General Reno and Mr. Heymann of the existence of the note, producing the note, and reading them a transcript of the note. Mr. Nussbaum then asked the Justice Department Officials what "should be done with it." Attorney General Reno told Mr. Nussbaum to "turn it over to the Park Police immediately."[914]

Attorney General Reno questioned Mr. Nussbaum about the long delay in disclosing the note to the proper authorities:

> She then asked why are we just getting it now if it was found I guess it's 30 hours—it was 30 hours before then. The White House people, I don't know whether it was Mr. Nussbaum or who, said that there was—they wanted first to show it to Mrs. Foster and they wanted to show it to the President who might, if he had wanted to, have asserted executive privilege, they said. They said they were not able to get to the President until late on the 27th and as soon as they got to the President and made the President aware of the note, they had called us.[915]

Attorney General Reno, who had to leave, asked Mr. Heymann to stay and take care of the matter. Mr. Heymann then called Mr. Margolis and asked him to call the Park Police immediately.[916]

Apparently unbeknownst to Attorney General Reno and Deputy Attorney General Heymann, Webster Hubbell, the Associate Attorney General, was in the White House Residence while Ms. Reno and Mr. Heymann were in the White House to receive the note. Mr. Hubbell's records indicate that Mrs. Clinton had called his office and left a message at 2:30 p.m. that afternoon.[917] White House logs indicate that Mr. Hubbell arrived at the Residence at 6:29 p.m. and remained there until 8:19 p.m.[918] Ms. Thomases, who was in the Residence at the same time as Mrs. Clinton and Mr. Hubbell, exited the White House at approximately the same time.[919] Neither Ms. Thomases nor Mr. Hubbell recalled discussing the note with each other or with Mrs. Clinton on that day. Ms. Thomases testified, "I don't know that Hillary Clinton and I have ever discussed that writing."[920]

Ms. Thomases acknowledged that she met with Mr. Hubbell and Mrs. Clinton in the Residence following Mr. Foster's death, but she did not recall whether the gathering occurred on July 27:[921][27] She claimed that the three shared only memories of Mr. Foster:

> We just talked about the tragedy of Vince's death and we talked about how sad it was, and I remember that the first time the three of us were together, we talked a little bit about some of the good times that we had had together and old times before Bill Clinton was elected President, and in the days in which I used to see them.[922]

[27] Entry and exit records for the White House and the Residence indicate that July 27 was the only day in the week following Mr. Foster's death when Mrs. Clinton, Ms. Thomases, and Mr. Hubbell were in the White House or the Residence together.

Mr. Hubbell testified that he learned about the note when he "read it in the newspaper."[923] When asked about his trip to the White House on July 27, Mr. Hubbell testified that he went to the White House to give Mrs. Clinton an account of Mr. Foster's funeral after Mrs. Clinton left. "I remember that I had to go to the White House to tell Hillary about what had gone on after they left the funeral, but I don't have any memory of doing it."[924] He testified that it was part of the grieving process: "We, as Southerners, we have large long funerals and we get together and drink and eat and talk and do it for days. And Hillary had missed that grieving process, and I remember my wife saying, Hillary needs to talk to you. She needs to understand who was there and things of that sort."[925] Implausibly, he did not recall seeing Ms. Thomases or discuss Mr. Foster's note with Mrs. Clinton.[926]

After Mr. Heymann called the Park Police, Officer Joseph Megby of the Park Police went to the White House. Mr. Nussbaum began to assemble the note.[927] Some of the pieces fell, and Mr. Nussbaum and others picked them up. Mr. Heymann testified that "the note fell down, a number of the pieces of the note fell down on the floor and there was a scramble to pick them up."[928] He noted at the time that "by the time it had been reassembled, the fingerprints of everybody in the White House were on it. So if anybody wanted fingerprints, they had all the fingerprints in the world."[929] [28]

Mr. Nussbaum then gave the note to Officer Megby and concluded the meeting. Heymann urged Officer Megby to ask any questions that he might have, but the officer declined. It was not until later that Mr. Heymann learned that Officer Megby "was simply a duty officer. This was probably all new to him."[930]

The circumstances surrounding the discovery of the note and the delay in turning it over to the authorities disturbed Mr. Heymann and caused him to question the level of cooperation that the White House provided to the investigation into Mr. Foster's death. The next day, July 28, 1993, Mr. Heymann met with Mr. Margolis and instructed him to ask the FBI to conduct a thorough investigation into the discovery of the note. Mr. Heymann specifically told them to be "very aggressive,"[931] and Mr. Margolis described the investigation as an "800-pound gorilla."[932] Mr. Heymann and Mr. Margolis identified the jurisdictional predicate for the investigation as obstruction of justice,[933] and FBI documents confirmed that the subject matter was "possible obstruction of justice of U.S. Park Police investigation of death of Vincent Foster, Counsel to the President."[934]

This sentiment was shared by the Park Police, who complained about the lack of White House cooperation to number two official of the Interior Department. Mr. Heymann testified that, on July 29, 1993, he received a call from Thomas Collier, the Chief of Staff to the Secretary of Interior, asking for help. Mr. Collier told Mr. Heymann that "the Park Police are very, very upset about the investigation* * *. He said that they really couldn't get the cooperation that they wanted, and he said that he wanted to pull the Park Police out and he'd like me to substitute the FBI for the Park

[28] A later FBI analysis of the pieces of the note concluded: "The specimens were examined and one latent palm print of value was developed on one piece of paper, part of Q1." Justice Department Document FBI–00000079. The latent palm print is unidentified.

Police."[935] Mr. Heymann did not want to pull the Park Police from the investigation, but told Mr. Collier that the FBI, at Mr. Heymann's request, were already involved in the White House investigation. Mr. Heymann also assured Mr. Collier that he would intervene with the White House to ensure future cooperation.

Mr. Heymann then called David Gergen at the White House and explained the problems that the Park Police investigators were encountering. Mr. Gergen told Mr. Heymann that he would call back in a few minutes so that Mr. Gergen could assemble a number of White House personnel in his office.[936] When Mr. Gergen called back, he was on a speakerphone with a number of White House officials, "eight or nine or ten people."[937] Mr. Gergen does not have a clear memory of the conversation, but he testified that Mr. Heymann "may have conveyed to me a sense of, not a precise x, y, z, here's what you guys are doing, but a sense of watch it, you know, an alert. Make sure the White House was doing this, to remind me in effect, these are very highly charged kinds of investigations and they can be misunderstood very easily."[938]

Mr. Heymann's recollection is clearer:

> I read them the riot act in unmistakable terms, telling them that this was a disaster very near to occur, that I was sending, I had sent the FBI in to interview on the note. That I wanted all interviews to take place without White House counsel there. That I wanted full cooperation. That there was a very good chance that nothing could avoid sort of a major failure of credibility and sense of biased investigation, but that only the most vigorous of steps, at this point, could do that, and I wanted a complete turnaround.[939]

According to Mr. Heymann, he deliberately delivered a "very strong message" seeking to change the White House attitude toward the investigation.[940] He received some, but not much, argument from the White House officials involved in the conference call. After the conversation, according to Mr. Heymann, "the cooperation with the Park Police and with the FBI turned around immediately and completely."[941]

FINDINGS OF THE SPECIAL COMMITTEE

In the course of its investigation, the Special Committee was confronted with witnesses who provided conflicting testimony about events highly relevant to the Special Committee's inquiry. To resolve these conflicts in testimony, Senate Resolution 120 authorized the Special Committee to make factual findings based on the available evidence. In doing so, the Special Committee placed primary emphasis on documentary or other physical evidence whenever such evidence was available and when there was no indication that such evidence had been altered or otherwise compromised. When judgments of credibility had to be made, the Special Committee focused on the factors that, from common sense and logic, contribute to the reliability of a person's testimony—factors such as a motive to lie or embellish, the detail and vividness of memory, and the internal and external consistency of a person's overall testimony. The Special Committee summarizes its factual findings below.

Finding 1. At the time of his death, Vincent Foster was intimately involved in two brewing scandals—Travelgate and Whitewater—touching on President and Mrs. Clinton

Mr. Foster played a central role in both the firing of the Travel Office staff and subsequent attempts to conceal Mrs. Clinton's true role in the firings. Mr. Foster participated in the May 12, 1993 meeting with Harry Thomasson, Catherine Cornelius, and David Watkins where the replacement of the Travel Office staff was first discussed.[942] Mr. Foster then assigned his former law partner, William Kennedy, to investigate alleged financial mismanagement in the Travel Office. When the July 2, 1993 report of an internal White House review into the matter sharply reprimanded Mr. Kennedy, Mr. Foster felt personally responsible and insisted that Mr. Nussbaum allow him to shoulder the blame.[943]

Mr. Watkins' belatedly disclosed memorandum concerning the Travel Office affair clearly outlined Mr. Foster's extensive involvement as Mrs. Clinton's conduit to the firings. Mr. Kennedy wrote, for example, "Once this made it on the First Lady's agenda, Vince Foster became involved, and he and Harry Thomasson regularly informed me of her attention to the Travel Office situation—as well as her insistence that the situation be resolved immediately by replacing the Travel Office staff."[944] Indeed, Mr. Watkins fingered Mr. Foster as the person who directly communicated to him Mrs. Clinton's order that the Travel Office staff be fired. "Foster regularly informed me that the First Lady was concerned and desired action—the action desired was the firing of the Travel Office staff."[945] Despite Mrs. Clinton's obvious and extensive involvement in the firing of the staff, Mr. Foster and other White House officials did not disclose to investigators probing the affair about her true role.

It is also undisputed that Mr. Foster played a central role in the effort to respond to and manage the brewing Whitewater scandal. When questions first arose in the 1992 campaign about Whitewater and Mrs. Clinton's representation of Mr. McDougal's Madison Guaranty, Mr. Foster compiled the files and billing records of the Rose Law Firm relating to that representation.[946] He and Mr. Hubbell improperly removed the files from the Rose Law Firm without authorization and transported them to Washington after the campaign. In order to "[g]et out of White Water,"[947] Mr. Foster also perfected the sale of the Clintons' interest in Whitewater to Mr. McDougal.[948]

After becoming Deputy White House Counsel, Mr. Foster continued his role as the Clintons' personal counsel on Whitewater. He was assigned the task of preparing the Clintons' tax returns for 1992 in order to reflect properly the sale of their shares in Whitewater,[949] a problem that his notes described as a "can of worms you shouldn't open."[950] Mr. Foster worked with other White House officials in the Spring of 1993 in coordinating a response to questions about Whitewater.[951] And Mr. Foster's telephone log indicated an inexplicable message from Mr. McDougal on June 16, 1993, "re tax returns of HRC, VWF and McDougal."[952]

Finding 2. Senior White House officials were aware that the President and Mrs. Clinton faced potential liability over Whitewater and their relationship with the McDougals

Before the Special Committee, Mr. Nussbaum boldly announced: "The Whitewater matter, which subsequently became the focus of so much attention, was not on our minds or even in our consciousness in July 1993."[953] The testimonial and evidentiary record belies Mr. Nussbaum's exculpatory declaration.

Questions about Whitewater and Mrs. Clinton's representation of Madison were a major campaign issue in 1992, so much so that the Clintons took the extraordinary step of retaining Jame Lyons, an "outside attorney," to issue a report on the matter. Mr. Foster and Mr. Hubbell at that time compiled the files and billing records of the Rose Law Firm relating to Mrs. Clinton's representation of Madison,[954] and transported the files to Washington after the campaign. And Mr. Foster was specifically asked to prepare the Clintons' personal tax returns as they relate to Whitewater,[955] a project which consumed his time in the White House.

More important, as early as 1992, the Clintons and their advisors were aware that questions about Whitewater would again resurface, this time in a criminal investigation. In the fall of 1992, Betsey Wright heard of a "criminal referral regarding a savings and loan official in Arkansas and . . . involv[ing] the Clintons."[956] Ms. Wright learned specifically that the RTC had just sent a "criminal referral up to the prosecutor in Little Rock."[957] She passed this news onto Mrs. Clinton.[958]

According to RTC Senior Vice President William H. Roelle, former Deputy Secretary of the Treasury Roger Altman, upon taking office, directed the staff to inform him of all important or potentially high-visibility issues.[959] Mr. Roelle testified that, on or about March 23, 1993, he told Mr. Altman that the RTC had sent a criminal referral mentioning the Clintons to the Justice Department.[960] Mr. Altman immediately sent Mr. Nussbaum two facsimiles about Whitewater. The first facsimile, sent on March 23, 1993 with a handwritten cover sheet, forwarded an "RTC Clip Sheet" of a March 9, 1992 *New York Times* article with the headline, "Clinton Defends Real-Estate Deal."[961] The article reported the responses that Bill Clinton, then a presidential candidate, offered to an earlier *Times* report detailing the Clintons' investment in Whitewater and their ties to Jim and Susan McDougal. The second facsimile from Mr. Altman to Mr. Nussbaum, sent the next day, March 24, 1993, forwarded the same article that was sent the day before and portions of the earlier *Times* report—an article dated March 8, 1992, by Jeff Gerth entitled "Clintons Joined S&L Operator in an Ozark Real-Estate Venture," which originally broke the story in the news media.[962]

In addition, SBA Associate Administrator Wayne Foren testified that, in early May 1993, he briefed Erskine Bowles, the new SBA Administrator about the agency's ongoing investigation of David Hale's Capital Management Services because the case involved President Clinton.[963] Shortly thereafter, Mr. Bowles told Mr. Foren that he had briefed White House Chief of Staff Mack McLarty about the case.[964] Although Mr. Bowles did not recall being briefed by Mr. Foren about Capital Management[965] or talking to Mr.

McLarty about the case,[966] Mr. Foren's account was corroborated by his deputy, Charles Shepperson.[967] Mr. McLarty's calendar indicated that Mr. Bowles had two meetings with Mr. McLarty at the White House in early May 1993.[968]

Mr. Foster's role in response to Whitewater was known in the White House. Ricki Seidman, former Deputy Director of Communications in the White House, reported to the FBI that she and Mr. Foster had worked together on Whitewater issues before his death. Specifically, she recalled that she worked with Mr. Foster in April 1993 in connection with the Clintons' tax returns.[969] Seidman participated in the discussions from a "communications perspective,"[970] thus indicating the White House's identification of Whitewater as a potential issue in the spring of 1993. Indeed, according to the FBI report of Ms. Seidman's interview, "it was believed the tax returns would bring the Whitewater issue into the 'public domain again.'"[971] And Ms. Seidman stated that there was discussion in the White House regarding "the 'soundest way' to seek closure to the issue."[972]

Given this overwhelming evidence, the Special Committee finds that White House officials knew about Mr. Foster's work for the Clintons on Whitewater, and that, at the time of his death, the Clinton White House was acutely aware that Whitewater was a potential political and criminal matter.

Finding 3. Senior White House officials ignored repeated requests by law enforcement officials to seal Mr. Foster's office on the night of his death

Nine different persons recalled four separate requests to White House officials to seal Vincent Foster's office on the evening of July 20. Park Police investigator Sergeant Cheryl Braun testified that, as she left the Foster residence, she asked Assistant to the President David Watkins to seal Mr. Foster's office.[973] Detective John Rolla expressly corroborated her testimony.[974] Park Police Major Robert Hines testified that he called and asked another senior White House official, Bill Burton, to seal Mr. Foster's office.[975] Another White House official, Sylvia Mathews, testified that she overheard Mr. Burton's conversation with the Park Police[976] and that right after the telephone call, Mr. Burton asked Counsel to the President Bernard Nussbaum to seal the office.[977]

Counselor to the President David Gergen testified that he asked Director of Communications Mark Gearan whether Mr. Foster's office was sealed.[978] Mr. Gearan then asked Mr. Burton, who assured Mr. Gearan that the office had been sealed.[979] Associate Attorney General Webster Hubbell testified that both his wife and Marsha Scott remembered him calling Chief of Staff Mack McLarty on the night of Mr. Foster's death to ask that Mr. Foster's office be sealed.[980] All the persons who received these requests to seal Mr. Foster's office denied having been asked to do so.

Mr. Watkins was the critical person in the failure to seal Mr. Foster's office on the night of his death. He received a specific request from the Park Police to seal Mr. Foster's office. Instead of doing so, he directed his assistant, Patsy Thomasson, to search the office. Mr. Watkins was intimately involved, along with Mr. Foster, in firing the career Travel Office staff and in the apparent subse-

quent cover up before investigators. In a memorandum drafted in the Fall of 1993, Mr. Watkins described in detail Mr. Foster's and Mrs. Clinton's role in the Travelgate affair. He wrote that "Foster regularly informed me that the First Lady was concerned and desired action—the action desired was the firing of the Travel Office staff."[981] The memorandum also revealed that, right before the firing of the Travel Office staff, White House Chief of Staff Mack McLarty met with Mr. Watkins and Ms. Thomasson and explained that the issue was on Mrs. Clinton's "radar screen" and that "immediate action must be taken."[982] At all times, however, the White House had maintained that Mrs. Clinton was not involved in the Travel Office matter; Mrs. Clinton and numerous other White House officials had made public statements that she had "no role" in the firing of the staff. Mr. Watkins' knowledge of Mrs. Clinton's true involvement in Travelgate, efforts by White House officials to conceal that involvement, and Mr. Foster's direct role in both the firing and the cover-up provides an obvious and powerful motive to violate the instructions of the Park Police to seal Mr. Foster's office. Instead, Mr. Watkins directed his trusted assistant, Patsy Thomasson, to search Mr. Foster's office.

The Special Committee finds that the overwhelming weight of the evidence established that senior White House officials received multiple requests to seal Mr. Foster's office on the night of his death. The testimony of Sylvia Mathews, a White House official with absolutely no motivation to mislead the Special Committee, was corroborated by notes that she prepared within one week of Mr. Foster's death.[983] And Bill Burton's undated notes listed Webster Hubbell's name and telephone numbers next to the reminder "(1) Secure Office".[984] This testimonial and documentary evidence is uncontradicted; the White House officials have testified simply that they did not recall the requests to seal Mr. Foster's office.

It is undisputed that, contrary to the requests of law enforcement, Mr. Foster's office was not sealed the night of his death.

Finding 4. White House officials conducted an improper search of Mr. Foster's office on the night of his death

The Special Committee received testimony that David Watkins and Bernard Nussbaum both received requests to seal Mr. Foster's office. Instead of taking steps to seal Mr. Foster's office, however, Mr. Watkins paged Patsy Thomasson and instructed her to go to into Mr. Foster's office to search for a note.[985] Ms. Thomasson was aware of Mr. Foster's role in the Travel Office matter.[986] Mr. Nussbaum then joined Ms. Thomasson in that search.[987] It is unclear what motivated, or whether anyone instructed, Margaret Williams to go into Mr. Foster's office, but the Special Committee finds improbable Ms. Williams' testimony that she went to Mr. Foster's office in the hope that "I would walk in and I would find Vince Foster there and we would have a chat sitting on his couch, as we have done so many times before."[988]

Following are the sequence of telephone calls established by records obtained by the Special Committee:

LATE NIGHT PHONE CALLS, JULY 20th–21st

Time	From	To	Length
10:13 p.m. EDT	Rodham Residence	Margaret Williams	16 min.
11:19 p.m. EDT	Rodham Residence	Susan Thomases	20 min.
12:15 a.m. EDT	Susan Thomases	Margaret Williams	pager.
12:56 a.m. EDT	Margaret Williams	Rodham Residence	11 min.
1:10 a.m. EDT	Margaret Williams	Susan Thomases	14 min.

Ms. Williams testified that she did not even mention to Mrs. Clinton the search of Mr. Foster's office in her telephone call at 12:56 a.m. on July 21—for example, that no note was found possibly explaining Mr. Foster's decision to take his own life.[989] They had already spoken earlier in the night about the fact of Mr. Foster's death.

Ms. Williams did not recall talking to Ms. Thomases on the evening of Mr. Foster's death.[990] Of her conversation with Ms. Williams that night, Ms. Thomases testified: "I don't recollect speaking with her that night. That's not to say that she didn't call me back and I didn't speak to her, but I have no independent recollection of having spoken with her that night."[991]

In the end, the documentary evidence showing the sequence of phone calls in the early hours of July 21, after Ms. Williams had entered Mr. Foster's office, reasonably leads to the conclusion that Ms. Williams called Ms. Thomases and Mrs. Clinton to report the results of the search of Mr. Foster's office.

Finding 5. Margaret Williams may have removed files from the White House Counsel suite on the night of his death

Secret Service Officer Henry O'Neill testified that, on the night of Mr. Foster's death, he specifically saw Margaret Williams remove file folders, three to five inches thick, from the White House Counsel suite and placed them in her office.[992] As Ms. Williams walked past Officer O'Neill to her office, her assistant, Evelyn Lieberman, said to Officer O'Neill: "that's Maggie Williams; she's the First Lady's chief of staff."[993] Ms. Williams denied removing any files and her attorney submitted the results of polygraph tests indicating that she was truthful in her denial.[994]

The Special Committee finds the testimony of Officer O'Neill to be credible. Officer O'Neill, a career officer with the Secret Service Uniformed Division, has no motive to lie. He has a clear recollection of the critical events on the evening of Mr. Foster's death, and he is certain that he saw Ms. Williams remove the documents. He was situated in an excellent position in the narrow hall between the White House Counsel suite and Ms. Williams' office, and his memory is punctuated by Evelyn Lieberman's introduction of Ms. Williams.

Although the results of Ms. Williams' polygraph examinations should be given some weight, there are reasons to question the probative value of those examinations. First, polygraph tests are generally unreliable—a recognition that in part led to the adoption of the Polygraph Protection Act of 1987.[29] Second, Ms. Williams was

[29] During debates on the bill, sponsored by Senators Hatch, Simon, and Dodd, one senator noted that polygraph tests are "not much better than a toss of the coin in many instances." (134

Continued

given three and probably four examinations by her private polygrapher before submitting to a test by the Independent Counsel.[995] A person may increase her chances of being found "truthful" by taking multiple polygraph examinations. Subjects are approximately 25 percent more likely to pass polygraph examinations with two practice exams, according to one study.[30]

Finding 6. Bernard Nussbaum agreed with Justice Department officials on July 21, 1993, to allow law enforcement officials to review documents in Mr. Foster's office

Philip Heymann testified that he and Mr. Nussbaum agreed on July 21, 1993, as to the procedures for reviewing the documents in Mr. Foster's office.[996] David Margolis and Roger Adams, whom Mr. Heymann sent to the White House to conduct the review as agreed, corroborated Mr. Heymann's recollection.[997] Mr. Nussbaum does not recall discussing procedures for reviewing Mr. Foster's office with Mr. Heymann on July 21. Mr. Margolis and Mr. Adams testified that, in Mr. Nussbaum's office that evening, they finalized the agreement between Mr. Heymann and Mr. Nussbaum.[998] Mr. Nussbaum and his associates in the White House counsel's office denied reaching any agreement.[999]

The Special Committee finds that the evidence overwhelmingly demonstrates that Mr. Nussbaum agreed with the Justice Department on July 21 with respect to the procedures for reviewing the documents in Mr. Foster's office. Mr. Heymann's specific and detailed recollection of his afternoon conversation with Mr. Nussbaum stands in stark contrast to Mr. Nussbaum's very hazy recollection that Mr. Heymann may "get other people involved" in the investigation. Mr. Margolis and Mr. Adams finalized Mr. Heymann's agreement when they met with Mr. Nussbaum, Mr. Sloan and Mr. Neuwirth later in the afternoon.[1000] The testimony of Mr. Margolis and Mr. Adams is corroborated by notes made by Mr. Adams within one week of the meeting and by Cynthia Monaco's dictated diaries[1001] and a contemporaneous FBI teletype describing the meeting.[1002]

There is independent evidence confirming that Mr. Nussbaum agreed with the Justice Department on the procedures for reviewing documents in Mr. Foster's office. Mr. Margolis and Mr. Adams testified that, during the later afternoon meeting, Mr. Nussbaum overruled and corrected Mr. Neuwirth when Mr. Neuwirth stated that Mr. Nussbaum alone would review the documents in Mr. Foster's office.[1003] The Special Committee finds simply not credible the testimony of Mr. Nussbaum, Mr. Neuwirth, and Mr. Sloan that they do not recall any such incident, given their vivid and specific denial of any such agreement with the Justice Department.

Cong. Rec. S1794, S1800 (March 3, 1988)). Others observed that "[l]ie detectors are inherently unreliable," (134 Cong. Rec. S1713, S1737 (March 2, 1988)) and that "polygraph tests cannot accurately distinguish truthful statement from lies." (134 Cong. Rec. S1638, S1647 (March 1, 1988)).

[30] Louis I. Rovner, "The Accuracy of Physiological Detection of Deception for Subjects with Prior Knowledge," 15 *Polygraph* p. 1 (1986).

Finding 7. Margaret Williams and Susan Thomases, in consultation with Mrs. Clinton, took part in formulating the procedure for reviewing documents in Mr. Foster's office on July 22, 1993

Mr. Nussbaum agreed with Justice Department officials on July 21, 1993, to an "entirely sensible plan"[1004] to review jointly documents in Mr. Foster's office. The next day, however, he broke the agreement, reviewed the documents himself, and permitted Margaret Williams, Mrs. Clinton's Chief of Staff, to participate in a second review and to remove documents from Mr. Foster's office. Given this sequence of events, which fundamentally changed the manner in which documents in Mr. Foster's office were handled, the obvious question that the Special Committee faced was, why?

Records obtained by the Special Committee[1005] showed the following sequence of telephone calls in the early hours of July 22:

EARLY MORNING PHONE CALLS, JULY 22nd

Time	From	To	Length
7:44 a.m. EDT	Margaret Williams	Rodham Residence	7 min.
6:57 a.m. CDT (7:57 a.m. EDT)	Rodham Residence	Susan Thomases	3 min.
8:01 a.m. EDT	Susan Thomases	Bernard Nussbaum	pager.

Mr. Nussbaum testified that, when he answered Ms. Thomases' page, Ms. Thomases asked him about the upcoming review of Mr. Foster's office and said that unspecified "people are concerned" about Mr. Nussbaum's plan to allow law enforcement officials to participate in the review.[1006]

Later in the day, according to Associate Counsel to the President Stephen Neuwirth, Mr. Nussbaum told Mr. Neuwirth that Mrs. Clinton and Ms. Thomases were concerned about the law enforcement authorities having "unfettered access" to Mr. Foster's office.[1007]

Ms. Thomases acknowledged that she talked with Mr. Nussbaum about the review, but only at his instigation, and she denied expressing any concern or reservation about the review procedures.[1008] She testified that she had no conversations with Mrs. Clinton about the review of documents in Mr. Foster's office.[1009]

Ms. Williams did not recall having any conversations about the document review.

The Special Committee finds that there is substantial, indeed compelling, evidence indicating that Ms. Williams and Ms. Thomases, in consultation with Mrs. Clinton, participated in formulating the procedure for reviewing documents in Mr. Foster's office on July 22, 1993. Although Ms. Williams and Ms. Thomases both denied speaking with Mrs. Clinton about the review of documents, the sequence of contiguous telephone calls from Ms. Williams to Mrs. Clinton, from Mrs. Clinton to Ms. Thomases, and from Ms. Thomases to Mr. Nussbaum leads to the unmistakable conclusion that these early morning phone calls precipitated Mr. Nussbaum's change of procedure.

The testimony of White House lawyers directly support this finding. According to Mr. Neuwirth's important testimony, Mr. Nussbaum understood, from a prior conversation with Ms. Thomases, that Mrs. Clinton and Ms. Thomases were concerned about the

prospect of unfettered access to Mr. Foster's papers. Although Ms. Thomases denied that she intervened in the formulation of the search procedure, Mr. Nussbaum testified that Ms. Thomases attempted to impose her views on how to conduct the review, an attempt that he claimed to have rebuffed.

By breaking his agreement with law enforcement over the terms of the search of Mr. Foster's office, Mr. Nussbaum demonstrated that he clearly took the concerns of Mrs. Clinton and Ms. Thomases into account. Mrs. Clinton, however, persists in her story that she had no involvement in the handling of documents in Mr. Foster's office. In public statements, she maintained that "[t]here were no documents taken out of Vince Foster's office on the night he died. And I did not direct anyone to interfere in any investigation." [1010] Although this statement may be technically correct, that Mrs. Clinton did not "direct" anyone to "interfere" with investigations, the evidence established that she communicated concerns about the handling of documents in Mr. Foster's office. Those concerns were passed on, in Mrs. Clinton's name and by someone known to have her authority, to White House officials.[1011] Here, as in Travelgate, that is enough. The invocation of Mrs. Clinton's interest in the matter commands a "clear" message: "immediate action must be taken." [1012] And the action taken, denying investigators access to documents in Mr. Foster's office, had the effect of interfering with the investigation. The Special Committee and the American people deserves candor, not lawyerly word games.

The documentary evidence establishes that Ms. Thomases and Ms. Williams remained directly involved in the process of reviewing the documents. Tellingly, throughout July 22, Ms. Thomases made repeated phone calls to the offices of Mack McLarty and Ms. Williams. [31] Records produced to the Special Committee showed the following calls by Ms. Thomases to the White House on July 22, 1993:

THOMASES CALLS TO THE WHITE HOUSE, JULY 22nd

Time	From	To	Length
8:01 a.m.	Susan Thomases	Bernard Nussbaum	pager.
9:00 a.m.	Susan Thomases	Margaret Williams	message
10:48 a.m.	Susan Thomases	Mack McLarty	3 min.
11:04 a.m.	Susan Thomases	Margaret Williams	6 min.
11:11 a.m.	Susan Thomases	Mack McLarty	3 min.
11:16 a.m.	Susan Thomases	Mack McLarty	1 min.
11:37 a.m.	Susan Thomases	Margaret Williams	9 min.
11:50 a.m.	Susan Thomases	Margaret Williams	4 min.
5:13 p.m.	Susan Thomases	Margaret Williams	9 min.
5:23 p.m.	Susan Thomases	Bruce Lindsey	3 min.

[31] The White House identified the telephone extension which Thomases called as that of Margaret Williams and her assistant, Evelyn Lieberman. Ms. Williams, however, testified that the extension is the general number for her office, to which a number of other individuals had access. Williams, 7/26/95 Hrg. p. 233. The White House later advised the Special Committee that all individuals who had access to that extension did not recall talking to Thomases on July 22, 1993. Letter from Jane Sherburne to Michael Chertoff and Richard Ben-Veniste, August 4, 1995; Letter from Jane Sherburne to Robert Giuffra, August 6, 1995; Letter from Jane Sherburne to Robert Giuffra, August 8, 1995. Both Ms. Lieberman and Ms. Williams testified that they likewise did not recall talking with Ms. Thomases. Williams, 7/7/95 Dep. p. 58. Ms. Thomases, however, testified that she recalled having conversations with Ms. Williams on July 21 and 22. Thomases, 7/17/95 Dep. p. 109.

Ms. Thomases thus remained in close touch with the White House while Mr. Nussbaum finalized the search procedures and announced to the law enforcement officials, at about 1:00 p.m., the decision that he alone would review the documents in Mr. Foster's office.

Contrary to certain public statements by the White House, Ms. Williams clearly was involved in the actual review and removal of documents from Mr. Foster's office on July 22.[32] After Mr. Nussbaum reviewed the documents in Mr. Foster's office in front of law enforcement, he and Margaret Williams conducted a second review—the real review. Ms. Williams then removed the Clintons' personal documents from Mr. Foster's office and transferred them to the residence, telling Thomas Castleton that "the President or the First Lady had to review the contents of the boxes to determine what was in them."[1013] Ms. Williams called Mrs. Clinton before putting the files in the residence, and, at 5:13 p.m., apparently after Ms. Williams had completed the transfer of files, Ms. Thomases called Ms. Williams' office and talked for nine minutes. At 7:12 p.m., Ms. Thomases put in a final call, one-minute call to Mrs. Clinton at the Rodham residence.[1014]

The sequence of documented telephone calls and their correlation to activities surrounding the review and removal of documents from Mr. Foster's office on July 22 leads to the inescapable conclusion that Ms. Thomases and Ms. Williams, in consultation with, or acting at the direction of, Mrs. Clinton, prevailed upon Mr. Nussbaum to abandon his procedure for reviewing documents in Mr. Foster's office and to replace it with one that prevented law enforcement officials from having access to Mr. Foster's papers and that permitted Ms. Williams to review and remove documents from Mr. Foster's office.

Finding 8. Bernard Nussbaum failed to conduct a meaningful review of Mr. Foster's office and did not describe to law enforcement officials sensitive files pertaining to the Clintons and the administration

Mr. Nussbaum testified that he conducted a comprehensive review and described each file in Mr. Foster's office—including all the files in Mr. Foster's credenza, where a number of the Clintons' personal files were kept. Notes taken by Mr. Spafford of the review demonstrate, however, that he provided only a very generic description, "matters re First Family"[1015]; Mr. Sloan's notes are similar: "Various investment matters re: First Family."[1016] This single general description by Mr. Nussbaum identified a number of files that Margaret Williams later transferred to the White House residence and eventually to the Clinton's personal lawyers at Williams & Connolly. Among these files was Mr. Foster's Whitewater file; no one at the review recalled Mr. Nussbaum making any reference whatsoever to Whitewater.

[32] At a press conference on April 22, 1994, Mrs. Clinton was asked whether Margaret Williams was among those who removed documents from Foster's office. She replied: "I don't think that she did remove any documents." White House Document Z 000107. On August 2, 1994, Press Secretary Dee Dee Myers affirmed Mrs. Clintons's statement: "I think that it is true that Maggie didn't remove any documents from Vince's office; they were removed by Bernie Nussbaum." White House Document Z 000578.

Although Mr. Nussbaum testified that Whitewater was not the subject of discussion in the White House at the time of Mr. Foster's death, the Special Committee finds that there was ample evidence indicating that in early 1993, the White House, and particularly Mrs. Clinton, knew that Whitewater was a potential public issue. Whitewater had been an issue during the 1992 presidential campaign. In late 1992, Betsey Wright, the coordinator of the Arkansas defense effort and former chief of staff to Governor Clinton, learned of a "criminal referral regarding a savings and loan official in Arkansas and * * * involv[ing] the Clintons."[1017] Upon hearing the news, she attempted to gather more information and directly told Mrs. Clinton about the referral.[1018] And the information was circulated within the campaign. Jim Lyons, author of the Whitewater report, testified that someone in the Clinton campaign notified him of the criminal referral.

Whitewater remained a live issue when the Clintons moved into the White House. Ricki Seidman, then Deputy Director of Communications for the White House, told the FBI that she discussed and attended meetings with Mr. Foster and the Clintons' outside counsel in April 1993 about the tax treatment of the Clinton's Whitewater investment because "it was believed the tax returns would bring the Whitewater issue into the 'public domain' again."[1019] In addition, records that the White House produced to the Special Committee after the conclusion of its public hearings indicate that James McDougal, the Clintons' Whitewater partner, called Mr. Foster at the White House just prior to his death.

The Special Committee also finds that Mr. Nussbaum failed to describe adequately the contents of Mr. Foster's briefcase. Although notes taken by Mr. Spafford and Mr. Sloan indicated that the briefcase contained a copy of the White House Travel Office Management Review, Mr. Nussbaum did not disclose that most of the contents of the briefcase pertained to the Travelgate controversy.[1020] Specifically, Mr. Nussbaum removed Mr. Foster's notebook on the Travel Office matter from the briefcase and kept it in his office until Mr. Nussbaum's resignation in March 1994.[1021] According to Mr. Spafford's notes, Mr. Nussbaum described the notebook as "Notebook of notes of meetings, GC [General Counsel] issues"; Mr. Sloan's notes similarly identified the notebook simply as "Notes re: meeting".[1022] The notebook and other Travel Office documents in Mr. Foster's briefcase were not turned over to the Independent Counsel until April 5, 1995.[1023]

Finding 9. An index of documents in Mr. Foster's office is missing and other indices were revised following his death to conceal possible references to Whitewater

Mr. Foster's secretary, Deborah Gorham, testified that, on July 22, she entered Mr. Foster's office and opened the drawer containing the Clintons' personal documents. "I saw Pendaflex folders and file folders, and I did not see an index that normally would have been there listing the names of the files."[1024] Ms. Gorham maintained an index for every drawer; this one was missing.

The Special Committee received three indices from the White House reflecting all the files in Mr. Foster's office. Two are dated July 22, 1993.[1025] One is shown to be last revised on October 25,

1993.[1026] It is thus undisputed that the indices were compiled or revised after Mr. Foster's death. None makes any reference to a Whitewater file known to be in Mr. Foster's office at the time of his death.

The evidence before the Special Committee indicates that the indices were revised in order to remove an earlier reference to the Whitewater file. Deborah Gorham testified that she made an index in the Spring of 1993, probably late April, and that the index reflected all the files in Mr. Foster's office at the time.[1027] She also testified that the Whitewater file was among the files in Mr. Foster's office at the time she prepared the index.[1028]

The Special Committee finds Ms. Gorham's testimony highly credible. Ms. Gorham was careful and meticulous, identifying with certainty to the Special Committee particular characteristics of indices she maintained. Moreover, independent evidence corroborates Ms. Gorham's recollection that Whitewater was among the files in Mr. Foster's office in April 1993. Mr. Foster prepared the Clintons' 1992 tax returns, and one of the key issues in those returns was how to treat the Clintons' investment in Whitewater. It is therefore highly likely that the Whitewater file was in Mr. Foster's office in April 1993, when the tax returns were due, instead of being brought into the office at a later date.

Finding 10. Bernard Nussbaum knew about yellow scraps of paper in Mr. Foster's briefcase prior to Stephen Neuwirth's apparent discovery on July 26, 1993

The Special Committee finds that the evidence demonstrates that Mr. Nussbaum knew about yellow scraps of paper in Mr. Foster's briefcase before Mr. Neuwirth allegedly discovered the scraps on July 26. Mr. Spafford testified that he overheard Mr. Sloan tell Mr. Nussbaum on July 22 that there were scraps at the bottom of the briefcase.[1029] Although neither Mr. Sloan nor Mr. Nussbaum recalled the exchange, Mr. Spafford testified that he remembered and had a privileged conversation about the incident the following week, right after he learned that Mr. Neuwirth had discovered the note in Mr. Foster's briefcase.[1030]

In addition, Deborah Gorham testified that in the days after Mr. Foster's death, she told Mr. Nussbaum that she saw a file folder and something yellow, possibly "Post-it" notes in Mr. Foster's briefcase.[1031] Ms. Gorham further testified that after Mr. Neuwirth discovered the note, Mr. Nussbaum grilled her at length about what she saw in Mr. Foster's briefcase the previous week.[1032] Although Mr. Nussbaum testified that he did not recall grilling Ms. Gorham,[1033] the Special Committee finds her vivid recollection of Mr. Nussbaum's interrogation to be highly credible. Mr. Nussbaum's interrogation, described by Ms. Gorham as "forceful" and "adamant",[1034] leads to the obvious inference that he was concerned about what Ms. Gorham had seen the previous week and how it would undercut his story about the discovery of the note.

The Special Committee finds that Mr. Nussbaum must have known on July 22 that scraps of paper were in Mr. Foster's briefcase. The briefcase has no flaps or inside seams that could conceal 27 pieces of yellow paper. Captain Charles Hume remarked that the "oldest and blindest" Park Police officer would have found the

note on July 22,[1035] and Sergeant Peter Markland testified that he thought Mr. Nussbaum lied when he said the note was discovered in the briefcase.[1036] Even White House official, Bill Burton, testified that he was incredulous when he learned that Mr. Neuwirth discovered the note in Mr. Foster's briefcase.[1037]

David Margolis, the career Justice Department official coordinating the investigation, offered this testimony:

> I thought I had this figured out, that the torn-up scraps of paper were not in the briefcase the day that Mr. Nussbaum did the search in our presence. That's what—that was the explanation I came up with, and that somebody—that it had never been there before and somebody put it in afterward or it had been there, somebody took it out and then decided they better put it back because there was public speculation of, you know, where is the suicide note. So, in my own mind, I speculated that must be what happened. But then, when I picked up the paper one day and saw that Mr. Spafford said that the note had been in there when the search was conducted, I am at a loss now. I just have no explanation. I don't know.[1038]

The Justice Department and the FBI did not have the information Mr. Spafford provided to the Special Committee when the FBI closed its investigation into the circumstances surrounding the discovery of the note.

Mr. Nussbaum's conduct may be explained by the fact that law enforcement officials and Mr. Spafford were still at the White House when the existence of the scraps of paper was called to his attention by Mr. Sloan. Rather than examining the scraps then and there, Mr. Nussbaum chose to put off such an examination until such time as he could be sure that he could do so in private.

Finding 11. Margaret Williams, in consultation with Mrs. Clinton, removed files from Mr. Foster's office to the White House residence to be reviewed by the Clintons

Thomas Castleton testified that, as he helped Margaret Williams transport the Clintons' personal files to the White House residence on July 22, Ms. Williams told Mr. Castleton that she was taking the files to the residence so that the Clintons could review them.[1039] Mr. Nussbaum testified that he discussed taking the files to the residence with Ms. Williams so that the Clintons could decide which lawyer to send them to.[1040] Ms. Williams, however, testified that she alone made the independent determination to place the files in the residence.[1041] Although Ms. Williams admitted calling Mrs. Clinton, Ms. Williams claimed that their discussion was limited simply to where to place the files in the residence.[1042]

The Special Committee finds that the evidence overwhelmingly demonstrates that Ms. Williams did not, as she asserted, make an independent decision to transfer the Clintons' personal files to the White House residence.

Ms. Williams' story is not credible given Mr. Nussbaum's testimony that they had discussed taking the files to the residence before Ms. Williams left Mr. Foster's office. Carolyn Huber testified that July 22 was the first time ever that Ms. Williams had placed

files in the White House Residence.[1043] Ms. Williams did not plausibly explain why she thought the residence—and not her office or somewhere else in the West Wing—was the appropriate place for the files or how personally transferring files to the residence was less taxing than having them picked up by a Williams & Connolly representative.

Ms. Williams testified that, despite having never discussed the files with Ms. Williams, Mrs. Clinton did not ask any questions—even one—but simply told her to arrange the details with Ms. Huber. Ms. Williams explained this seemingly odd response by suggesting that "I could have told Mrs. Clinton that I was going to put 44 elephants in the White House the day after Vince died and she probably would have said okay"[1044]—a suggestion that the Special Committee finds to border on the contemptuous. Moreover, Ms. Huber testified that Ms. Williams "called and said that Mrs. Clinton had asked her to call me to take her to the residence to put this box in our third floor office."[1045] The Special Committee finds that Ms. Williams intended the files to be reviewed by the Clintons and that, in fact, someone reviewed the files before they were turned over to Williams & Connolly. When confronted with Mr. Castleton's testimony that she said the Clintons were to review the files, Ms. Williams asked rhetorically, "Why would I tell an intern that?"[1046] The Special Committee finds it natural that Ms. Williams would have told Mr. Castleton why the files were going to the residence—especially because, as Ms. Huber testified, Ms. Williams had never moved files to the residence. Mr. Nussbaum testified that Ms. Williams returned a file, one dealing with White House decorations, before the Clinton personal files were transferred to Williams & Connolly. Although, after consulting with counsel, Mr. Nussbaum stated that he was not sure that it was Ms. Williams who returned the file, he acknowledged that a file was indeed returned from the residence because it was not a Clinton personal file.[1047] The inevitable conclusion from this testimony is that someone reviewed the files to determine which files should be returned to Mr. Nussbaum.

Finding 12. Senior White House officials did not provide complete and accurate information to the Park Police and FBI with respect to the handling of Mr. Foster's note

It is undisputed that Mrs. Clinton saw the note within hours of its discovery on July 26.[1048] In addition, Susan Thomases testified that Mr. Nussbaum called and told her about the note the same afternoon.[1049] Neither Mrs. Clinton nor Ms. Thomases were identified in the reports by the FBI or Park Police as among those who saw or knew about the note before it was turned over to the authorities.[1050] Although Mr. Neuwirth testified that he told FBI Special Agent Salter that Mrs. Clinton was made aware of the note, his testimony is inconsistent with written records of the interview. Neither Agent Salter's report nor his handwritten notes of the interview (later obtained by the Committee) indicated that Mr. Neuwirth told him that Mrs. Clinton was among those who saw the note.[1051] Instead, Agent Salter's notes recorded Mr. Neuwirth's continuous narrative of the chain of events after Mr. Neuwirth discovered the note. The narrative, however, omitted any mention of

Mrs. Clinton as the second person Mr. Nussbaum brought into his office to view the note.[1052]

The Special Committee finds that Mr. Neuwirth's omission of Mrs. Clinton may have been willful. Bill Burton's handwritten record of a meeting about Mr. Foster's note on July 28, the day after the note was turned over to the authorities, listed "HRC" with an arrow pointing to an adjacent letter "n".[1053] Because Mr. Burton testified that he did not know what his own notes meant, the Special Committee adopts the most reasonable interpretation of his notations—that those present at the meeting discussed the matter and decided not to disclose that Mrs. Clinton saw the note.

Finding 13. Mr. Hubbell probably knew about the discovery of Mr. Foster's note on July 27, 1993

In the hours and days following Mr. Foster's death, there was overwhelming interest in whether Mr. Foster left a note explaining the reasons for his apparent suicide. By their own admission, Mr. Nussbaum, Ms. Thomasson, Ms. Williams, and Ms. Lieberman, testified that they conducted an improper search of Mr. Foster's office on the night of his death in order to look for a note. Because of the seeming inexplicable nature of Mr. Foster's death and the speculations of foul play, there was a groundswell of interest in whether Mr. Foster had left a note prior to his death. The White House released an official statement stating that "no suicide note or other document bearing on" Mr. Foster's death had been found.[1054] And news articles in the week following Mr. Foster's death generally mentioned the anomaly that a note had not been found.[1055]

On July 27, approximately 26 hours after a note in Mr. Foster's hand was discovered by White House officials, White House Counsel Bernard Nussbaum finally contacted Attorney General Reno and Deputy Attorney General Heymann to turn over the note. Apparently unbeknownst to Ms. Reno and Mr. Heymann, Associate Attorney General Webster Hubbell was upstairs in the White House Residence with Mrs. Clinton and Ms. Thomases while they were downstairs receiving news of the note. Mr. Hubbell's records indicate that Mrs. Clinton had called his office and left a message at 2:30 p.m. that afternoon.[1056] White House logs indicate that Mr. Hubbell arrived at the Residence at 6:29 p.m. and remained there until 8:19 p.m.[1057] Ms. Thomases, who was in the Residence at the same time as Mrs. Clinton and Mr. Hubbell, exited the White House at the same time.[1058] Neither Ms. Thomases nor Mr. Hubbell recalled discussing the note with each other or with Mrs. Clinton on that day. Ms. Thomases testified, "I don't know that Hillary Clinton and I have ever discussed that writing."[1059]

When presented with the entry and exit logs, Ms. Thomases acknowledged that she met with Mr. Hubbell and Mrs. Clinton in the Residence following Mr. Foster's death.[1060] Secret Service records indicate that July 27 was the only time in the week following Mr. Foster's death that Mrs. Clinton, Ms. Thomases, and Mr. Hubbell were together in the White House. Ms. Thomases implausibly testified, however, that during their meeting the three only reminisced about Mr. Foster and their friendship.[1061]

For his part, Mr. Hubbell testified that he did not recall even seeing Ms. Thomases on July 27.[1062] He testified that he came to

the White House on July 27 in order to give Mrs. Clinton an account of Mr. Foster's funeral after Mrs. Clinton left. "I remember that I had to go to the White House to tell Hillary about what had gone on after they left the funeral, but I don't have any memory of doing it." [1063] He testified that it was part of the grieving process: "We, as Southerners, we have large long funerals and we get together and drink and eat and talk and do it for days. And Hillary had missed that grieving process, and I remember my wife saying, Hillary needs to talk to you. She needs to understand who was there and things of that sort." [1064]

Mr. Hubbell testified that he learned about the note when he "read it in the newspaper," [1065] and that he did not discuss the note with Mrs. Clinton during his post-funeral visit to the White House. [1066] The Special Committee finds Mr. Hubbell's testimony incredible. Whether there was a note was the topic of interest, inquiry, and speculation for all involved in the story of Mr. Foster's death. White House officials conducted an improper search of Mr. Foster's office on the night of his death specifically, according to their own testimony, to look for a note. The Park Police had specifically asked about the existence of a note on the night of his death, and continued to look for indications of why Mr. Foster took his life during its investigation. Mr. Hubbell's high-ranking colleagues at the Justice Department were at the White House at the same time as Mr. Hubbell to receive the note from Mr. Nussbaum. Mrs. Clinton had called Ms. Thomases repeatedly to summon her to Washington for a meeting on July 27, and Mrs. Clinton had called Mr. Hubbell on the afternoon of July 27. Given all these events, there is little possibility that three of the persons closest to Mr. Foster—Mrs. Clinton, Ms. Thomases, and Mr. Hubbell—two of whom knew about the existence of the note, were in the private quarters of the White House together for two hours without any mention of the note.

The Special Committee adopts the most reasonable finding in light of the circumstances, that Mr. Hubbell most likely learned of the existence of the note either before or during his meeting with Mrs. Clinton and Ms. Thomases on July 27, 1993.

Finding 14. Margaret Williams provided inaccurate and incomplete testimony to the Special Committee in order to conceal Mrs. Clinton's role in the handling of documents in Mr. Foster's office following his death

The testimony of Margaret Williams, the First Lady's Chief of Staff, to the Special Committee was frequently inconsistent with her prior statements and contradicted by the testimony of other witnesses. These numerous and varied contradictions in Ms. Williams's testimony followed one predictable pattern: they diminished Ms. Williams' role in the events surrounding the handling of the documents in Mr. Foster's office and, more important, concealed Mrs. Clinton's involvement in this now controversial matter. Although Ms. Williams's testimony may not necessarily be untruthful with respect to each and every contradiction, the obvious pattern of the contradictions and inconsistencies leads inexorably to the conclusion that she did not provide complete and accurate testimony to the Special Committee.

Ms. Williams testified implausibly that she entered Mr. Foster's office on the night of his death in the vain hope of finding Mr. Foster there.[1067] She claimed that she did not remove any files from the White House Counsel's suite and that her assistant, Evelyn Lieberman, did not even enter the suite on July 20. Officer Henry O'Neill testified, however, that he saw Ms. Williams remove files, three to five inches thick, from the suite and place them in her office.[1068] According to Officer O'Neill, Ms. Lieberman was there and introduced Ms. Williams to Officer O'Neill.[1069]

After searching Mr. Foster's office, Ms. Williams went home and called Mrs. Clinton and Ms. Thomases. When asked about these late-night telephone calls, Ms. Williams testified to the Special Committee that she did not talk to Mrs. Clinton about the search of Mr. Foster's office. Ms. Williams also denied talking with Susan Thomases.[1070] After being confronted with records indicating that she called Ms. Thomases at 1:10 a.m. on July 21, Ms. Williams insisted that her earlier testimony was only that she did not recall talking to Ms. Thomases.[1071] When reminded that she actually said, "I didn't talk to her," [1072] Ms. Williams replied, "I'm not going to argue with you. I think this is exactly what I said." [1073]

With respect to Mrs. Clinton's involvement in the much criticized decision to keep law enforcement from reviewing documents in Mr. Foster's office on July 22, Ms. Williams did not tell the Special Committee initially about her early morning phone call to the Rodham residence.[1074] When presented with records documenting the telephone call made at 7:44 EDT, Ms. Williams replied, "I don't remember who I talked to." [1075]

Ms. Williams initially testified that she did not speak to Susan Thomases on the telephone on July 22.[1076] Telephone records indicated, however, that Susan Thomases called Ms. Williams' office twice on July 21 and five times on July 22.[1077] Ms. Thomases made these repeated telephone calls to Ms. Williams' office on July 22 at the same time that White House officials were meeting to discuss the procedures for searching Mr. Foster's office.[1078] When questioned about these calls, Ms. Williams suggested that she was at home on the morning of July 22.[1079] Records from the U.S. Secret Service established, however, that Ms. Williams entered the White House at 8:10 a.m. on July 22.[1080]

Ms. Williams testified that she did not review files in Mr. Foster's office on the afternoon of July 22, but Mr. Nussbaum testified that Ms. Williams helped him pick out the Clintons' personal files.[1081] Deborah Gorham also testified that Ms. Williams was in Mr. Foster's office when Mr. Nussbaum asked Ms. Gorham to point out the location of the Clintons' personal files.[1082] Ms. Williams claimed that she made a completely independent decision to have the Clintons' personal files transferred to the White House residence en route to Williams & Connolly.[1083] Mr. Nussbaum testified, however, that he and Ms. Williams discussed the matter and decided to remove the files to the residence, and then the Clintons would decide where the files should go.[1084] While she was in Mr. Foster's office, Ms. Williams called Mrs. Clinton. Although the two had not talked previously about any transfer of files, Ms. Williams testified that she, improbably, asked Mrs. Clinton simply where the files should go in the residence, and had no other discussions with

Mrs. Clinton about what the files contained or where they came from.[1085]

Ms. Williams asserted that she did not intend for the Clintons to review the files after they were placed in the residence. Thomas Castleton testified, however, that Ms. Williams expressly told him that she was taking the files to the residence so the Clintons could review them.[1086] Ms. Williams denies saying this to Mr. Castleton.[1087] Carolyn Huber testified that, after Ms. Williams placed the files in the residence closet, Ms. Huber returned the key to its usual place, in a marked envelope in the desk drawer.[1088] Ms. Williams, however, testified that Ms. Huber gave her the key, which Ms. Williams kept on her key chain until she had to open the closet for a Williams & Connolly representative.[1089] Ms. Williams testified that no one reviewed the files while they were in the residence, but Mr. Nussbaum testified that someone, probably Ms. Williams, returned a residence file because it was determined not to be a Clinton personal file.[1090]

Finding 15. Susan Thomases provided inaccurate and incomplete testimony to the Special Committee in order to conceal Mrs. Clinton's role in the handling of documents in Mr. Foster's office following his death

Susan Thomases, a prominent New York attorney, was Mrs. Clinton's conduit to the White House staff. She was in close contact with Mrs. Clinton and the White House staff throughout the week following Mr. Foster's death. Although the documentary and other evidence before the Special Committee established that Ms. Thomases was involved in every key event relating to the handling of documents in Mr. Foster's office following his death, her testimony to the Special Committee with respect to these key events was often implausible, incomplete or inaccurate.

When Ms. Thomases first appeared before the Special Committee, on August 8, 1995, she was asked whether she had discussed her appearance with Mrs. Clinton. Ms. Thomases testified, "I did not discuss my opinion—my appearance here today with Hillary Clinton."[1091] On December 18, 1995, however, Ms. Thomases contradicted herself by admitting that she had actually talked with Mrs. Clinton about her appearance "way back when, before the first hearing." According to Ms. Thomases, she and Mrs. Clinton discussed "that I was going to have to come down, and that I didn't think that I had very much interesting to tell you, that you were still going to ask me the questions because you felt the need to ask me the questions."[1092]

On the night of Mr. Foster's death, Ms. Thomases paged Ms. Williams at 12:15 a.m., while Ms. Williams was at the White House. When asked whether she talked to Margaret Williams after Ms. Williams searched Mr. Foster's office, Ms. Thomases claimed that she did not "recollect speaking with [Ms. Williams] that night. That's not to say that she didn't call me back and I didn't speak to her, but I have no independent recollection of having spoken with her that night."[1093] The Committee later obtained telephone records, however, indicating that Ms. Williams, right after speaking with Mrs. Clinton, called Ms. Thomases at 1:10 a.m. and spoke for 14 minutes.[1094]

With respect to her role in changing the procedures for reviewing documents in Mr. Foster's office, Ms. Thomases acknowledged that she spoke with Bernard Nussbaum on July 22. According to Ms. Thomases, Mr. Nussbaum brought up the subject of reviewing documents in Mr. Foster's office and described his plan of action, to which Ms. Thomases replied simply that it "sounds good to me."[1095] Mr. Nussbaum, however, testified that Ms. Thomases initiated the discussion, said that "people were concerned" about the review, and attempted to impose her views on the proper procedures.[1096] Even more importantly, Associate White House Counsel Stephen Neuwirth testified that Mr. Nussbaum understood from the conversation that Ms. Thomases and Mrs. Clinton were concerned about law enforcement officials having "unfettered access" to Mr. Foster's office.[1097]

Ms. Thomases testified that "I don't remember ever having a conversation with Hillary Clinton during the period after Vince Foster's death about the documents in Vince Foster's office."[1098] Telephone records, however, established that, after receiving the early morning call from Ms. Williams, Mrs. Clinton called Ms. Thomases at 6:57 a.m. CDT on July 22, and talked for three minutes.[1099] Ms. Thomases then immediately paged Mr. Nussbaum at the White House and subsequently expressed her concerns about the search procedures.[1100] Even after confronted with these telephone records, Ms. Thomases maintained that she called Mr. Nussbaum merely to commiserate because she was "worried about my friend Bernie."[1101] Ms. Thomases testified that her early-morning conversation with Mrs. Clinton was about "the possibility that I didn't feel well enough to go to Little Rock" for Mr. Foster's funeral.[1102]

When questioned about the repeated telephone calls she made to Ms. Williams's office on July 22 at the same time that White House officials were meeting to discuss the procedures for searching Mr. Foster's office, Ms. Thomases claimed that she probably was attempting not to reach Ms. Williams but rather to be transferred to someone else in the White House.[1103] Ms. Thomases also implausibly suggested that she may have been put on hold during these lengthy calls, for as long as nine minutes,[1104] despite her earlier testimony that July 22 was "a very, very busy day in my work."[1105]

Finally, U.S. Secret Service records established that Ms. Thomases entered the White House at 2:50 p.m. on July 27.[1106] Within ten minutes of her entry, Robert Barnett arrived at the White House to meet with Mrs. Clinton.[1107] During this visit, Mr. Barnett reviewed the Clintons' personal files, previously in Mr. Foster's office, and transferred them from the White House residence to Williams & Connolly.[1108] Ms. Thomases left the White House at 8:20 p.m., after Mr. Nussbaum had turned the note apparently in Mr. Foster's handwriting over to Attorney General Janet Reno. When asked about this unusual visit to the White House—Ms. Thomases is normally in Washington on Wednesdays[1109]—Ms. Thomases testified that she implausibly had "no specific recollection of being at the White House on the 27th."[1110]

Finding 16. Bernard Nussbaum provided inaccurate and incomplete testimony to the Special Committee concerning the handling of documents in Mr. Foster's office following his death

As members of the Special Committee recognized previously, "a witness' response of 'I don't recall' or 'I don't remember' may also be a false statement to the Committee." [1111]

Bernard Nussbaum did not recall Bill Burton asking him to seal Mr. Foster's office on the night of Mr. Foster's death.[1112] Sylvia Mathews testified that she overheard the conversation, [1113] and her notes supported the testimony.[1114]

Mr. Nussbaum did not recall talking to Philip Heymann on July 21 about the procedures for reviewing documents in Mr. Foster's office.[1115] Mr. Heymann testified that he and Mr. Nussbaum agreed that Justice Department lawyers would review the documents; [1116] David Margolis, [1117] Roger Adams, [1118] and Charles Hume [1119] testified that Mr. Heymann so described the procedure to them on July 21.

Mr. Nussbaum did not recall overruling Mr. Neuwirth when Mr. Neuwirth stated in the evening of July 21 that Mr. Nussbaum would review the documents.[1120] Mr. Adams and Mr. Margolis described the incident in detail at the time to other Justice Department officials and later to the Special Committee.[1121]

Mr. Nussbaum did not recall telling Mr. Neuwirth that Ms. Thomases and Mrs. Clinton were concerned about investigators having "unfettered access" to Mr. Foster's office.[1122]

Mr. Nussbaum did not recall telling Mr. Heymann on July 22 that he would call Mr. Heymann back before conducting the search.[1123]

Mr. Nussbaum did not recall Mr. Margolis or Mr. Heymann telling him on July 22 that he was making a "terrible mistake" by changing the procedures.[1124]

Mr. Nussbaum did not recall Mr. Heymann calling him in the evening and asking him, "Bernie, are you hiding something?" [1125]

Mr. Nussbaum did not recall telling Susan Thomases about the note on July 26.[1126]

The frequency of these memory lapses contrasted with Mr. Nussbaum's very definite recollection of other purported facts—facts that put his conduct in a more favorable light. Mr. Nussbaum was sure that no one removed any files from Mr. Foster's office on the night of his death. He was sure that there was no agreement with the Justice Department with respect to procedures to review documents in Mr. Foster's office. He was sure that there was no discussions in the White House about Whitewater at the time of Mr. Foster's death.

Whether a product of deliberate deception or selective memory, Mr. Nussbaum's frequent and convenient assertions that he did not recall important, often damaging, events lead the Special Committee to the obvious conclusion that Mr. Nussbaum provided incomplete and inaccurate testimony to the Special Committee.

The Committee's ability to investigate fully the true facts concerning the handling of documents in Mr. Foster's office following his death has been hindered by the often incomplete and inaccurate testimony of key witnesses. In conjunction with this report of findings, the Special Committee has voted to refer the matter,

including the testimony of specific witnesses, to the Office of Independent Counsel for investigation of possible criminal violations.

In sum, notwithstanding the pattern of stonewalling by the White House and other witnesses, the Special Committee uncovered evidence that clearly established a pattern of highly improper conduct by senior White House officials in the days following Mr. Foster's death. The Committee and the American people will never know exactly what happened in Mr. Foster's office in the days after his death—what documents were removed, whether any documents were destroyed, and whether any evidence of ethical or even criminal misconduct was covered up. The misguided actions of senior White House officials raise not only questions of impropriety, but also raise the specter that investigations were impeded and justice thwarted.

ENDNOTES

[1] Letter from Independent Counsel Robert Fiske to the Chairman and Ranking Member of the Committee, July 15, 1994, quoted in the Report of the Senate Banking Committee, Inquiry into the U.S. Park Police Investigation of the Death of White House Deputy Counsel Vincent W. Foster, Jr., January 3, 1995 [hereinafter "Foster Report"], p. 2.

[2] Foster Report, January 3, 1995, p. 51 (Additional Views of Senators D'Amato, Faircloth, Bond, Hatch, Shelby, Mack, Domenici) (quoting Hume, Trans. pp. 48–49).

[3] S. Res. 120 § 1(b)(2), p. 4.

[4] See Watkins v. United States, 354 U.S. 178, 194–95 (1957); McGrain v. Daugherty, 272 U.S. 135 (1927).

[5] Treasury Document 2987 (1994 Production).

[6] Heymann, 8/2/95 Hrg. p. 50.

[7] Williams & Connolly Document DKSN000518.

[8] Treasury Document 2987 (1994 Production).

[9] Neuwirth, 8/3/95 Hrg. p. 71.

[10] Foster Report, p. 4.

[11] Vinson & Elkins Document RS237A

[12] Clark 1/18/96 Hrg. p. 163.

[13] Hubbell, 2/7/96 Hrg. p. 101

[14] Model Rules of Professional Conduct Rule 3.4(a); 18 U.S.C. § 1510.

[15] The Hotline, Whitewater: CBS Looks at Hillary and Her Shredder, June 7, 1996.

[16] Hubbell, 2/7/96 Hrg. p. 169.

[17] Clark, 1/18/96 Hrg. pp. 162–164

[18] Black, 2/6/96 Hrg. p. 89.

[19] Hubbell, 2/7/96 pp. 20, 50–51

[20] Clark, 1/18/96 Hrg. p. 90

[21] Clark, 1/18/96 Hrg. p. 90.

[22] Huber, 1/18/95 Hrg. p. 5.

[23] Huber 1/18/96 Hrg. p. 9

[24] Hubbell, 2/7/96 Hrg. p. 56

[25] Wright, 1/26/96 Dep. p. 157–159.

[26] Wright, 1/26/96 Dep. p. 157–159.

[27] Wright, 1/26/96 Dep. p. 157–159.

[28] Wright, 1/26/96 Dep. p. 160–161.

[29] Wright, 1/26/96 Dep. p. 164.

[30] Madison Guaranty S&L and the White Water Development Corporation: Washington, DC, Phase, Report of the Committee on Banking, Housing, and Urban Affairs on the Communications between Officials of the White House and the U.S. Department of the Treasury or the Resolution Trust Corporation, S. Rep. 103–433, Jan. 3, 1995, p. 3 & n. 7.

[31] Report of the Committee on Banking, Housing, and Urban Affairs, United States Senate, on the Communications between Officials of the White House and the U.S. Department of the Treasury or the Resolution Trust Corporation, January 3, 1995, [hereinafter Treasury Contacts Report], p. 3.

[32] Treasury Contacts Report, p. 3 & n. 7.

[33] IX Hearing before the Committee on Banking, Housing, and Urban Affairs, White House Production, pp. 1447–1449.

[34] IX Hearing before the Committee on Banking, Housing, and Urban Affairs, White House Production, pp. 1450–1455.

[35] Foren, 11/28/95 Hrg. p. 20.

[36] Foren, 11/28/95 Hrg. p. 23.

[37] Bowles, 11/28/95 Hrg. p. 24.

[38] Bowles, 11/28/95 Hrg. p. 24.

[39] Shepperson, 11/28/95 Hrg. pp. 23–24.

[40] White House Document S12334.

[41] Blair, 2/19/96 Dep. p. 79.

[42] Seidman, II Foster Hearings, p. 1794.
[43] White House Document S9210.
[44] Redden, 5/30/96 Dep. p. 237.
[45] Williams & Connolly Document DKSN000518.
[46] Williams & Connolly Document DKSN000516.
[47] Paul Bedard, GOP Says Thomason May Have Broken Law, *Washington Times*, July 9, 1993, p. Al, produced to the Special Committee as White House Document F 000274.
[48] Id.
[49] Report of the Independent Counsel In Re Vincent W. Foster Jr., June 30, 1994 [hereinafter "Fiske Report"], p. 12, reprinted in I Hearings before the Committee Banking, Housing, and Urban Affairs on the Death of Vincent W. Foster, Jr. [hereinafter "Foster Hearings"], p. 187.
[50] House document CGE12287.
[51] House document CGE12287.
[52] Justice Department Document 6675
[53] Braun, 6/19/95 Dep. pp. 24–25, 121; Rolla, 6/20/95 pp. 54–55; Hines, 7/20/95 Hrg. p. 25; Mathews, 7/25/95 Hrg. pp. 73–74; Gergen, 7/12/95 Dep. pp. 29–30; Gearan, 7/6/95 Dep. p. 48; Hubbel, 7/13/95 Dep. pp. 49–51.
[54] Hines, 7/20/95 Hrg. p. 25.
[55] Pond, 6/26/95 Dep. p. 81.
[56] Neuwirth, 7/10/95 Dep. p. 49.
[57] Castleton, 6/27/95 Dep. p. 75–76.
[58] Flynn, 7/21/95 Dep. p. 48.
[59] Markland, 8/1/95 Hrg. p. 164.
[60] White House Document Z001214.
[61] Markland, 6/28/95 Dep. p. 165.
[62] Heymann, 7/21/95 Dep. p. 24; 8/2/95 Hrg. p. 42.
[63] Thomases, 11/2/95 Hrg. p. 52.
[64] Adams, 7/27/95 Hrg. pp. 96–97.
[65] Neuwirth, 8/3/95 Hrg. p. 71.
[66] Heymann, 7/21/95 Dep. p. 62.
[67] Margolis, 8/10/95 Hrg. p. 233.
[68] Markland, 8/1/95 Hrg. pp. 167–68.
[69] Markland, 8/1/95 Hrg. pp. 167–168.
[70] Spafford, 7/27/95 Hrg. p. 20.
[71] White House Document Z 000354.
[72] Letter from Abner J. Mikva, Counsel to the President, to Hon. William F. Clinger, Chairman, House Committee on Government Reform & Oversight, August 30, 1995, p.1.
[73] White House Documents Z1109, Z1123, Z1110–1117; Gorham, 8/1/95 Hrg. pp. 69–70.
[74] Spafford, 7/27/95 Hrg. p. 19.
[75] White House Document Z 001213.
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[439] Williams, 7/26/95 Hrg. p. 279; Williams, 7/7/95 Dep. p. 32.
[440] O'Neill, 7/26/95 Hrg. p. 7; O'Neill, 6/23/95 Dep. p. 45.
[441] O'Neill, 7/26/95 Hrg. p. 11; White House Document Z0000598.
[442] O'Neill, 7/26/95 Hrg. p. 11.
[443] O'Neill, 7/26/95 Hrg. p. 11.
[444] O'Neill, 7/26/95 Hrg. p. 12.
[445] O'Neill, 7/26/95 Hrg. pp. 12–13.
[446] O'Neill, 7/26/95 Hrg. p. 16.
[447] O'Neill, 7/26/95 Hrg. p. 17; O'Neill, 6/23/95 Dep. p. 61.
[448] O'Neill, 7/26/95 Hrg. p. 17.
[449] O'Neill, 7/26/95 Hrg. p. 17–18.

[450] O'Neill, 7/26/94 Hrg. pp. 18–19.
[451] S. Hrg. 7/26/95 p. 22.
[452] O'Neill, 7/26/95 Hrg. p. 23.
[453] O'Neill, 7/26/95 Hrg. p. 22.
[454] O'Neill, 7/26/95 Hrg. p. 112.
[455] S. Hrg. 7/26/95 p. 95.
[456] O'Neill, 7/26/95 Hrg. p. 22; O'Neill, 6/23/95 Dep. pp. 48, 54–55, 38–39, 81–83, 86–87.
[457] O'Neill, 7/26/95 Hrg. p. 23.
[458] White House Document Z0000598.
[459] Williams, 7/7/95 Dep. p. 56.
[460] Williams, 7/7/95 Dep. pp. 57–58.
[461] Bell Atlantic Document (unnumbered).
[462] Thomases, 7/17/95 Dep. p. 60.
[463] Hubbell, 7/13/95 Dep. p. 72.
[464] Hubbell, 7/13/95 1995 Dep. 73.
[465] Hubbell, 7/13/95 1995 Dep. p. 87.
[466] Hubbell, 7/13/95 1995 Dep. pp. 74–75.
[467] Burton, 7/5/95 Dep. p. 78.
[468] White House Document Z000450.
[469] Pond, 6/26/95 Dep. pp. 74, 77.
[470] Flynn, 6/21/95 Dep. pp.25–26.
[471] Pond, 6/26/95 Dep. pp. 81.
[472] Neuwirth, 7/10/95 Dep. p. 47.
[473] Neuwirth, 7/10/95 Dep. p. 49.
[474] Pond, 6/26/95 Dep. p. 84.
[475] Nussbaum, 7/12/95 Dep. p. 65.
[476] Tripp, 7/12/95 Dep. p. 67.
[477] Burton, 7/5/95 Dep. p. 72. Burton testified that "there weren't three days when I lived in Washington that I didn't make the 8:00 senior staff meeting." Burton, 7/5/95 Dep. p. 79.
[478] Burton, 7/5/95 Dep. p. 72, McLarty, 7/6/95 Dep. pp. 37–38.
[479] Gergen, 7/12/95 Dep. pp. 40–41; McLarty, 7/6/95 Dep. p. 38, Burton, 7/5/95 Dep. p. 72.
[480] Gergen, 7/12/95 Dep. p. 41.
[481] Burton, 7/5/95 Dep. p. 72.
[482] Nussbaum, 7/12/95 Dep. p. 70.
[483] Nussbaum, 7/12/95 Dep. pp. 69–70; Neuwirth, 7/10/95 Dep. p. 58; Sloan, 7/7/95 Dep. pp. 90–91.
[484] Nussbaum, 7/12/95 Dep. pp. 69–70.
[485] Tripp 7/11/95 Dep. p. 87.
[486] Tripp 7/11/95 Dep. p. 87.
[487] Tripp 7/11/95 Dep. pp. 88–89.
[488] Flynn, 6/21/95 Dep. p. 25.
[489] Flynn, 6/21/95 Dep. pp. 41–42.
[490] Markland, 6/28/95 Dep. p. 39.
[491] Flynn, 6/21/95 Dep. p. 43.
[492] Treasury Document 6233.
[493] Castleton, 6/27/95 Dep. p. 76.
[494] Braun, 6/19/95 Dep. pp. 50, 51.
[495] Hines, 6/21/95 Dep. pp. 50–51.
[496] Hines, 6/21/95 Dep. p. 50; Langston, 6/27/95 Dep. p. 24.
[497] Langston, 6/27/95 Dep. p. 35.
[498] Langston, 6/27/95 Dep. p. 33.
[499] Markland, 6/28/95 Dep. p. 43.
[500] Markland, 6/28/95 Dep. p. 43.
[501] Langston, 6/27/95 Dep. p. 43.
[502] Langston, 6/27/95 Dep. pp. 42, 44.
[503] Flynn, 6/21/95 Dep. p. 46.
[504] Flynn, 6/21/95 Dep. p. 47.
[505] Flynn, 6/21/95 Dep. p. 47.
[506] Flynn, 7/21/95 Dep. p. 47.
[507] Flynn, 7/21/95 Dep. p. 48.
[508] Flynn, 6/21/95 Dep. p. 49; Markland, 6/28/95 Dep. p. 97.
[509] Hubbell, 7/18/95 Hrg. p. 142.
[510] Hubbell, 7/18/95 Hrg. p. 142.
[511] Hubbell, 7/18/95 Hrg. p. 142.
[512] Hubbell, 7/18/95 Hrg. p. 143.
[513] Nussbaum, 7/12/95 Dep. p. 85.
[514] Nussbaum, 7/12/95 Dep. p. 87.
[515] Nussbaum, 7/12/95 Dep. p. 94.
[516] Heymann, 7/21/95 Dep. p. 22.
[517] Heymann, 7/21/95 Dep. pp. 23–24.
[518] Heymann, 7/21/95 Dep. p. 24.
[519] Heymann, 7/21/95 Dep. p. 24; 8/2/95 Hrg. p. 42.
[520] Heymann, 7/21/95 Dep. pp. 24–25.
[521] Heymann, 7/21/95 Dep. p. 26.
[522] Heymann, 7/21/95 Dep. p. 26.
[523] Hume, 6/29/95 Dep. p. 68.
[524] Heymann, 7/21/95 Dep. p. 21.
[525] Heymann, 7/21/95 Dep. p. 17.

[526] Heymann, 7/21/95 Dep. p. 41.
[527] Margolis, 8/10/95 Hrg. pp. 178–179.
[528] Adams, 6/29/95 Dep. p. 34; Flynn, 6/21/95 Dep. pp. 27–30;
[529] Margolis, 8/10/95 Hrg. p. 179.
[530] Adams, 7/27/95 Hrg. p. 94; Adams, 6/29/95 Dep. p. 35 ("I think as I have just described, the agreement was that David and I would look at each file and determine relevance or—or determine relevance first of all.")
[531] Adams, 6/29/95 Dep. pp. 35–36; Adams, 7/27/95 Hrg. p. 94.
[532] Justice Document FBI–129.
[533] Margolis, 8/10/95 Hrg. p. 179.
[534] Adams, 7/27/95 Hrg. p. 95.
[535] Justice Department Document F 000149.
[536] Nussbaum, 8/9/95 Hrg. pp. 39–40.
[537] Nussbaum, 8/9/95 Hrg. p. 41.
[538] Nussbaum, 8/9/95 Hrg. p. 21.
[539] S. Hrg. 8/3/95 p. 118: Mr. Neuwirth: "It was left without resolution with the understanding that there would be further discussion about it." Mr. Ben-Veniste: "Mr. Sloan?" Mr. Sloan: "I don't recall a clear resolution on the 21st, Mr. Ben-Veniste."
[540] Margolis, 8/10/95 Hrg. p. 181.
[541] Heymann, 9/2/95 Hrg. pp. 44–45.
[542] Adams, 6/29/95 Dep. p. 34.
[543] Flynn, 6/21/95 Dep. pp. 72–73.
[544] Flynn, 6/21/95 Dep. pp. 75–76.
[545] White House Document Z 001214.
[546] White House Document Z 001213.
[547] White House Document Z 001213.
[548] White House Document Z 001214.
[549] Park Police Document No. 30.
[550] Park Police Document 31.
[551] Park Police Document 32.
[552] Park Police Document 32.
[553] Park Police Document 32.
[554] Park Police Document 33.
[555] Park Police Document 33.
[556] Markland, 8/1/95 Hrg. p. 164.
[557] Markland, 8/1/95 Hrg. p. 164–165.
[558] 8/1/95 Hrg. pp. 165–166.
[559] 8/1/95 Hrg. pp. 165–166.
[560] Markland, 6/28/95 Dep. p. 165.
[561] Bell Atlantic Document (not numbered).
[562] Williams & Connolly Document 001.
[563] Thomases, 8/8/95 Hrg. p. 63.
[564] Williams & Connolly Document 001.
[565] Thomases, 8/8/95 Hrg. p. 9.
[566] Thomases, 8/8/95 Hrg. p. 10.
[567] Williams & Connolly Document 001.
[568] White House Document Z 000647.
[569] Thomases, 8/8/95 Hrg. p. 64; Nussbaum, 7/12/95 Dep. p. 139.
[570] Neuwirth, 7/10/95 Dep. p. 112; 8/3/95 Hrg. p. 75.
[571] Neuwirth, 7/10/95 Dep. p. 112; 8/3/95 Hrg. p. 75.
[572] Williams, 7/7/95 Dep. p. 88.
[573] Williams, 11/2/95 Hrg. p. 21.
[574] Thomases, 8/8/95 Hrg. pp.12–13.
[575] Thomases, 8/8/95 Hrg. p. 64.
[576] Thomases, 8/8/95 Hrg. p. 64.
[577] Thomases, 8/8/95 Hrg. p. 64.
[578] Thomases, 8/8/95 Hrg. p. 68.
[579] Thomases, 8/8/95 Hrg. p. 68.
[580] Thomases, 11/2/95 Hrg. p. 51.
[581] Thomases, 11/2/95 Hrg. p. 57.
[582] Thomases, 11/2/95 Hrg. p. 52.
[583] Nussbaum, 7/12/95 Dep. p. 139.
[584] Nussbaum, 7/12/95 Dep. p. 142.
[585] Nussbaum, 8/9/95 Hrg. p. 58.; Nussbaum, 7/12/95 Dep. p. 144.
[586] Nussbaum, 7/12/95 Dep. pp. 144–145.
[587] Nussbaum, 7/12/95 Dep. p. 142.
[588] Nussbaum, 8/9/95 Hrg. p. 17.
[589] Nussbaum, 8/9/95 Hrg. p. 60.
[590] Quinn, 7/14/95 Dep., p. 7; Nussbaum, 7/12/95 Dep., p. 177.
[591] Willkie, Farr & Gallagher Document ST000001–ST000006.
[592] Thomases, 8/8/95 Hrg. p. 102.
[593] Thomases, 11/2/95 Hrg. p. 95.
[594] Thomases, 11/2/95 Hrg. p. 52.
[595] Thomases, 11/2/95 Hrg. p. 99.
[596] Williams, 11/2/95 Hrg. p. 25.
[597] Treasury Document (unnumbered).
[598] Adams, 7/27/95 Hrg. pp. 96–97.
[599] Adams, 7/27/95 Hrg., p. 97.

[600] 8/10/95 Hrg., pp. 182–183.
[601] Adams, 7/27/95 Hrg. p. 97; Margolis, 8/10/95 Hrg. p. 183.
[602] Margolis, 8/10/95 Hrg. p. 183.
[603] Margolis, 8/10/95 Hrg. p. 184.
[604] Heymann, 8/2/95 Hrg. p. 46.
[605] Heymann, 8/2/95 Hrg. p. 46.
[606] Heymann, 8/2/95 Hrg. pp. 46–47.
[607] Heymann, 8/2/95 Hrg. p. 47.
[608] Heymann, 8/2/95 Hrg. p. 48.
[609] Heymann, 8/2/95 Hrg. p. 48.
[610] Justice Department Document F000166.
[611] Nussbaum, 7/12/95 Dep. p. 174.
[612] Margolis, 8/10/95 Hrg. p. 188.
[613] Margolis, 8/10/95 Hrg. pp. 183–184.
[614] Margolis, 8/10/95 Hrg. pp. 183–184.
[615] Heymann, 7/21/95 Dep. p. 62.
[616] Heymann, 7/21/95 Dep. p. 62.
[617] Margolis, 8/10/95 Hrg. p. 185.
[618] Margolis, 8/10/95 Hrg. p. 185.
[619] Margolis, 8/10/95 Hrg. p. 186.
[620] Margolis, 8/10/95 Hrg. p. 186.
[621] Margolis, 8/10/95 Hrg. p. 186.
[622] Margolis, 8/10/95 Hrg. p. 186, p. 188.
[623] Margolis, 8/10/95 Hrg. p. 189.
[624] Nussbaum, 7/12/95 Dep. 175.
[625] Justice Department Document F 000149.
[626] Nussbaum, 7/12/95 Dep. pp. 176–177.
[627] Nussbaum 7/12/95 Dep. p. 176.
[628] Nussbaum, 7/12/95 Dep. p. 175.
[629] Nussbaum, 7/12/95 Dep. p. 177.
[630] Nussbaum, 7/12/95 Dep. p. 180.
[631] Nussbaum, 7/12/95 Dep. p. 180.
[632] Quinn, 8/7/95 Hrg. p. 45.
[633] Park Police Document 36.
[634] Margolis, 8/10/95 Hrg. p. 189.
[635] Nussbaum, 7/12/95 Dep. p. 172.
[636] Margolis, 8/10/95 Hrg. p. 189.
[637] Margolis, 8/10/95 Hrg. p. 185.
[638] Park Police Document 36; White House Document Z 000354.
[639] Adams, 7/27/95 Hrg. p. 102.
[640] Park Police Document 36.
[641] Markland, 8/1/95 Hrg. p. 167.
[642] Adams, 7/27/95 Hrg. p. 102; Margolis, 8/10/95 Hrg., pp. 194–195.
[643] Markland, 8/1/95 Hrg pp. 167–168; Park Police Document 37.
[644] Swidler & Berlin Document (not numbered).
[645] Markland, 8/1/95 Hrg pp. 167–168.
[646] Park Police Document 37.
[647] Adams, 7/27/95 Hrg. p. 103.
[648] Margolis, 8/10/95 Hrg. p. 190.
[649] Margolis, 8/10/95 Hrg. p. 191.
[650] Margolis, 8/10/95 Hrg. p. 219.
[651] Salter, 7/27/95 Hrg. p. 105.
[652] Adams, 7/27/95 Hrg. p. 105.
[653] Park Police Document 37.
[654] Park Police Document 37.
[655] Park Police Document 37.
[656] Salter, 7/27/95 Hrg. pp. 106–107.
[657] Justice Department Document F 000150.
[658] Margolis, 8/10/95 Hrg. pp. 191–192
[659] Margolis, 8/10/95 Hrg. pp. 191–192
[660] Sloan, 8/3/95 Hrg. p. 66.
[661] Margolis, 8/10/95 Hrg. p. 195.
[662] Margolis, 8/10/95 Hrg. p. 109.
[663] Salter, 7/27/95 Hrg. p. 110.
[664] Adams, 7/27/95 Hrg. p. 106.
[665] Adams, 7/27/95 Hrg. p. 106.
[666] Justice Department Document F 000150.
[667] The notes state: "M= what @ computer? Please review". Swidler & Berlin Doc (not numbered).
[668] White House Document Z 000353.
[669] Salter, 7/27/95 Hrg. p. 107.
[670] White House Document Z000353.
[671] White House Document Z 001209.
[672] Tripp, 8/1/95 Hrg p. 35.
[673] Gorham, 8/1/95 Hrg. pp. 35–36.
[674] White House Documents Z 001210–Z001211.
[675] White House Document Z 001213.
[676] White House Document Z 001214.

[677] Adams, 7/17/95 Hrg. p. 107.
[678] Adams, 7/17/95 Hrg. p. 107.
[679] Salter, 7/17/95 Hrg. p. 108.
[680] Letter from Abner J. Mikva, Counsel to the President, to Hon. William F. Clinger, Chairman, House Committee on Government Reform & Oversight, August 30, 1995, p. 1.
[681] Swidler & Berlin Document (unnumbered)
[682] Letter from Abner J. Mikva, Counsel to the President, to Hon. William F. Clinger, Chairman, House Committee on Government Reform & Oversight, August 30, 1995, p. 1.
[683] Letter from Abner J. Mikva, Counsel to the President, to Hon. William F. Clinger, Chairman, House Committee on Government Reform & Oversight, August 30, 1995, p. 2.
[684] Memorandum from Michael E. Shaheen Jr to David Margolis, July 24, 1995, p. 1.
[685] Memorandum from Michael E. Shaheen Jr to David Margolis, July 24, 1995, pp. 2–3.
[686] Nussbaum, 8/10/95 Hrg. p. 59.
[687] Nussbaum, 8/10/95 Hrg. p. 59.
[688] Salter, 7/27/95 Hrg. pp 108–109.
[689] Adams, 7/27/95 Hrg. p. 107.
[690] Condon, 6/28/95 Dep. p. 56.
[691] Flynn, 6/21/95 Dep. p. 89.
[692] Hume, 8/1/95 Hrg. p. 218.
[693] Markland, 6/30/95 Dep. p. 213.
[694] Spafford, 7/11/95 Dep. p. 70.
[695] Markland, 6/28/95 Dep. p. 213; 8/1/Hrg. p. 172.
[696] Markland, 8/1/95 Hrg p. 172.
[697] Margolis, 8/10/95 Hrg. pp. 192–193.
[698] Nussbaum, 8/10/95 Hrg. p. 62.
[699] Burton, 7/5/95 Dep. p. 109; Neuwirth, 7/10/95 Dep. p. 187; Sloan, 7/7/95 Dep., p. 187. Sloan did testify that he had the impression on July 22 that the briefcase was empty, but he could not recall how he got that impression. Sloan, 7/7/95, Dep. p. 188.
[700] Burton, 7/5/95 Dep. p. 184.
[701] Hines, 6/21/95 Dep. p. 83.
[702] Markland Dep. p. 218.
[703] Markland, 6/28/95 Dep. pp. 251–252.
[704] Spafford, 7/27/95 Hrg. p. 19.
[705] Spafford, 7/27/95 Hrg. p. 20.
[706] Spafford, 7/27/95 Hrg. p. 18.
[707] Spafford, 7/27/95 Hrg. p. 22.
[708] Sloan, 8/3/95 Hrg. p. 67.
[709] Margolis, 8/10/95 Hrg. pp. 230–231.
[710] Salter, 7/27/95 Hrg. p. 112.
[711] Markland, 8/1/95 Hrg. p. 170.
[712] Margolis, 8/10/95 Hrg. p. 170.
[713] 7/27/95 Hrg. p. 113.
[714] White House Document Z 000107.
[715] White House Document Z 000578.
[716] Spafford, 7/27/95 Hrg. p. 20.
[717] White House Document Z 000354.
[718] Sloan, 8/3/95 Hrg. p. 85.
[719] White House Document Z 000851.
[720] White House Document Z 000953.
[721] Williams, 7/26/95 Hrg. pp. 165.
[722] Nussbaum, 8/9/95 Hrg. p. 25.
[723] Nussbaum, 7/12/95 Dep. pp. 237–238.
[724] Nussbaum, 7/12/95 Dep. p. 240.
[725] Williams, Dep. p. 119.
[726] Williams, 7/26/95 Hrg. pp. 170–171.
[727] Williams, 7/7/95 Dep. p. 119.
[728] Williams, 7/7/95 Dep. pp. 122–123.
[729] Gorham, 8/1/95 Hrg. pp. 16–17.
[730] Gorham, 8/1/95 Hrg. pp. 16–17.
[731] Gorham, 8/1/96 Hrg. p. 18.
[732] Gorham, 8/1/96 Hrg. p. 18.
[733] Gorham, 8/1/96 Hrg. p. 18.
[734] Nussbaum, 7/12/95 Hrg. pp. 258–259.
[735] Williams, 7/26/95 Hrg. pp. 176–177.
[736] Gorham, 8/1/95 Hrg. p. 20.
[737] Gorham, 8/1/95 Hrg. p. 20.
[738] Gorham, 8/1/95 Hrg. p. 20.
[739] Tripp, 8/1/95 Hrg. p. 21.
[740] Williams, 7/26/95 Hrg. p. 167.
[741] Williams, 7/26/95 Hrg. pp. 179–180.
[742] Williams, 7/26/95 Hrg. p. 180.
[743] Williams, 7/26/95 Hrg. p. 181.
[744] Williams, 7/26/95 Hrg. p. 181.
[745] Williams, 7/26/95 Hrg. p. 182.
[746] Williams, 7/26/95 Hrg. pp. 183–184.
[747] Williams, 7/26/95 Hrg. p. 184.
[748] Williams, 7/26/95 Hrg. p. 184.
[749] Williams, 7/26/95 Hrg. p. 180.

[750] Williams, 7/26/95 Hrg. p. 221.
[751] Williams, 7/26/95 Hrg. p. 221.
[752] Nussbaum, 9/16/95 Dep. p. 238.
[753] Nussbaum, 7/12/95 Dep. p. 239.
[754] Nussbaum, 7/12/95 Dep. p. 239.
[755] Castleton, 8/3/95 Hrg. p. 33
[756] Castleton, 6/27/95 Dep. p. 132.
[757] Castleton, 8/3/95 Hrg. p. 8.
[758] Castleton, 8/3/95 Hrg. p. 11.
[759] Castleton, 8/3/95 Hrg. p. 12.
[760] Castleton, 8/3/95 Hrg. p. 12.
[761] Castleton, 8/3/95 Hrg. p. 12.
[762] Castleton, 8/3/95 Hrg. p. 13.
[763] Huber, 8/3/95 Hrg. p. 5.
[764] Huber, 8/3/95 Hrg. pp. 14–15.
[765] Huber, 8/3/95 Hrg. p. 15.
[766] Huber, 8/3/95 Hrg. p. 16.
[767] Huber, 8/3/95 Hrg. p. 17.
[768] Huber, 8/3/95 Hrg. p. 17.
[769] Huber, 6/29/95 Dep., p. 36.
[770] White House Document S 020915.
[771] Heymann, 7/21/95 Dep. pp. 85–86.
[772] Heymann, 7/21/95 Dep. pp. 85–86.
[773] Justice Department Document F 000166.
[774] Heymann, 7/21/95 Dep. pp. 170.
[775] Heymann, 7/21/95 Dep. pp. 170.
[776] Margolis, 8/10/95 Hrg. p. 212.
[777] Heymann, 7/21/95 Dep. pp. 154–155.
[778] Margolis, 8/10/95 Hrg. p. 233.
[779] Margolis, 8/10/95 Hrg. p. 233.
[780] Margolis, 8/10/95 Hrg. p. 232.
[781] Heymann, 8/2/95 Hrg. p. 51.
[782] Margolis, 8/10/95 Hrg. p. 230.
[783] Heymann, 8/2/95 Hrg. pp. 49–50.
[784] Justice Department Document F 000163.
[785] Heymann, 8/2/95 Hrg. p. 50.
[786] Heymann, 8/2/95 Hrg. p. 50.
[787] Heymann, 8/2/95 Hrg. p. 50.
[788] Nussbaum, 8/9/95 Hrg. p. 127.
[789] Neuwirth, 8/3/95 Hrg. pp. 121–122.
[790] Neuwirth, 8/3/95 Hrg. pp. 121–122.
[791] Neuwirth, 8/3/95 Hrg. pp. 121–122.
[792] Neuwirth, 8/3/95 Hrg. p. 124.
[793] Nussbaum, 7/12/95 Dep. pp. 278–279.
[794] Nussbaum, 7/12/95 Dep. pp. 278–279.
[795] Nussbaum, 7/12/95 Dep. pp. 278–279.
[796] Park Police Document 43.
[797] Park Police Document 68.
[798] The FBI conducted a comparison of the handwriting on the note and that of Vince Foster in various personal documents, and concluded that Foster wrote the note. I Foster Hearings, p. 257–258.
[799] Nussbaum, 7/12/95 Dep. pp. 282–283.
[800] Burton, 8/7/95 Hrg. p. 8.
[801] Burton, 8/7/95 Hrg. p. 9.
[802] Gorham, 8/1/95 Hrg. p. 27.
[803] Tripp, 8/1/95 Hrg. p. 29.
[804] Tripp, 8/1/95 Hrg. p. 29.
[805] Tripp, 8/1/95 Hrg. p. 29.
[806] Nussbaum, 8/10/95 Hrg. p. 19.
[807] Sloan, 8/3/95 Hrg. p. 97.
[808] White House Document Z 001206, Z 001208.
[809] White House Document Z 001213.
[810] White House Document Z 001214.
[811] Gorham, 8/1/95 Hrg. p. 31.
[812] Nussbaum, 8/10/95 Hrg. p. 12.
[813] Nussbaum, 8/9/95 Hrg. p. 18.
[814] Nussbaum, 7/12/95 Dep. p. 302.
[815] Nussbaum, 7/12/95 Dep. p. 303.
[816] Burton, 8/7/95 Hrg. pp. 49–49.
[817] Nussbaum, 7/12/95 Dep. p. 303.
[818] Burton, 8/7/95 Hrg. p. 51.
[819] Nussbaum, 7/12/95 Dep. pp. 303–305.
[820] Nussbaum, 7/12/95 Dep. pp. 303–305.
[821] Gergen, 7/12/95 Hrg. pp. 116–117.
[822] Gergen, 7/12/95 Dep. p. 137.
[823] Nussbaum, 7/12/95 Dep. pp. 298–299.
[824] S. Hrg., 8/7/95, p. 122.
[825] McLarty, 8/7/95 Hrg. p. 122–123.

[826] McLarty, 8/7/95 Hrg. p. 23.
[827] Nussbaum, 7/12/95 Dep. p. 299.
[828] Nussbaum, 7/12/95 Dep. pp. 287–288.
[829] Burton, 8/7/95 Hrg. p. 13.
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CONCLUSIONS OF THE SPECIAL COMMITTEE

"Try to find out what's going on in Investigation"
"Vacuum Rose Law files WWDC docs-subpoena
*Documents—> Never know go out quietly" [1]

Handwritten notes of William Kennedy, former White House Associate Counsel

"HRC 'doesn't want [an independent counsel] poking into 20 years of public life in Arkansas'"

Diary of Roger Altman, former Deputy Secretary of Treasury, quoting Margaret Williams, Chief of Staff to the First Lady

"HI Spcl Counsel-3 major problems: (1) HRC adamantly opposed (2) Reno has shut the door (3) if we ask looks like we ducked."

Handwritten notes of Mark Gearan, former Director of White House Communications.

Our nation rests on the principle that all Americans are equal under the law. No one, including the President, is entitled to special treatment in a civil or criminal investigation of their conduct. The power of the presidency may not be used to obtain a legal defense for the President and his associates unavailable to other citizens.

During the 1992 presidential campaign, questions surfaced about the relationship of then-Governor Clinton and Mrs. Clinton and James McDougal, the owner of Madison Guaranty Savings and Loan Association ("Madison Guaranty") and the Clintons' partner in the Whitewater Development Corporation, Inc. ("Whitewater"). Within the past month, a jury in Little Rock, Arkansas convicted Mr. McDougal, his former wife, Susan, and Arkansas Governor Jim Guy Tucker of numerous federal crimes relating to the activities of Madison Guaranty and, in part, the operation of Whitewater.

The McDougal-Tucker convictions grew out of an investigation begun during the 1992 presidential campaign by investigators of the Resolution Trust Corporation ("RTC"). This RTC investigation culminated in a series of criminal referrals to the United States Attorney's Office in Little Rock naming the Clintons as witnesses to suspected criminal activity. These significant convictions also rested on a parallel inquiry begun in 1992 by the Small Business Administration ("SBA") of Capital Management Services, Inc. ("CMS"), a small business investment company.

Within months of the inauguration of President Clinton, senior Administration officials began to take steps to minimize the legal and political damage to the Clintons arising from these investigations. These officials seriously misused their public offices for the Clintons' private benefit, obtained confidential law enforcement information from the RTC and SBA relating to investigations touching on the Clintons, and they attempted to interfere in ongoing law enforcement investigations.

During hearings in the summer of 1994, the Senate Banking Committee examined—in deference to the investigation of Special Counsel Robert Fiske—only the propriety of certain communications in late 1993 and early 1994 between senior officials of the White House and the Treasury Department concerning confidential RTC criminal referrals involving Madison and Whitewater. The White House then claimed that its receipt of this confidential law enforcement information was appropriate to allow the President to respond to press inquiries and to protect the President from inadvertently engaging in meetings that later could prove embarrassing. No one—and certainly no member of the Banking Committee—asserted that the President was entitled to use such information to further his personal legal interests.

Rather than being limited to the narrow question before the Banking Committee in the 103rd Congress, and without objection by Independent Counsel Kenneth Starr, the Special Committee examined all aspects of the Clinton Administration's response to ongoing investigations of Whitewater and related matters. This broader inquiry revealed that in 1993 and 1994, senior Administration officials took steps that went far beyond what was necessary to respond to press inquiries. Indeed, when the full picture is examined, the claim that Administration officials were innocently gathering information so they could respond to press inquiries collapses entirely.

After careful review of all the evidence, including evidence obtained by the Banking Committee during the summer of 1994, the Special Committee concludes that senior Administration officials—in the White House, the Treasury and Justice Departments, the RTC and the SBA—engaged in a pattern of highly improper conduct in responding to investigations of the Clintons' involvement in Whitewater and related matters.

This pattern cannot be explained as the result of a series of lapses in judgment. The Committee concludes that these Administration officials deliberately misused their public offices to advance the purely private interests of the President and Mrs. Clinton. Raising the possibility of obstruction of justice, they repeatedly attempted to hinder, impede and control investigations of Whitewater and related matters by the RTC, the Justice Department, the Inspectors General of the RTC and Treasury Departments, and even the Senate.

Because of misdeeds of the White House, perhaps the American people will never know the full extent to which the highly improper actions of Administration officials prejudiced the outcome of inquiries involving Whitewater, Madison Guaranty and related matters. But the available facts clearly demonstrate that Administration officials improperly used the power of their offices in a wrongful at-

tempt to ensure that ongoing federal investigations resulted in the least amount of legal and political damage to the President and Mrs. Clinton.

* * * * * * *

1. By mid-1993, the Clintons and their associates had already taken steps to minimize their potential liability from investigations of Whitewater and Madison Guaranty

The pattern of concealment, interference and abuse of power surrounding the Clintons' response to federal investigations of Whitewater and Madison Guaranty began in the mid-1980s.

On July 2, 1986, the Arkansas Securities Commissioner, Beverly Bassett Schaffer, warned Governor Clinton that federal regulators were about to remove James McDougal from the management of Madison Guaranty. Specifically, she wrote to the Governor's chief counsel that the S&L was in "serious trouble." [2]

On July 14, just four days after the Federal Home Loan Bank Board removed Mr. McDougal from Madison, Mrs. Clinton terminated her law firm's relationship with Madison Guaranty and returned the unused portion of the S&L's retainer. [3] That same day, Governor Clinton erroneously advised his Chief of Staff, Betsey Wright, that he and Mrs. Clinton were no longer partners of Mr. McDougal in the Whitewater real estate investment. [4]

In 1988, after federal regulators had taken over Madison Guaranty and were investigating insider dealing that contributed to the S&L's collapse, Mrs. Clinton took the questionable step of ordering the destruction of records reflecting her and her law firm's work for Madison. [5] At the time, Seth Ward, a former associate of Mr. McDougal, was suing Madison Guaranty over a land deal that federal regulators have described as a fraud. The Committee has recently obtained evidence indicating that Mrs. Clinton herself may have had greater involvement in creating documents that concealed irregular loans between Mr. Ward and Madison than her own statements admit. [6]

In late fall 1992, Mrs. Clinton learned of an RTC "criminal referral regarding a savings and loan official in Arkansas and * * * involv[ing] the Clintons." [7] After the election, her law partner and Mr. Ward's son-in-law, Webster Hubbell secretly and improperly removed the firm's client files for Madison without obtaining the approval of the firm or the RTC, which at this point owned them in its capacity as conservator of Madison Guaranty. [8] In anticipation of the possibility that the Clintons might need the Madison files (as well as other client files) to respond to an inquiry, Mr. Hubbell brought the records from Little Rock to Washington—storing them in his basement for almost a year. In some instances, Mr. Hubbell left the firm with no copies of the relevant files, including billing records.

By March 1993, senior Clinton Administration officials confirmed that the RTC had sent a criminal referral mentioning the Clintons to the Justice Department. Specifically, RTC Senior Vice President William Roelle advised Roger Altman, then Deputy Treasury Secretary and a close associate of the President, of the existence of the RTC referral involving the Clintons. [9]

In a pattern that would be repeated, Mr. Altman signaled the White House about this confidential RTC information which was not yet the subject of any press inquiries. On March 23 and 24, Mr. Altman sent Mr. Nussbaum, by facsimile, two news articles, written the year before, concerning the Clintons' Whitewater investment.[10]

In early May 1993, again prior to any press inquiries, the White House learned of another investigation relating to President Clinton. Former SBA Associate Administrator Wayne Foren testified that David Hale, who was a key prosecution witness in the recently concluded McDougal-Tucker trial, told him that he had access and influence with Governor Tucker and President Clinton.[11] On May 5, Mr. Foren briefed Erskine Bowles, the new SBA Administrator, on the agency's investigation of CMS and Mr. Hale.[12] Mr. Foren and his deputy understood that Mr. Bowles passed this confidential information to White House Chief of Staff Mack McLarty.[13]

2. The White House concealed damaging evidence about Whitewater and Travelgate from career law enforcement officials investigating Vincent Foster's death

In July 1993, as described in Part I of this Report, senior White House officials engaged in highly improper conduct in handling the documents in the office of former White House Deputy Counsel Vincent Foster following his death. By the time of Mr. Foster's death, the Clintons and their associates were aware that the Clintons' involvement with Whitewater and Madison Guaranty might subject them to liability, and that Mr. Foster's office might contain damaging evidence about the Whitewater and Travelgate affairs. Over the objection of the Deputy Attorney General and at the direction of Mrs. Clinton, senior White House officials prevented law enforcement officials from examining Mr. Foster's records. Mrs. Clinton's Chief of Staff, Margaret Williams, then transferred damaging Whitewater files to the White House Residence for review by the President and Mrs. Clinton.

3. Senior White House officials improperly gathered confidential information about investigations involving Whitewater and Madison Guaranty

By the summer of 1993, the White House began to obtain information about the looming Whitewater investigation. On August 17, Randy Coleman, David Hale's attorney, told Associate White House Counsel William Kennedy that Mr. Hale was under investigation by the Federal Bureau of Investigation, that he expected to be indicted soon, and that the investigation could affect the President.[14]

Several days later, Mr. Kennedy—not the Clintons' private counsel—called Mr. Coleman, who commented that if Heidi Fleiss "was madam to the stars, David Hale was the lender to the political elite in Arkansas."[15] Mr. Coleman told Mr. Kennedy that Mr. Hale's firm had made a number of improper loans involving politicians, including Governor Clinton.[16] Mr. Kennedy advised Counsel to the President Bernard Nussbaum of Hale's allegations against the President.[17]

Sometime in September, the White House apparently obtained confidential information from the U.S. Attorney's Office in Little

Rock, through Mr. McDougal's counsel, regarding the likelihood that Mr. McDougal would be indicted imminently.[18]

By late September 1993, the RTC Office of Investigations in Kansas City prepared nine criminal referrals related to Madison Guaranty. The submission of the referrals to the Justice Department was, however, delayed by a week due to a demand by lawyers in the RTC's Professional Liability Section to perform a "legal review" of the referrals.

During that week, Jean Hanson, the General Counsel of the Department of Treasury, which oversaw the RTC and its investigations, informed White House Counsel Bernard Nussbaum and Associate White House Counsel Clifford Sloan that there were several RTC referrals involving Madison, Whitewater, and the Clintons.[19] Ms. Hanson told Mr. Nussbaum that the President and Mrs. Clinton were identified as possible witnesses to the suspected crimes at issue in the referrals.[20] Ms. Hanson also told Mr. Nussbaum that the referrals referenced possible improper campaign contributions from Madison to one of Mr. Clinton's gubernatorial campaign.[21] Mr. Nussbaum admitted that Ms. Hanson provided him with nonpublic information about the referrals.[22]

This improper transmittal of confidential RTC information was a violation of clearly established RTC procedures as criminal referrals derived from records of financial institutions are subject to the restrictions of the Right to Financial Privacy Act.[23]

The day after this private conversation, on September 30, Ms. Hanson called Mr. Sloan to amplify on the confidential information she had provided[24] and informed him that the nine referrals, among other things, referred to Governor Jim Guy Tucker,[25] named a Clinton gubernatorial campaign as a "co-conspirator,"[26] and mentioned the Clintons as potential witnesses.[27] In accordance with instructions from Mr. Nussbaum, Mr. Sloan relayed this information to Bruce Lindsey on or about September 30.[28]

On October 4 or 5, 1993, Mr. Lindsey apprised President Clinton of the criminal referrals.[29] It is highly likely that Mr. Lindsey told the President, a former Governor of Arkansas, that his immediate successor was mentioned in a criminal referral. When asked about President Clinton's response, Mr. Lindsey testified that "it was certainly nothing other than just sort of, '"[30]

Two days later, President Clinton and Mack McLarty had meetings at the White House with Governor Tucker.[31] Although the President and Mr. McLarty have denied briefing Governor Tucker on the criminal referrals, senior White House officials undeniably put the President in the position where a legitimate question can be raised that such a briefing occurred. This fact wholly undermines the White House's claim that it was entitled to receive confidential information about the RTC criminal referrals to protect the President from embarrassing meetings with persons named in those referrals.

On October 14, 1993, senior White House officials met again in Mr. Nussbaum's office with senior officials from the Treasury Department about the criminal referrals.[32] The discussion included a detailed description of the referrals[33] including the fact that one of the referrals "involved four cashiers checks—each for $3,000, two

made payable to the Clinton for Governor Campaign and two made payable to Bill Clinton."[34]

4. A pivotal event: senior White House officials and private counsel for the Clintons participate in an improper Whitewater defense meeting

On November 5, 1993, armed with details of the confidential RTC criminal referrals obtained from the Treasury Department—as well as information on Mr. Hale's allegations obtained from the SBA—White House officials met with the Clintons' private lawyers, "to impart information to the Clinton's personal lawyers,"[35] and to arrange "a division of labor between personal and White House counsel for handling future Whitewater issues."[36]

When asked whether the gathering was a legal defense meeting, Mr. Lindsey testified that "that would accurately characterize the meeting."[37] The meeting was not, according to Mr. Lindsey, for the official purpose of responding to press inquiries.[38] The participants, for example, discussed either "vacuum[ing]," or a "vacuum" in, the Rose Law Firm's files on Madison. In any event, members of the White House Counsel's office were clearly being employed in the service of the Clintons' private legal defense effort.

Mr. Kennedy's contemporaneous notes of this meeting, which the Special Committee finally obtained after the full Senate voted to authorize the Senate Legal Counsel to institute a civil enforcement proceeding, indicate that a significant portion of the discussion was related to the confidential criminal referrals and the ongoing RTC investigation of Madison. Among the principal topics of the meeting was the referral related to illegal contributions to Mr. Clinton's gubernatorial campaigns.[39]

The Kennedy notes indicate that the White House officials imparted to the private lawyers much of the knowledge they possessed with respect to Whitewater, including confidential information. As of November 5, the RTC considered the information about the referrals confidential and had not officially confirmed the accuracy of any press accounts about the referrals.[40]

It was improper for White House officials to communicate confidential RTC or other law enforcement information to the Clintons' private lawyers to assist them in defending the Clintons against the RTC or any other potential civil or criminal enforcement actions. The investigations of Madison raised the possibility that the President or Mrs. Clinton personally could be held liable, financially or otherwise, in connection with Rose Law Firm's representation or the activities of Whitewater.

The Special Committee concludes that the decision, as reflected in the November 5 meeting of White House officials and the Clintons' private counsel to cooperate in their response to the Whitewater investigations facing the Clintons represented a fundamental and disturbing turning point in the investigation. Although the Clintons faced adverse legal actions by the United States, they were relying on United States officials at the highest levels to defeat or avoid such actions. After the November 5 meeting, senior White House officials could no longer assert that their Whitewater efforts were solely intended to serve the government's official interests. The White House had completely obliterated the

distinction between the public interest and the Clintons' private good.

5. Senior White House officials did not pass the torch to the Clintons' new private counsel, but continued to take highly improper steps to advance the Clintons' private interests

Although the White House has claimed that the purpose of the November 5 meeting was to "pass the torch between White House lawyers who had been handling Whitewater to the newly hired attorney, David Kendall,"[41] that clearly proved not to be the case. After the meeting, members of the White House Counsel's Office undeniably took affirmative steps to collect confidential information about the federal investigations into Whitewater—information that private counsel could not obtain.

For example, on November 16, 1993, Mr. Eggleston obtained confidential information in the form of a stack of documents "approximately one foot high"—from the SBA about criminal referrals involving Mr. Hale.[42] Mr. Eggleston reviewed these confidential documents for any references to President or Mrs. Clinton. The Justice Department later demanded that Mr. Eggleston return the documents to the SBA. Fraud Section Chief Gerald McDowell remarked: "I've got to believe the WH counsel have done an incredibly stupid thing!"[43] Contrary to Mr. Eggleston's denial, the Special Committee concludes that the evidence, particularly the documentary evidence, indicates that he shared this information with Bruce Lindsey, then the chief White House advisor on Whitewater.

6. Senior White House officials held formal "Whitewater Response Team" meetings to protect the Clintons' private interests in ongoing federal investigations

In January 1994, a group of senior White House officials frequently met twice daily as a "Whitewater Response Team."[44] These meetings must be viewed in context. They went far beyond what was necessary to respond to press inquiries or to address other official matters. The meetings were held after the critical November 5 defense meeting with the Clintons' personal counsel. And, the Clintons' private defense counsel, Mr. Kendall, directly or indirectly participated in these meetings.

During the initial Whitewater Response Meetings, senior White House officials debated the appointment of a special counsel to investigate Whitewater. Normally, the decision whether to ask for the appointment of a special counsel would be an official matter. The appropriateness of members of the Whitewater Response Team debating this matter, however, was fatally compromised by their earlier participation in the November 5 defense meeting. Thus, in discussions over the wisdom of appointing a special counsel, the assembled group undeniably considered matters relevant to the Clintons' personally—for example, whether the Clinton associates could be pressured into cooperating with the special counsel.

Mrs. Clinton opposed the appointment of a special counsel, and her opposition was the source of considerable concern within the White House.[45] Notes taken by Communications Director Mark Gearan of a January 4, 1994 meeting reflect that Mrs. Clinton attended a meeting, then in progress, and said "this looks like a

meeting I might be interested in."[46] Mr. Gearan testified that Mrs. Clinton stayed for approximately 15 minutes,[47] and expressed her view that no special counsel be appointed.[48]

Senior White House officials, and Mrs. Clinton in particular, feared that persons close to President Clinton might be indicted. At a January 7, 1993 meeting, Mr. Nussbaum curiously said, "Indictments will be Betsey Wright."[49] Ms. Wright was Governor Clinton's former Chief of Staff in the 1980s and handled Whitewater and other Arkansas-related matters for the 1992 Clinton Presidential campaign.[50] A White House document marked "Confidential: Second Draft, Summary of Arguments Re: Whitewater," dated January 10, 1994, listed reasons against the appointment of a prosecutor,[51] including that a special counsel investigation "may result in focus on friends and associates of the President, begin to squeeze them and may subject some to indictment."[52]

On January 8, 1994, Deputy Chief of Staff Harold Ickes expressed discontent with the manner in which career Justice Department prosecutors—Donald MacKay and Alan Carver—were then handling the ongoing federal investigations of the Clintons.[53] Mr. Ickes described Mr. Carver as a "bad guy" and actually said of Messrs. MacKay and Carver: "Those guys are f——— us blue."[54]

The Whitewater Response Team assigned tasks to White House attorneys that should have been handled solely by the Clintons' private attorneys. For example, Mr. Eggleston prepared a legal analysis on the statute of limitations applicable to claims brought by the RTC and on the potential civil liability faced by the Clintons arising from their involvement with Madison Guaranty.[55] Another White House official was assigned the task of contacting Christopher Wade, the realtor of the Whitewater property, to gather information from him.[56]

The Whitewater Response Team was particularly concerned about the potentially adverse testimony of Beverly Bassett Schaffer, the former Arkansas Securities Commissioner who oversaw the regulation of Madison Guaranty in the mid-1980s. An RTC criminal referral expressly referenced Ms. Schaffer, and her contact with Mrs. Clinton in connection with Mrs. Clinton's representation of Madison Guaranty. At a January 7 meeting, Mr. Ickes exclaimed, "[Beverly] Bassett [Schaffer] is so f——- important. [I]f we f—- this up, we're done."[57]

Even the President worried about Ms. Schaffer. In late December, he directed Messrs. Lindsey and McLarty: "This is important to be on top of. Bassett did a good job in [campaign] on this—can she now?"[58] In an effort to conceal the White House's involvement, the Response Team debated sending outside emissaries to speak with Ms. Schaffer.[59] Shortly thereafter, Mr. Lindsey's former law partner, John Tisdale, and another Clinton confidant, Skip Rutherford, contacted Ms. Schaffer. Mr. Tisdale reported back to Mr. Lindsey by memoranda,[60] and Mr. Rutherford discussed Ms. Schaffer with the White House.[61] Ms. Schaffer further testified that although Mr. Rutherford did not specifically indicate he was calling on behalf of the White House, she was aware that Mr. Rutherford was "helping" Mr. McLarty in some capacity.[62]

7. In early 1994, senior White House officials sought to manipulate the RTC investigation of Madison Guaranty and the Rose Law Firm

In early 1994, while the Whitewater Response Team was, in effect, plotting the Clintons' legal defense, there were substantial additional contacts between the Treasury Department and senior White House officials concerning RTC matters. In view of the totality of the White House's involvement in defending the Clintons' private interests in this period, the impropriety of these contacts can no longer be seriously debated. The Special Committee concludes that the contacts were improper, wrong and never should have occurred. In reaching this conclusion, the Special Committee places particular weight on the fact that as of the time of these additional contacts, the White House participants were members of the Whitewater Response Team and had discussed the concern that the investigators might pressure Clinton associates into cooperating.

At a February 2 meeting, Deputy Treasury Secretary and Acting RTC CEO Roger Altman briefed key members of the Whitewater Response Team, who, by then, were in regular contact with the Clintons' private counsel on the status of the RTC's investigation into civil claims against the Clintons. Specifically, Mr. Altman provided the critical confidential information that the RTC investigation probably would not be finished prior to the expiration of the statute of limitations. Armed with this inside information, the Clintons could safely reject any RTC request for a tolling agreement.

Also on February 2, having been told that the RTC would have to decide quickly, and with very incomplete information whether to bring civil claims against the Clintons, senior White House officials pressured Mr. Altman, a friend of the President, not to recuse himself. The White House feared that RTC General Counsel Ellen Kulka would be too tough and unreasonable. She could not be controlled, and the stakes were too high. Ultimately, Mr. Altman gave in to the pressure; his so-called "de facto" recusal was no recusal at all.

The Special Committee concludes that this February 2 meeting is indefensible. It never should have occurred. At the time, Mr. Nussbaum had functioned as a critical part of the Whitewater Response Team. He worked with private counsel for the Clintons. He was no longer in a position to provide dispassionate policy advice to Mr. Altman about recusal. Ironically, at this point, Mr. Nussbaum's conflict exceeded that of Mr. Altman. The Special Committee notes that RTC General Counsel Ellen Kulka, when asked to provide confidential information to Mr. Kendall, strongly objected.[63] At that time, senior White House officials failed to advise Ms. Kulka that they were already engaged in joint defense efforts with Mr. Kendall.

The importance to the White House of keeping the friendly Mr. Altman in the loop on the Madison case is illuminated by the mysterious discovery of the Rose Law Firm billing records in the Book Room of the White House Residence. These records may explain why, as Mrs. Clinton's chief of staff, Margaret Williams, told Mr. Altman in early January 1994, "HRC was 'paralyzed' by [Whitewater]."[64] The records may also explain why Deputy White House Chief of Staff Ickes and the White House Counsel's office

prepared a memorandum on the Rose Law Firm's and the Clintons' potential civil liability relating to the failure of Madison.

The billing records indicate that Mrs. Clinton—contrary to her previous statements—represented Mr. McDougal's S&L in connection with the Castle Grande project, which federal regulators have criticized as a series of sham land sales and insider transactions.[65] In fact, after reviewing the records, former Madison chief loan officer, Harry Don Denton, recently told the federal investigators that he warned Mrs. Clinton in 1986 that loan transactions she was handling involving the Castle Grande project could be irregular, but he said she "summarily dismissed" his concern.[66]

8. Jay Stephens was removed from the investigation of possible civil claims against parties associated with Madison Guaranty, including the Clintons

Early in February 1994, the RTC retained the law firm of Pillsbury, Madison & Sutro, ("Pillsbury") including former Republican U.S. Attorney Jay Stephens, to investigate possible civil actions against parties associated with Madison Guaranty.

On February 25, 1994, George Stephanopoulos, Senior Advisor to the President, and Josh Steiner, Chief of Staff to Secretary of the Treasury Lloyd Bentsen, discussed the RTC's decision to hire Mr. Stephens.[67] Mr. Steiner testified that Mr. Stephanopoulos was "angry" and thought that Mr. Stephens should be disqualified from handling the matter because he had been a critic of the Clinton administration.[68]

Treasury Department General Counsel Jean Hanson recalled that during one conversation Mr. Steiner told her: "Do you believe those guys? They want to see if they can get rid of Jay Stephens." Ms. Hanson understood that "those guys" referred to various White House officials.[69] Ms. Hanson further testified that on a separate occasion Mr. Steiner, himself, expressed the opinion that Ms. Kulka should be fired for hiring Mr. Stephens.[70] Moreover, Mr. Steiner wrote in his diary about his conversation with Mr. Stephanopoulos:

> Simply outrageous that RTC had hired him [Stephens], but even more amazing when George then suggested to me that we needed to find a way to get rid of him. Persuaded George that firing him would be incredibly stupid and improper.[71]

In hearings before the Senate Banking Committee, Mr. Steiner implausibly claimed that he lied in his diary.[72] In the weeks following this contact, Mr. Stephens' role in the civil investigation of Madison Guaranty came to a halt. The White House succeeded in what Mr. Steiner described as being "incredibly stupid and improper."[73]

Mr. Stephens' name was included in Pillsbury's initial proposal to the RTC as one of the three partners in charge of the matter.[74] And during the early stages of the investigation in February 1994, Mr. Stephens attended meetings and was in daily contact with the RTC.[75] After press reports about Mr. Steiner's conversation with Mr. Stephanopoulos appeared in the third week of March 1994, however, Mr. Stephens' role "diminished substantially," and by the summer of 1994, he was "virtually disengaged from the matter."[76]

Mr. Stephens had no involvement in drafting the Pillsbury reports.[77] He declined the RTC's request that he place his imprimatur on the final reports. Curiously, the RTC subsequently refused to authorize Pillsbury to correct the public misconception that Mr. Stephens authored these reports.

Although the RTC ultimately concluded that it would not be cost effective to bring civil claims against the Clintons or Mrs. Clinton's law firm, the RTC was left to rely upon Pillsbury's incomplete analyses. In fact, Mr. Stephens himself was critical of the initial draft of the Pillsbury's report on Whitewater, and his criticisms were ignored.

9. Senior RTC officials sought to impede the criminal investigation of Madison

In March 1992, RTC criminal investigators based in Kansas City commenced an investigation into the failed Madison Guaranty Savings & Loan. The RTC subsequently produced 10 criminal referrals related to Madison, one in 1992 and nine in 1993. The lead criminal investigator on the case was Jean Lewis. Ms. Lewis and her two supervisors, Richard Iorio and Lee Ausen, signed all 10 referrals.

The Special Committee concludes that the Kansas City RTC investigators were obstructed in their investigation and were forced to contend with an environment hostile to their inquiry. Ms. Lewis, testified that she "believe[d] there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison." [78] The evidence suggests that Ms. Lewis' belief was well founded.

The submission of the nine 1993 referrals to the Justice Department was delayed when attorneys in the RTC Professional Liability Section ("PLS") demanded time to perform a "legal review of them." During the week long delay that ensued, the White House learned about the referrals and some of the confidential information they contained. Shortly after this event, Ms. Lewis was removed as the lead criminal investigator on the Madison Guaranty case at the urging of PLS.

On August 15, 1994, the three Madison investigators were placed on "administrative leave" by RTC upper management.[79] The three were provided with no warning or explanation whatsoever for this action. Two weeks later, the three investigators were told to return to work.

The Special Committee concludes that the most plausible explanation for this action is that it was taken in retaliation for the investigators' work on the Madison Guaranty case. An internal investigation by the Inspector General of the Federal Deposit Insurance Corporation ("FDIC") (the successor to the RTC) is ongoing.

The Special Committee also concludes that April Breslaw improperly intervened in, and attempted to affect, the outcome of investigations into Madison Guaranty.

In 1989, Ms. Breslaw while an attorney with the FDIC hired the Rose Law Firm to handle a malpractice suit against Madison Guaranty's former accountants. Her decision came under fire when it was reported that Rose's representation of the government was fraught with conflicts of interest. By 1994, both the FDIC and the

RTC had commenced investigations into the Rose conflicts issue. That year, Ms. Breslaw sought to discourage RTC employees from investigating issues related to Madison Guaranty and informed RTC investigators that senior RTC officials would prefer a certain outcome to any such investigation.

In January 1994, Ms. Breslaw warned RTC civil fraud investigator Gary Davidson that certain RTC managers would take a "dim view" of him investigating Madison. Then, in February 1994, Ms. Breslaw told Ms. Lewis in a tape recorded conversation that the "head people" at the RTC "would like to be able to say Whitewater did not cause a loss to Madison."[80]

Ms. Breslaw's testimony before the Special Committee regarding her statement to Ms. Lewis was wholly incredible. Ms. Breslaw refused to admit that she had said the comment attributed to her and implausibly claimed that she could not recognize her own voice on the tape.

It is unclear who, if anyone, instructed Ms. Breslaw to "send these messages" to the RTC investigators working on the Madison Guaranty and Rose Law Firm matters, although the telephone message pads of Webster Hubbell indicate that Ms. Breslaw and Mr. Hubbell were in contact on or about September 29, 1993. Both Mr. Hubbell and Ms. Breslaw admit that they spoke about the investigation into the Rose Law Firm conflicts of interest relating to Madison. They deny, however, that they discussed the "substance" of the RTC investigations.

Viewed cumulatively, the Special Committee concludes that Ms. Breslaw's actions, coupled with the improper actions taken toward the RTC investigators, illustrate a concerted effort to improperly obstruct the investigations relating to Madison Guaranty and Whitewater.

10. U.S. Attorney Paula Casey mishandled the RTC criminal referral referencing the President and Mrs. Clinton

The first criminal referral, Referral No. C0004, was made to Charles Banks, then U.S. Attorney, in September 1992. Mr. Banks did not take action on the referral, but on January 27, 1993, he sent a recusal letter to the Executive Office of U.S. Attorneys, to which he never received a response.[81] Although a decision on a criminal referral is usually issued within 60-90 days after submission, the U.S. Attorney's Office did not render a prosecutorial opinion on Referral C0004 until October 27, 1993—over one year after its submission.[82]

Senior Justice Department officials believed that Paula Casey, Mr. Banks' successor and a former student of President Clinton, should have recused herself because of her ties to the Clintons and to Governor Jim Guy Tucker. They communicated this view to her on several occasions. The director and agents of the FBI similarly expressed concern that U.S. Attorney Casey should recuse herself from Madison-related matters.

Moreover, contrary to Justice Department policy, Ms. Casey did not notify Main Justice with an Urgent Memorandum when she learned that the case against David Hale might involve allegations against Governor Tucker and President Clinton. Senior officials were "surprised" that Ms. Casey had not alerted Main Justice to

Mr. Hale's allegations about the President, and believed that Main Justice should have been involved in the case sooner.[83]

Even after agreeing to recuse herself, Ms. Casey continued to participate actively in the Hale and Madison investigations. She attended FBI briefings involving the investigation of Madison Guaranty and Mr. Hale.[84] She continued to correspond with Mr. Hale's attorney about a possible plea agreement and reject the efforts of Mr. Hale to negotiate with the government. Sometime between the middle and the end of October, she reviewed the nine new RTC criminal referrals relating to Madison Guaranty.[85]

Finally, for reasons unknown, Ms. Casey formally declined prosecution on Referral C0004, even though she claimed that she already knew that she was going to recuse herself. Justice Department officials testified that this declination was a "substantive decision" that someone who supposedly had recused herself from the matter should not have made.[86]

No one in charge of handling Referral C0004 in the U.S. Attorney's office in Little Rock ever reviewed or analyzed the hundreds of pages of documentary exhibits attached to it. Indeed, neither Ms. Casey nor her First Assistant ever reviewed the exhibits to the referral prior to declining prosecution.[87] Senior Justice Department officials testified that Ms. Casey should have conducted an independent review of the evidence prior to declining Referral C0004.

Even after his recusal from the case in November 1993,[88] Associate Attorney General Webster Hubbell, a close associate of the Clintons and now a convicted felon, possessed—in his basement—the Clintons' personal and campaign files on Whitewater, as well as Rose Law Firm client files on Madison that he improperly took from the firm. He was involved in the review and transfer of those files to the Clintons' personal attorney in November and December 1993.[89] Although Mr. Hubbell was in virtually daily contact with senior White House officials, he implausibly claimed that he was kept out of the loop on the Whitewater defense effort.

The Special Counsel and then Office of the Independent Counsel took over responsibility for the investigations in 1994. The work of the Independent Counsel is ongoing, and therefore, it is unknown whether the actions of the U.S. Attorney's Office or Ms. Casey ultimately tainted the investigations in any way. The Special Committee concludes, however, that the U.S. Attorney's Office mishandled the RTC criminal referrals and the Hale plea negotiations.

11. Senior administration officials improperly sought to manipulate the investigation of the RTC and Treasury Inspectors General into the propriety of White House-Treasury contacts

During its hearings in the summer of 1994, the Banking Committee learned that the Treasury Inspector General ("IG") furnished to the White House—at the White House's request and a full week before the Office of Government Ethics ("OGE") opinion was publicly released—transcripts of all depositions conducted by the RTC and Treasury IGs in the course of their investigation into the propriety of White House-Treasury contacts.

The Special Committee concludes that senior Administration officials improperly sought to manipulate this investigation of the Treasury and RTC IGs. This interference is particularly troubling

given that the Treasury and RTC IGs were investigating the Administration's efforts to interfere in the underlying Whitewater/Madison investigation.

Despite the fact that Department of Treasury General Counsel Jean Hanson was a subject of investigation, Francine Kerner, a member of the General Counsel's office, provided advance copies of the investigation transcripts to Ms. Hanson's staff. The transcripts were then disseminated to other senior Treasury Department officials.[90] The transcripts contained confidential information about RTC criminal investigations and referrals that even Treasury Secretary Lloyd Bentsen should not have been permitted to review. RTC IG John Adair testified that the transcripts contained 90% of the substance of the criminal referrals.[91]

Ms. Kerner also provided Ms. Hanson's staff with draft copies of the RTC-IG's conclusions and asked Ms. Hanson's staff to edit the proposed OGE report.[92] The Treasury IG's chief investigator, James Cottos, objected to Ms. Kerner's attempts to alter the draft investigative report. He told Ms. Kerner "we were not the Jean Hanson defense team." In addition, according to Mr. Cottos, "I felt they were slanting the facts or attempting to slant the facts."[93] Clark Blight, the chief investigator for the RTC IG, similarly testified that he was under the impression that Ms. Kerner was "an advocate for the White House."[94]

The Special Committee is deeply concerned that Treasury Department officials caused the transfer of confidential transcripts of investigative depositions to the White House. This disturbing action was taken without the knowledge or consent of the RTC IG. In fact, members of the RTC IG's office had voiced their opposition to such a transfer when the idea was raised. When they learned of the transfer, after the fact, they were "shocked" by the communication of this confidential information to the White House.[95]

During the Banking Committee's hearings, senior White House officials relied repeatedly on the OGE opinion as evidence that White House personnel had not engaged in improper conduct.[96] The Special Committee discovered that this reliance was entirely misplaced.

In particular, Stephen Potts, Director of OGE, testified that, contrary to statements made by White House Special Counsel Lloyd Cutler to the Banking Committee in August 1994, the OGE did not "informally concur" in Mr. Cutler's conclusion that White House officials did not violate ethical standards with regard to the communication of confidential RTC information from the Treasury Department to the White House.[97]

Mr. Cutler admitted to the Special Committee that he may have "transgressed" and "may have gone too far when he testified" before the Banking Committee in August 1994.[98]

12. The White House delayed in producing documents to the Special Committee

The Special Committee confronted a number of obstacles that hindered the progress of its investigation. Among the most notable, certainly the most time-consuming, of these obstacles were (1) the withholding and delay in the production of documents directly rel-

evant to the Committee's investigation and the noncooperation and resistance of a number of witnesses.

Because the testimony of witnesses before the Special Committee was often contradictory as to important events and actions, the Special Committee placed particular emphasis on available documentary evidence. Unfortunately, throughout the course of its inquiry, the Special Committee had been hindered by parties unduly delaying the production of, or withholding outright, documents critical to its investigation.

The White House did not live up to its repeated promise to cooperate with the Special Committee's investigation into Whitewater, Madison Guaranty and related matters. The White House and various individuals associated with the White House engaged in a pattern of activity designed to hinder the Special Committee's investigation.

The White House withheld documents from the Special Committee or produced highly relevant documents very late in the Committee's investigation. For example, the White House failed to produce until January and February 1996 various notes taken by high level White House officials relating to the January 1994 Whitewater Response Team meetings.

On January 29, 1996 the White House produced the notes of former White House Director of Communications Mark Gearan,[99] and claimed that the notes "were inadvertently moved to the Peace Corps with other personal effects in boxes."[100] On February 13, 1996, the White House produced the documents from the files of Mr. Waldman, Special Assistant to the President that Mr. Waldman discovered these documents in his office in a file marked "WWDC", Whitewater Development Corporation, in the course of an office move.[101] Then, on February 20, 1996 the Special Committee received memoranda from the White House which were prepared by Harold Ickes, White House Deputy Chief of Staff and the leader of the Whitewater Response Team meetings. The White House represented that some were "mistakenly overlooked."[102] Finally, on March 1, 1996, lawyers for Deputy White House Counsel Bruce Lindsey "which inadvertently were not produced" previously.[103]

The White House withheld notes of the November 5, 1993 meeting of White House officials and the Clintons' private attorneys relating to Whitewater taken by Associate Counsel William Kennedy. Although President Clinton had made numerous statements that he would not claim executive privilege for matters relating to Whitewater, the White House withheld these notes based on an assertion of "the attorney-client component of executive privilege." On December 20, 1995, the full Senate adopted Senate Resolution 199, directing the Senate Legal Counsel to initiate a civil action in federal District Court under 28 U.S.C. §1365 (1994). On December 22, 1995, before the Senate Legal Counsel initiated such action, the White House reversed its position, and Mr. Kennedy produced his notes to the Special Committee. The notes turned out to be highly relevant to the Special Committee's investigation. They provided evidence that the White House Counsel's office and the Clintons' private attorneys had joined forces and clearly were working as

agents of the private counsel in a joint and wholly improper effort to serve the private interests of the Clintons.

13. Senior administration officials provided inaccurate and incomplete testimony to the Senate

The Special Committee concludes that senior Administration officials provided inaccurate and incomplete testimony to the Senate on a number of occasions.

Most notably, Roger Altman, former Deputy Treasury Secretary and Acting CEO of the RTC, intentionally misled the Senate when he testified before the Banking Committee on February 24, 1994. Mr. Altman was specifically asked about contacts with the White House and whether the RTC briefed the White House about the criminal referrals. Mr. Altman's response was that there was only one substantive contact, and that it dealt with the procedure relating to the expiring statute of limitations. As detailed in the Banking Committee's report on Treasury-White House contacts, he failed to mention his other communications with the White House.[104]

In addition, as set forth in the discussion of Foster Phase of its inquiry, the Special Committee believes that other senior Administration officials provided inaccurate and incomplete testimony to the Senate.

With respect to matters bearing upon the Washington Phase of the Committee's inquiry, the Special Committee believes that Deputy White House Chief of Staff Harold Ickes repeatedly provided inaccurate and incomplete testimony.

Mr. Ickes testified under oath to the Senate and to the Inspectors General of the Treasury Department and the RTC that he and other White House officials had no discussions about, or knowledge of, the statute of limitations for Madison-related civil claims prior to February 2, 1994. In light of newly discovered evidence, the Special Committee believes that this testimony was inaccurate.

In January 1994, considerable public interest existed in issues relating to Whitewater and Madison. The statute of limitations for Madison-related civil claims involving fraud or intentional misconduct was scheduled to expire on February 28, 1994. There was considerable congressional attention focused on the approaching expiration date. Prior to enactment of the law extending the statute of limitations, however, the RTC had to decide by February 28, 1994, whether to bring suit, to seek tolling agreements, or to allow the statute to expire without action. Because President and Mrs. Clinton faced potential liability relating to the failure of Madison, inside information regarding the status of the RTC investigation and its deliberations with respect to the statute of limitations was valuable to the White House and the Clintons in coordinating a defense strategy.

During its 1994 investigation, counsel to the Banking Committee asked Mr. Ickes about his knowledge of issues surrounding the statute of limitations prior to its extension.[105] Specifically, Mr. Ickes testified about a meeting on February 2, 1994, between senior White House officials and Roger Altman, then Deputy Secretary of the Treasury and Acting Chief Executive Officer of the RTC, and Jean Hanson, General Counsel to the Department of the Treasury.

With respect to discussions about the statute of limitations at that meeting, Mr. Ickes testified, "I, for one, had little knowledge, if any knowledge, about the situation,"[106] and that "all this was new to me."[107] [1]

Evidence newly uncovered by the Special Committee, however, strongly suggests that these statements were untrue when Mr. Ickes made them under oath. The evidence indicates that Mr. Ickes specifically assigned a subordinate to prepare, and later received, a memorandum on the statute of limitations for Madison-related civil claims and that he discussed the issue with other White House officials in January 1994, prior to the February 2 meeting with Mr. Altman and Ms. Hanson.

On November 2, 1995, for example, the White House produced to the Special Committee a memorandum to Mr. Ickes from Associate Counsel to the President Neil Eggleston entitled "Statute of Limitations in Actions Brought by the Conservators of a Financial Institution."[108] The memorandum, which was dated January 17, 1994, discussed the statute of limitations generally applicable to claims filed by the RTC on behalf of failed thrift institutions. More important, Mr. Eggleston's memorandum discussed the statute of limitations as applied specifically to Madison and identified March 2, 1994, as the final date for the RTC to file civil tort claims on behalf of Madison, the type of action usually brought against outsiders in financial institution cases.[109]

Beyond this, the Special Committee believes that Mr. Ickes provided inaccurate testimony under oath about Mrs. Clinton's knowledge in 1994 of her potential liability to the RTC arising from her representation of Madison. Mr. Ickes testified under oath to the Senate Banking Committee in July and August 1994 that he did not know whether two memoranda detailing the potential liability of the President and Mrs. Clinton to the RTC had been sent to Mrs. Clinton. However, the Special Committee has discovered evidence indicating that, at about the same time of Mr. Ickes' testimony, his attorney transmitted information to the White House Counsel's Office that Mr. Ickes had specifically remembered sending the memoranda to Mrs. Clinton in response to repeated questions from the Clintons about their possible exposure in the RTC investigation. The foregoing, to be sure, do not exhaust the instances in which the Committee believes that Mr. Ickes was less than candid, but it amply demonstrates that Mr. Ickes provided inaccurate and incomplete testimony to the Senate.

14. The Office of the White House Counsel was frequently and improperly put in the service of the personal legal interests of the President and Mrs. Clinton

The Special Committee concludes that the use of the White House Counsel's Office to serve the private legal interests of the

[1] Similarly, when asked by the RTC-IG about this same February 2, 1994, meeting, Mr. Ickes testified: "Mr. Altman, as I recall, raised the issue of the upcoming—the possible—well, not the possible, but the fact that the statute of limitations, which I knew nothing about at the time, of the RTC in connection with an investigation that was apparently being conducted by the RTC on Madison Whitewater was about to expire." (Ickes, 7/15/94 RTC Dep. p. 7). Mr. Ickes emphasized that White House officials had no knowledge of the statute of limitations issue: "There were questions about the statute of limitations, when it expired, under what conditions it expired. I don't think anybody in the room other than Mr. Altman and Ms. Hanson had a clear picture of what the statute of limitations situation was." (Ickes, 7/15/94 RTC Dep. p. 8).

President and Mrs. Clinton was highly improper. As government lawyers, the attorneys in the White House Counsel's Office have a duty to represent the public interest. That duty is incompatible with the representation of any private parties—even the President or First Lady. Here, the interest of the United States with respect to these investigations in establishing civil and/or criminal liability was potentially adverse to the private interests of the Clintons in avoiding any such liability.

The provision of legal services by government lawyers relating to the President's personal matters is contrary to the "Standards of Ethical Conduct" promulgated by the Office of Government Ethics ("OGE"). The Standards of Ethical Conduct, which were issued pursuant to Executive Order 12674 and apply to all Executive Branch employees, establish that it is a misuse of government position to make "[u]se of public office for private gain." [110] More specifically, a government employee "shall not use his public office for his own private gain, . . . or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." [111]

The underlying issues related to Whitewater and Madison arose prior to the inauguration of President Clinton. The only Whitewater issues arising after the inauguration of the President involve the improper contacts between the White House and various other government agencies that were investigating Madison and Whitewater, including the Treasury Department, the RTC, and the SBA. If such contacts had not taken place, there would be no investigation into events occurring after the President's inauguration. The Office of the White House Counsel cannot bootstrap its improper handling of information about Whitewater and Madison into a justification for its participation in underlying Whitewater matters.

When he was appointed Special Counsel to the President by President Clinton, Lloyd Cutler explained the proper sphere of the White House Counsel's representation of the President: "When it comes to a President's private affairs, particularly private affairs that occurred before he took office, those should be handled by his own personal private counsel, and in my view not by the White House Counsel." [112]

The attempt of White House lawyers to obtain information and to communicate with witnesses is inconsistent with the need to maintain both the perceived or actual integrity of the ongoing federal investigations into Whitewater. It is also contrary to the OGE's Standards of Ethical Conduct for a public employee to misuse nonpublic information.[113] Finally, it contravenes a regulation promulgated by the Executive Office of the President, which provides: "For the purpose of furthering a private interest, an employee shall not . . . directly or indirectly, use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public." [114]

In sum, the Special Committee concludes that White House officials, in particular the Office of the White House Counsel, violated ethical standards and abused their official positions of public trust to assist in the Clintons' private legal defense effort. The Special

Committee recommends that steps be taken to prevent such future abuses.

CONCLUSIONS OF THE SPECIAL COMMITTEE ON THE DISCOVERY OF THE ROSE LAW FIRM BILLING RECORDS

On January 5, 1996, the Special Committee received computer printouts of the Rose Law Firm's billings to Madison Guaranty. These records were discovered under mysterious circumstances in the Book Room of the White House Residence.

The billing records constitute the best, and therefore most important, evidence concerning Mrs. Clinton's representation of Mr. McDougal's S&L in the mid-1980s—a relationship that was being investigated by at least three separate federal agencies. The records had been subject to several different federal subpoenas, besides that of the Special Committee, for nearly two years. When federal investigators served their subpoenas, some more than two years ago, the billing records were nowhere to be found. Despite extensive searches conducted by the Rose Law Firm, neither the originals nor copies were discovered.[115] They were not in the firm's computers, its client files, or its storage facility.[116]

1. The Rose billing records provide the best evidence of the legal services performed by Mrs. Clinton for Madison Guaranty

The billing records provide the best evidence of the legal services performed by Mrs. Clinton for Madison Guaranty and, as a result of the failed memories of many Rose Law Firm attorneys, are the only source of detailed information about the services that the Rose Law Firm provided to Madison Guaranty. The computerized billing records are thus an invaluable asset in reconstructing Mrs. Clinton's actual involvement in the matter. In total, Mrs. Clinton billed Madison Guaranty for 89 tasks, including 33 conferences with Madison Guaranty officials, on 53 separate days.[117]

Among the significant facts established by the billing records are the following, the significance of which are discussed more fully in the Special Committee's conclusions regarding the Arkansas Phase of its investigation:

• Mrs. Clinton, and others on her behalf, repeatedly made statements that Richard Massey brought in Madison Guaranty as a client and, even though she was the billing partner on the matter, she was merely a "backstop" because the firm did not permit associates to bill clients directly.[118] Mr. Massey, however, directly contradicted Mrs. Clinton's account in sworn testimony before the Special Committee. The president of the S&L, John Latham, and a partner at the Rose law firm, David Knight, also contradicted Mrs. Clinton's account.

The billing records substantially resolve this dispute in favor of the testimony of Messrs. Massey, Latham and Knight.

• During the 1992 campaign, allegations surfaced that Beverly Bassett Schaffer, who Governor Clinton appointed as Arkansas Securities Commissioner, gave preferential treatment to Madison Guaranty because of her relationship with the Governor and Mrs. Clinton. The Clinton campaign denied that Mrs. Clinton attempted to influence Commissioner Bassett.

The billing records show that Mrs. Clinton called Ms. Schaffer the day before the Rose Law Firm submitted Madison's proposal for its preferred stock offering to the Arkansas Securities Department.[119] The records reflect that Mrs. Clinton billed as much as one hour to the call.[120] Ms. Schaffer notified Mrs. Clinton of the approval of the proposal two weeks later in a letter addressed, "Dear Hillary."[121]

In testimony before the Special Committee, former Commissioner Schaffer directly contradicted Mrs. Clinton and stated that the proposal was discussed during the telephone call. Mr. Massey similarly disputed Mrs. Clinton's account for the telephone call to Ms. Schaffer.[122]

• Mrs. Clinton has minimized her role in the Rose Law Firm's representation of Madison before the Arkansas Securities Department in connection with Madison's proposed stock offering. The billing records and Mr. Massey's testimony directly contradict Mrs. Clinton's claim that her role on the matter was merely to serve as a "backstop."

The billing records show that Mrs. Clinton billed Madison for a total of approximately 60 hours of work. Mrs. Clinton billed 6.2 hours on the preferred stock deal for conferences alone that she had with Mr. McDougal, with Mr. Latham and Davis Fitzhugh, two other Madison S&L officers involved in the stock offering.[123]

Mrs. Clinton had at least six conferences with Mr. Massey, the young Rose Law Firm attorney responsible for performing the associate type tasks on the matter.[124] Mrs. Clinton also reviewed the amendments to the application submitted to the Arkansas Securities Department.[125] Mr. Massey testified that he did his work under the supervision of Mrs. Clinton.[126] According to Mr. Massey: "Mrs. Clinton was the billing attorney and had a relationship with me such that she needed to know what I was doing so she could be prepared to update the client at any time."[127] When asked whether Mrs. Clinton's work on the stock proposal deal was "minimal," Mr. Massey responded, "In my own mind it's a significant amount of time."[128]

• The billing records indicate that Mrs. Clinton's involvement in Castle Grande was much more extensive than she has thus far owned up to. Before the billing records were discovered, little was known about the nature of the Rose Law Firm's representation of Madison Guaranty in connection with the Castle Grande land transaction. Perhaps because Mrs. Clinton had ordered the destruction of Madison-related records in 1988, the Rose Law Firm no longer possessed any file related to the Castle Grande deal.

Federal investigators described the Castle Grande transactions as a series of land flips and transactions that cost the American taxpayers $4 million.[129] In 1995, when the RTC asked about her knowledge of Castle Grande, Mrs. Clinton stated "I do not believe I knew anything about any of these real estate parcels and projects."[130]

The billing records identify Mrs. Clinton as the billing partner on the matter—even though Mrs. Clinton claimed that she has no idea how the Rose Law Firm became involved in the matter.[131] These records indicate that Mrs. Clinton billed more time on the Castle Grande matter—29.5 hours, or 54 percent of total billings on the

matter—than any other lawyer at the Rose Law Firm. Indeed, nearly half of Mrs. Clinton's total billings to Madison were for work on Castle Grande. In the months following the initial transaction, Mrs. Clinton had at least 12 conferences with Mr. Ward and numerous meetings with Madison officials in connection with the subsequent sales that she billed to the IDC/Castle Grande matter.

More important, the billing records were perhaps most illuminating with respect to the nature of Mrs. Clinton's work on Castle Grande. For his role as the "straw man" and other related services to the project, Mr. Ward was owed a commission. On March 31, 1986, Madison Guaranty loaned Mr. Ward $400,000.[132] One week later, on April 7, 1986, Madison Financial executed two promissory notes, for $300,000 and $70,943, purporting to reflect loans from Mr. Ward to Madison Financial Corporation, Madison Guaranty's subsidiary service corporation.[133] At about this time, bank examiners were scrutinizing Madison Guaranty's books. Mr. James Clark, the chief examiner, asked whether the three notes were related.[134] He was assured by a Madison Guaranty official, probably Don Denton, that the notes were not related.[135] In fact, according to Madison official John Latham, the three notes were related, and the $400,000 March 31 loan from Madison Guaranty was intended to pay Mr. Ward's commissions.[136]

The Rose Law Firm billing records revealed that on April 7, 1986, the day the Madison Financial notes were executed, Mrs. Clinton billed 12 minutes to the IDC/Castle Grande matter for "Telephone conference with Don Denton."[137] A message slip produced by Mr. Denton reflects that Mrs. Clinton called him from the Rose Law Firm on April 7, 1986.[138] On a June 11, 1996 interview with FDIC investigators, Mr. Denton stated that Mrs. Clinton called seeking copies of the notes between Mr. Ward, Madison Financial, and Madison Guaranty.[139] Mr. Denton told investigators that during the conversation he cautioned Mrs. Clinton that a problem might exist with respect to the April 7 notes to Mr. Ward because "they constituted in effect a parent entity fulfilling the obligation of a subsidiary,"[140] a violation of the so-called direct investment rule. Mrs. Clinton, however, "summarily dismissed" that concern in a way that he took to mean that "he would take care of savings and loan matters, and she would take care of legal matters."[141]

And she did. The billing records showed that on May 1, 1986, Mrs. Clinton billed Madison Guaranty for two hours of time for the following work: "Conference with Seth Ward; telephone conference with Seth Ward regarding option; telephone conference with Mike Shauffler; prepare option."[142] Indeed, a May 1 option agreement between Mr. Ward and Madison Financial bore a word processing code ("0190g") that, according to the Rose Law Firm's counsel, indicates the document was created at the Rose Law Firm by or for Mrs. Clinton.[143]

Mr. Clark, the bank examiner told investigators that, after reviewing the records and in light of Mr. Denton's testimony, he believed that the May 1 option prepared by Mrs. Clinton "was created 'in order to conceal the connection—whatever it was—between'" the March 31 and April 7 notes.[144]

On June 13, 1996, the Special Committee requested that the First Lady attempt to refresh her recollection regarding the matters discussed by Mr. Denton and to inform the Committee of what she recalls about them.[145] On June 17, 1996 the Special Committee received an affidavit from Mrs. Clinton accompanied by a letter from Mr. Kendall. In the affidavit, Mrs. Clinton gave no answer to the question posed by the Special Committee; instead, she simply referred to Mr. Kendall's letter "addressing certain allegations recently made by Mr. Don Denton."[146] In his letter, Mr. Kendall maintained that Mr. Denton's recollection is "wholly unreliable"[2] but gave no indication as to the recollection of the First Lady.[147] The First Lady therefore has neither confirmed nor denied Mr. Denton's testimony.

The significance of the billing records as they relate to Castle Grande is perhaps best illustrated by the activities of Mrs. Clinton's legal defense team immediately after the discovery of the records. A message slip from John Tisdale, the Clintons' Arkansas lawyer to Alston Jennings, Seth Ward's former attorney on Castle Grande, indicate that, on June 5, 1996, the day after Ms. Huber discovered the records in her White House office, Mr. Kendall called Mr. Tisdale and Mr. Jennings to arrange a meeting.[148] One week after the records were discovered, on January 11, 1996, Mr. Kendall flew to Little Rock and met first with Mr. Jennings and then with Mr. Ward.[149] The meeting with Mr. Ward lasted 30–40 minutes.[150] Curiously, Mr. Kendall had also contacted Mr. Jennings in August 1995. Subsequent to that contact, Mrs. Clinton summoned Mr. Jennings to the White House for a personal meeting on August 10, 1995, around the time that the billing records were placed in the Book Room of the White House residence.

2. The disappearance and mysterious reappearance of the Rose Law Firm billing records was part of a larger pattern of removal, concealment and, at times, destruction of records concerning Mrs. Clinton's representation of Madison

The mysterious discovery of the Rose billing records must be viewed in the context of the destruction and mishandling of other Rose Law Firm files concerning Madison between 1988 and 1992. In 1988, Mrs. Clinton ordered the Rose Law Firm to destroy records relating to her representation of Mr. McDougal's Madison S&L.[151] As described above, this was not a routine destruction of records because there was pending litigation relating to Castle Grande and federal regulators were investigating the operation and

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[2] Mr. Kendall based this assertion on the fact that Mr. Denton testified at two trials, *Ward* v. *Madison Guaranty,* and *United States* v. *McDougal et al.,* yet did not mention his April 7, 1986 telephone conversation with Mrs. Clinton. Mr. Kendall, however, offered no indication whether Mr. Denton was asked questions about his conversations with Mrs. Clinton or, for that matter, whether such conversations and Mrs. Clinton's work for Madison were within the scope of the trials. (Letter from David Kendall to Senator Alfonse D'Amato, 6/17/96 p. 2)

What is clear, however, is that Mr. Denton recalled the conversation only after being shown Mrs. Clinton's billing records reflecting the 12 minute telephone call on April 7. When he was shown this record, on June 3, 1996, he did not recall the conversation. However, after the interview, he reviewed his files and discovered the April 7 message slip from Mrs. Clinton. His memory thus refreshed, he provided additional testimony to the FDIC–IG, all under a legal obligation of truthfulness, 18 U.S.C. § 1001. (Denton, FDIC–IG Report of Interview, June 11, 1996.) Mr. Denton has no reason to mislead investigators, much less to go out of his way to give inaccurate testimony.

solvency of Madison in anticipation of taking over the troubled S&L.

The mishandling of Madison documents continued after the 1992 presidential campaign, when the firm's files on Madison, which were by now the property of the RTC as conservator of Madison, and files of other Rose clients for whom Mrs. Clinton had performed legal services, were secretly removed from the firm by another then-Rose Law Firm partner, Webster Hubbell. Mr. Hubbell removed these files, at times taking the firm's only copies,[152] without obtaining the consent of the firm or the client.[153]

3. Vincent Foster is the last person known to have the billing records in his possession

During the 1992 presidential campaign, on February 12, 1992, an unknown person printed out a set of the Rose Law Firm's computerized records of billings to Madison Guaranty.[154] Mr. Hubbell asserted that either he or former Deputy White House Counsel Vincent Foster, also a Rose partner, directed the Rose accounting department to print the billing records for Madison.[155] In addition to obtaining the computerized billing records, Mr. Hubbell also retrieved other files and documents relating to Mrs. Clinton's work for Madison.

According to Mr. Hubbell, Mr. Foster was the last person he saw handling the billing records.[156] Mr. Hubbell did not know who removed the records from the Rose Law Firm,[157] or how they came to be left in the White House Residence.[158] He claimed not to have spoken with anyone about the billing records since the 1992 presidential campaign.[159]

4. The billing records mysteriously reappear in the Book Room of the White House Residence in August 1995

During the first two weeks of August 1995, Carolyn Huber, Special Assistant to the President and Special Director of Correspondence for the White House, saw the Rose Law Firm billing records for the first time.[160] The billing records were in the Book Room, a small room on the third floor of the First Family's private quarters in the White House Residence.[161]

In early August 1995, Ms. Huber was gathering newspaper and magazine clippings in the Book Room when she noticed the records in clear view on the edge of a table.[162] The records were folded in half, and Ms. Huber recognized the records, from her experience at the Rose Law Firm, to be billing records.[163]

For several months, Ms. Huber gave little thought to the records, which were moved in a box to her office. On the morning of January 4, 1996, Ms. Huber discovered the records when the table was removed that had concealed the box with the billing records for five months.[164]

Immediately, Ms. Huber realized the billing records were related to Madison Guaranty.[165] She was horrified because she understood their significance; she had seen several subpoenas calling for the production of Madison Guaranty records, including these very records.[166]

5. Only a limited number of people had access to Book Room of the White House Residence

The Special Committee's inquiry discovered that only a limited number of people had access to the Book Room, and no one admitted to placing the billing records in the Book Room of the White House Residence. Only a limited number of people had access. Moreover, it is highly unlikely that those with access would be leaving or disturbing documents in that private area of the White House.

The Special Committee rejects as fanciful the suggestion that construction workers or residence staff were somehow responsible for leaving the records in the Book Room. Similarly, the denials by overnight guests are highly credible because none of them would have been likely to be carrying records into the Book Room or to disturb materials in the Book Room.

Accordingly, the Special Committee concludes that most persons with access to the Book Room during the relevant period truthfully denied leaving the Rose billing records in the Book Room. They had neither the opportunity to possess the billing records nor the motive to conceal them from investigators for nearly two years.

6. Very few people had motive to be handling or reading the Rose billing records in August 1995

Few lay people would have understood the significance or content of the Rose billing records in August 1995. In fact, based on the evidence received by the Special Committee, only three people had previously shown an interest in and handled the billing records—Mrs. Clinton, Mr. Foster and Mr. Hubbell. Of these, Mr. Foster passed away on July 20, 1993, and Mr. Hubbell reported to federal prison on August 7, 1995.[167]

Moreover, as discussed earlier in these Conclusions, the principal relevance of the billing records was to disclose the nature and extent of the legal work performed by Rose Law Firm partners for Madison Guaranty. As noted above, these records were particularly significant in evaluating work done by Mrs. Clinton. Again, this is an important factor in evaluating who would have had an interest in reviewing the records in August 1995. Finally, the Committee is impressed by the fact that these records appeared on the table of the Book Room within days after the RTC-IG issued its report critical of the Rose Law Firm and its conflict of interest over Madison. As evidenced by the memorandum of March 1, 1994 from Mr. Ickes to Mrs. Clinton, this particular issue was of concern to Mrs. Clinton in connection with her possible exposure to personal liability.

7. Only a limited number of people were definitely within the chain of custody of the billing records

Although the absence of fingerprints does not rule out that a person handled documents, the presence of fingerprints positively establishes that someone was in the chain of custody. Of individuals positively within the chain of custody on these documents, only Mrs. Clinton and Mr. Foster are likely to have been interested in reading the billing records. Indeed, in an affidavit submitted to the Special Committee on June 17, 1996, Mrs. Clinton stated: "I recall discussing some of this legal work in 1992 with Mr. Vincent Foster

and Mr. Webster Hubbell, as I sought to answer press questions about the Madison Guaranty representation during the Presidential Campaign. Prior to the recent release of FBI fingerprint information, I had stated that I might have been shown billing records in 1992." [168]

8. Mrs. Clinton is more likely than any other known individual to have placed the billing records in the Book Room in August 1995

The Special Committee is mindful that the question of possession of the long lost and much sought Rose billing records has grave legal implications. Not surprisingly, no one has admitted to putting the documents in the Book Room. On the current state of the record, the Special Committee cannot state with certainty who put the records in the Book Room.

Nevertheless, the pattern of past behavior in handling documents, the limited number of persons with access to the Book Room, the question of motive, and the chain of custody evidence, taken together, suggest that very few people were likely to have placed the Rose billing records in the Book Room in August 1995. With these factors in mind, the Special Committee concludes that Mrs. Clinton is more likely than any other known individual to have placed the records in the Book Room. Certainly, Mrs. Clinton fits the above criteria most closely.[3]

BACKGROUND

I. WHITEWATER DEVELOPMENT CORPORATION AND MADISON GUARANTY S&L

In August 1978, the Clintons and the McDougals purchased 230 acres of land in Marion County, Arkansas for $202,000 with the intention of dividing the land into lots and selling them for a profit.[169] At the time, Mr. Clinton was the Attorney General of Arkansas, and Mrs. Clinton was a young associate with the Rose Law Firm of Little Rock.[170] In June 1979, the Clintons and the McDougals formed Whitewater Development Corporation and subsequently transferred the land to the company.[171]

In October 1980, the year after Whitewater was formed, Mr. McDougal and others purchased a controlling interest in the Bank of Kingston, a small commercial bank located in Kingston, Arkan-

[3] On June 13, 1996, the Special Committee requested that Mrs. Clinton respond in writing, under oath, about "any knowledge she may have concerning the Rose Law Firm billing records bearing Bates Stamp numbers DKSN028928 through DKSN029043, including whether she has reviewed, handled, or discussed (other than with counsel) these records, and her knowledge relating to the disappearance or discovery of the records."

On June 17, 1996, Mrs. Clinton responded: "I do not know how the billing records (DKSN028928 through DKSN029043) came to be identified by Mrs. Huber at the White House on January 4, 1996, although I have read various media accounts." In light of the Special Committee's request for detailed and specific information relating to *any knowledge* she had concerning *their disappearance or discovery*, Mrs. Clinton's answer is incomplete. For example, she does not state whether she has any knowledge as to how the billing records were removed from the Rose Law Firm; who possessed the billing records between February 1992 and August 1995; where they were stored between February 1992 and August 1995; and, most importantly, who placed them in the Book Room of the White House in August 1995. There is no mystery as to how Ms. Huber came to identify the records on January 4, 1996. These other, more important questions, however, remain to be answered.

Mrs. Clinton's incomplete response, therefore, does not alter the Special Committee's conclusion.

sas,[172] and changed its name to Madison Bank and Trust.[173] In January 1982, the McDougals purchased an interest in Woodruff County Savings and Loan, which they renamed Madison Guaranty Savings and Loan Association.[174] Madison Guaranty thereafter formed a service corporation, Madison Financial Corporation, to facilitate Madison Guaranty's investment in real estate development projects.[175] In November 1983, the McDougals obtained a controlling interest in Madison Guaranty.[176]

Madison Guaranty's financial condition was poor when the McDougals purchased it and only became worse in later years. In January 1984, the Federal Home Loan Bank Board ("FHLBB") commenced a special examination of Madison Guaranty that culminated in a supervisory agreement to which Madison's Board of Directors consented in July 1984.[177] In October 1984, Mr. and Mrs. McDougal resigned as directors and officers of Madison Guaranty, but Mr. McDougal remained as Chairman and President of Madison Financial.[178] Mr. McDougal, however, retained control of Madison Guaranty and maintained his office there.[179]

In March 1986, the FHLBB began another examination of Madison Guaranty which revealed that the thrift's problems had grown worse.[180] At a meeting in Dallas, Texas on July 11, 1986, the FHLBB instructed Madison Guaranty's Board of Directors to remove John Latham, the Chairman of Madison Guaranty, and Mr. McDougal from their positions at Madison Financial.[181] The next month, the FHLBB entered a cease and desist order against the S&L.[182] The FHLBB took over Madison Guaranty in February 1989 and, in November of that year, the RTC was appointed receiver.[183]

The failure of Madison Guaranty cost American taxpayers in excess of $60 million. While Mr. McDougal was running Madison Guaranty between 1982-86, the Clintons made no payments toward the Whitewater debt.[184]

In 1992, the RTC began to investigate improper activities at Madison Guaranty and, on September 1, 1992, sent a criminal referral to the U.S. Attorney's office highlighting possible criminal violations. The referral described "numerous questionable cash flow and 'loan' transactions" between Madison and a dozen companies owned or controlled by the McDougals, including Whitewater.[185] The referral named, among others, the Clintons and future Arkansas Governor Jim Guy Tucker as persons who stood to benefit from, and as potential witnesses to, the suspected criminal activity.[186]

The Clintons, in a pattern that would recur, received advance notice of the confidential RTC referral. In late fall 1992, Betsey Wright, former chief of staff to Governor Clinton, learned of a "criminal referral regarding a savings and loan official in Arkansas and . . . involv[ing] the Clintons"[187] which had been sent "to the prosecutor in Little Rock."[188] Upon learning the news, Ms. Wright told Mrs. Clinton about the referral.[189] It is with this knowledge of the confidential referral that the Clintons and their advisors came to Washington.

By March 1993, senior Clinton Administration officials confirmed that the RTC had sent a criminal referral mentioning the Clintons to the Justice Department.[190] Specifically, RTC Senior Vice President William H. Roelle, on or about March 23, 1993, told Roger Altman, then Deputy Treasury Secretary, of the RTC referral involv-

ing the Clintons.[191] Mr. Altman immediately passed this important information on to White House Counsel Bernard Nussbaum. On March 23, Mr. Altman sent Mr. Nussbaum a facsimile with a handwritten cover sheet, forwarding an "RTC Clip Sheet" of a March 9, 1992 New York Times article with the headline, "Clinton Defends Real-Estate Deal."[192] The next day, Mr. Altman faxed to Mr. Nussbaum the same article and another Times report on Whitewater, dated March 8, 1992, entitled "Clintons Joined S&L Operator in an Ozark Real-Estate Venture."[193] The link thus had been made between the RTC criminal referral and the Clintons' investment in Whitewater and their relationship with Mr. McDougal. This knowledge of the link between Whitewater and possible criminal investigations provides the subtext for a pattern of misconduct in the White House and elsewhere in the Clinton administration in an effort to contain potential damage from Whitewater and Madison.

II. CAPITAL MANAGEMENT SERVICES AND DAVID HALE

Whitewater was not the Clintons' only link to criminal investigations. In September 1978, David Hale, a former prosecutor and municipal court judge, formed Capital Management Services Inc., ("CMS").[194] In March 1979, the SBA licensed CMS as a Specialized Small Business Investment Company ("SSBIC").[195] On September 15, 1993, the SBA placed CMS into receivership after "the company's accumulated losses exceeded its private capital by 171 percent."[196]

A SSBIC is a company that the SBA licenses to lend money to disadvantaged small businesses.[197] SSBICs may not provide assistance to businesses that are not at least 50 percent owned, controlled, and managed by "disadvantaged individuals."[198] To ensure that SSBICs comply with these requirements, the SBA requires firms to document that they qualify for SBA assistance.[199]

Mr. Hale and his associates perpetrated a fraud on the SBA by using CMS to make loans to political insiders rather than "disadvantaged" individuals.[200] After the SBA would advance federal funds to CMS, Mr. Hale and his business associates would falsify loan applications in order to receive funds for their personal needs.[201] Mr. McDougal and Jim Guy Tucker were among associates of Mr. Hale who participated in and benefitted from this fraud.[202]

On April 3, 1986, Mr. Hale loaned $300,000 to Susan McDougal for the stated purpose of capitalizing Mrs. McDougal's new advertising firm, Master Marketing.[203]

Wayne Foren, then Associate Administrator for Investment at the SBA and the program director for the SSBIC program, learned of the $300,000 loan.[204] Mr. Foren also learned that some of the proceeds of the loan to Mrs. McDougal's Master Marketing benefitted Whitewater.[205] Mr. Foren stated that records suggest that of the original $300,000 loan, $111,500 was diverted to make payments on the Flowerwood Farms account and another $25,000 was used to replace money, either directly or indirectly, that went into Whitewater.[206]

At the McDougal and Tucker trial, Mr. Hale testified that he made these loans to Mr. McDougal as a favor to then-Governor Clinton and Mr. McDougal.[207] After Mr. Hale's allegations implicat-

ing the President became public in September 1993, this $300,000 loan quickly became the center of the controversy surrounding CMS and its connections to Mr. McDougal and Whitewater. Although the accounts of Mr. McDougal and Mr. Hale differ regarding why the loan was made and the use of the proceeds, records clearly indicate that the money was used for purposes other than those stated on the loan application filed with the SBA.[208] Mr. Hale's allegations concerning President Clinton have been refuted by Mr. McDougal's version of the events and President Clinton's own testimony at Mr. McDougal's trial, but neither has been verified by any outside source.[209]

Mr. Foren testified that he became concerned about CMS when Mr. Hale attempted to obtain matching government funds for what Mr. Hale claimed was an increase in his capital resulting from a gift.[210] Mr. Hale told Mr. Foren that people would give him money for his SSBIC because they knew he had ties to Jim Guy Tucker and then-Governor Clinton.[211] These statements aroused Mr. Foren's suspicion and, after a discussion with Mr. Hale, he sent a referral to investigate Mr. Hale's SSBIC to the Inspector General's office.[212]

In early 1993, the SBA began an internal inquiry into Mr. Hale and questionable activities at CMS, an inquiry which touched upon Mr. Hale's relationship with the Clintons.[213] Again, by the time the inquiry ripened into a referral for further investigative action, the White House received word. SBA Associate Administrator Wayne Foren testified that, in early May 1993, he briefed Erskine Bowles, the new SBA Administrator, about the agency's investigation of Mr. Hale and CMS because the case involved President Clinton.[214] Shortly thereafter, Mr. Bowles told Mr. Foren that he had briefed White House Chief of Staff Thomas ("Mack") McLarty about the case.[215]

On March 22, 1994, Mr. Hale pleaded guilty to two felony counts in connection to the granting of illegal loans.[216] In 1996, James McDougal, Susan McDougal, and Governor Jim Guy Tucker were indicted on charges stemming from dealings associated with Madison Guaranty and Capital Management Services.[217] On May 28, 1996 all three were convicted; Mr. and Mrs. McDougal were both convicted of eight charges directly related to the illegal $300,000 loan from Mr. Hale.[218]

SUMMARY OF THE EVIDENCE

PART I: THE HANDLING OF FEDERAL INVESTIGATIONS

I. Mrs. Clinton learns of the RTC criminal referral on Madison Guaranty

Before its charter expired at the end of 1995, the RTC was charged with investigating the cause of the failure of savings and loans under its control and to determine what civil claims, if any, should be pursued. The RTC, however, lacked the authority to initiate criminal prosecution of the failed S&Ls. Thus, it was the RTC's practice to notify the Justice Department—typically, the U.S. Attorney's office and the FBI Bureau for the jurisdiction in which the failed thrift was located—of any suspected crimes discovered by the agency. A "criminal referral" is the formal document that the RTC

and other federal agencies use to report suspected criminal activity to the Justice Department.[219]

In 1992 and 1993, RTC investigators in Kansas City submitted to the U.S. Attorney for the Eastern District of Arkansas ten criminal referrals concerning the activities of Madison Guaranty. Several of the referrals identified Mr. and Mrs. McDougal, the Clintons' Whitewater partners, and Mr. Tucker, who succeeded Mr. Clinton as Governor of Arkansas, as targets. Two of the referrals specifically involved Whitewater Development Corporation, which maintained a checking account at Madison Guaranty. One of the referrals alleged that Madison Guaranty funds were used to make illegal contributions to then-Governor Clinton's gubernatorial campaigns in the mid-1980s. Finally, the Clintons were named in three of the referrals as possible witnesses to suspected criminal activities.

A. The RTC begins its criminal investigation of Madison Guaranty

The RTC began its investigation of criminal activities related to Madison Guaranty after the publication of an article on the front page of the *New York Times* on March 8, 1992.[220] The article, written by investigative reporter Jeff Gerth, reported that Governor Clinton, then a leading Democratic candidate for president, and his wife were partners with Mr. McDougal in the Whitewater real estate venture.

Mr. Gerth's article caused several RTC officials to question whether Whitewater had caused any of the financial losses suffered by the failed Madison Guaranty S&L. Mr. Gerth had written that "at times money from Mr. McDougal's savings and loan was used to subsidize" Whitewater. Mr. Gerth also wrote:

> It was during the period that Whitewater was making the Clintons' loan payments that Madison Guaranty was putting money into Whitewater.
>
> For example, Whitewater's check ledger shows that Whitewater's account at Madison was overdrawn in 1984, when the corporation was making payments on the Clintons' loan. Money was deposited to make up the shortage from Madison Marketing, an affiliate of the savings and loan that derived its revenue from the institution, records also show.[221]

After publication of the article, the criminal investigations unit in the RTC's office in Tulsa, Oklahoma—the office responsible for investigating possible crimes involving failed savings and loans in Arkansas—received requests to investigate Madison Guaranty and Whitewater from both the Office of Investigations in the RTC Washington, D.C. office and from the director of the Tulsa office.[222] In any event, a criminal examination of Madison Guaranty had already been slated to commence in December, 1992.[223]

In March 1992, Mike Van Valkenberg, the head of investigations in the Tulsa office, assigned Laura Jean Lewis to be the lead RTC criminal investigator on the case.[224] At the time, Ms. Lewis was the RTC's only criminal investigator with responsibility for savings and loans in Arkansas.[225]

From March through August 1992, Ms. Lewis examined Madison Guaranty records stored in a warehouse in Little Rock.[226] She retraced and analyzed the flow of funds between several checking accounts at Madison Guaranty, including the Whitewater account, the McDougals' personal account, and the accounts of several other McDougal-related companies.[227]

Ms. Lewis testified that the investigation uncovered "substantial evidence of bank fraud."[228] Specifically, Ms. Lewis found numerous instances in which the McDougals would write a check on the Madison Guaranty account of one of their various enterprises with insufficient funds to satisfy the draft and then deposit another check in that account, also written on insufficient funds, from another Madison Guaranty account.[229] Ms. Lewis observed that although many of checks had the word "loan" written on them, they were written on accounts lacking sufficient funds.[230] Ms. Lewis testified that through this "elaborate check kiting scheme" the McDougals "float[ed] worthless checks among specific accounts [so as] to create the appearance of legitimate balances."[231]

B. The first RTC criminal referral: C0004

In July 1992, the investigation was interrupted briefly when the RTC office in Tulsa was closed and its investigations unit merged with the Kansas City office.[232] Ms. Lewis accepted an offer to transfer to the Kansas City office.[233]

By early August 1992, Ms. Lewis had begun to draft a criminal referral based upon her investigation of Madison Guaranty.[234] On August 31, 1992, the referral was completed and assigned the number C0004.[235] The referral was signed by Ms. Lewis, and her two immediate supervisors in the Kansas City office: Lee O. Ausen, the head of the Criminal Investigations Department, and L. Richard Iorio, the Director of Investigations.[236]

On September 1, 1992, Mr. Iorio sent Criminal Referral C0004 to Charles Banks, the U.S. Attorney for the Eastern District of Arkansas,[237] and to Steven Irons, Supervisory Special Agent ("SSA") of the FBI Little Rock Field Office.[238] In the accompanying transmittal letter to Mr. Banks, Mr. Iorio wrote that "[c]ertain matters have come to our attention which may constitute criminal offenses under Federal law. Enclosed is a report of Apparent Criminal Irregularity."[239] The referral was accompanied by several hundred pages of documentary exhibits consisting of copies of checks, account statements, and other bank records.

Prior to its submission to the Justice Department, Criminal Referral C0004 was reviewed not only by Mr. Iorio and Mr. Ausen, but also by James Thompson, the Deputy Regional Director of the RTC's Kansas City office.[240] James Dudine, the Director of the Office of Investigations in the RTC's Washington, D.C. office, also reviewed the referral after it was submitted to the Justice Department.[241] Both Thompson and Dudine testified that they thought C0004 met the standard for issuance of a criminal referral—i.e., that there was a reasonable basis for believing that a crime has been committed or attempted.[242] Mr. Iorio, who signed the referral, testified that he thought the referral met and exceeded the prescribed standard.[243]

Criminal Referral C0004 was a 20-page, single-spaced description of "numerous questionable cash flow and 'loan' transactions" occurring in 1984 and 1985 among a dozen companies controlled by the McDougals, including Whitewater Development Corporation.[244] The referral alleged that crimes may have been committed in the course of these transactions; that some of the McDougal's business associates may have been aware of the criminal activity; and that the suspected criminal activity may have cumulatively contributed to the failure of Madison Guaranty:

> The transactions reviewed and discussed herein will allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends [credence] to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.[245]

The referral alleged that the McDougals and Lisa Aunspaugh (an employee of Susan McDougal's), had committed, among other crimes, bank fraud, in violation of 18 U.S.C. 1344, and conspiracy, in violation of 18 U.S.C. 371.[246] The referral named the President and Mrs. Clinton, Governor Jim Guy Tucker, former U.S. Senator J.W. Fulbright, Stephen Smith, and Greg Young, as potential witnesses to suspected criminal activity.[247] The referral also identified the Clintons, Mr. Tucker, and Mr. Smith as persons who had stood to benefit from the suspected criminal activity.[248]

Ms. Lewis identified the Clintons as possible witnesses because they "were business associates and involved in the Whitewater Corporation with Mr. McDougal, and as such, I think I would have been imprudent in my job had I not listed them as witnesses because they were part of Whitewater and could have easily had knowledge of what Mr. McDougal was doing with those funds."[249] Mr. Iorio agreed with Ms. Lewis' decision to list the Clintons as possible witnesses.[250]

The referral indicated that, during the mid-1980s, at least 10 checks were written on the Whitewater's account at Madison Guaranty and that five of the checks totalling over $60,000 were written on insufficient funds.[251] The referral also noted that these overdrafts were cured by funds supplied by other McDougal entities, and that Madison Guaranty did not impose any service charges or fees in connection with the overdrafts.[252]

C. Betsey Wright informs Mrs. Clinton of the RTC criminal referral

At about the time when Ms. Lewis was preparing Criminal Referral C0004, Mrs. Clinton learned of its existence. Betsey Wright,

the former Chief of Staff to Governor Clinton, testified that in the fall of 1992, while she was working on the Clinton presidential campaign, she was informed, from a person she could not remember, of an RTC Criminal "Referral about an S&L officer which would implicate the Clintons in Arkansas."[253] Ms. Wright testified that "she went scrambling trying to find out what on earth they were talking about."[254] Ms. Wright called Bob Wilson, a criminal defense attorney in Little Rock, to determine whether she could obtain information about the referral but was told that such information would be confidential.[255]

Ms. Wright testified that she spoke with Mrs. Clinton and asked "if she was aware of any friend of theirs in the savings and loan business who might be under criminal investigation, and we couldn't think of anybody."[256] Although national media attention was focused on the McDougals, Madison Guaranty, and Whitewater during the 1992 campaign, Ms. Wright claimed that Mr. McDougal's name was not discussed during her conversation with Mrs. Clinton.[257]

II. Criminal referral C0004 languishes at the Justice Department

After a criminal referral is submitted to the U.S. Attorney, he or she must determine whether it warrants further investigation or the initiation of criminal proceedings.[258] When the U.S. Attorney declines to proceed with a criminal referral, a "declination letter" is sent to the RTC.[259]

Although RTC Criminal Referral C0004 was submitted to the U.S. Attorney's Office in Little Rock on September 1, 1992,[260] no action was taken on the referral for more than one year. Finally, in October 1993, the new U.S Attorney in Little Rock, Paula Casey, a former student and campaign worker for President Clinton, declined this referral.[261] The referral was also reviewed by Justice Department officials in Washington, D.C., where the President's close friend, Webster Hubbell, was the Associate Attorney General, the third-highest position in the Justice Department.

A. The U.S. Attorney sends Criminal Referral C0004 to the main Justice Department

On September 2, 1992, the U.S. Attorney's Office in Little Rock received Criminal Referral C0004.[262] The U.S. Attorney's Manual directs that a U.S. Attorney send an "Urgent Memorandum" to the attention of the Attorney General whenever a sensitive matter arises.[263] Although Criminal Referral C0004 identified Governor Clinton, then the Democratic nominee for President, his wife, and Jim Guy Tucker, then the Lieutenant Governor, as potential witnesses, Mr. Banks did not send an "Urgent Memorandum" or even report the receipt of the referral to the Justice Department in Washington, D.C. ("Main Justice").[264] Mr. Banks claimed that he did not notify Main Justice of the referral immediately because he lacked "confidence" in the referral and wanted more evidence before notifying persons outside of Little Rock.[265]

At about the same time, on September 17, 1992, White House Cabinet Secretary Edie Holliday asked Attorney General William Barr whether he was aware of any matter involving one of the presidential candidates.[266] Ms. Holiday later told Mr. Barr that the

matter she had heard about involved a failed savings and loan and the Clintons. Mr. Barr asked Ira Raphaelson, then-Special Counsel for Financial Institutions Crimes,[267] to ascertain whether the Justice Department was handling such an investigation.[268] Mr. Raphaelson initially informed the Attorney General that no such case existed within the Department.[269]

After Mr. Barr made a second request, however, Mr. Raphaelson discovered that "there had been a referral down in Arkansas, but it had not been reported. In fact, it appeared that the office had withheld it from [Justice Department] headquarters."[270] Mr. Barr testified that he was angry that the U.S. Attorney's Office in Little Rock had deliberately failed to inform him of the matter:

> I basically said I was very angry that a matter which I viewed as a sensitive matter, that should have been reported to the Attorney General, was deliberately withheld from the Attorney General. So I was angry, and expressed my displeasure, and said that I'd be interested in knowing why an urgent report was not prepared for me and why I was not advised of this case, and why it had been deliberately withheld.[271]

Mr. Barr testified that Criminal Referral C0004 definitely met the criteria for the issuance of an Urgent Report:

> The criteria is really anything which involves—well, includes anything that involves a public personage, a celebrity or any kind of sensitive case that can involve, for example, public officials in the state, those kinds of things. It's inconceivable to me that any U.S. Attorney would not immediately understand that this case would require an Urgent Report.[272]

Mr. Barr instructed Mr. Raphaelson to ensure that the matter was kept in the strictest confidence to prevent any leaks and was handled solely based on its merits.[273]

On October 7, 1992, Floyd Mac Dodson, First Assistant to Mr. Banks, informed Lawrence McWhorter, Director of the Executive Office of United States Attorneys, that the U.S. Attorney's Office had been "sitting on the referral for six weeks," and that he "thought some further investigation was needed."[274] The next day, Mr. McWhorter transmitted an Urgent Memorandum, along with a copy of Criminal Referral C0004, to Attorney General Barr, stating that "[i]t is the belief of the U.S. Attorney's Office that further investigation into this matter is warranted."[275]

On the same day, SSA Irons also sent a teletype to SSA Kevin Kendrick at FBI headquarters in Washington informing him about Criminal Referral C0004.[276] The FBI teletype listed then-Governor and Mrs. Clinton and then-Lieutenant Governor Jim Guy Tucker among the possible witnesses.[277] The teletype explained the reason for identifying the Clintons as potential witnesses:

> The activities of McDougal as they may have involved Bill or Hillary Clinton are related to Whitewater Development Corporation, Inc. (WWD) James and Susan McDougal and Bill and Hillary Clinton were partners in

> WWD . . .. [Pages of the referral] discuss the check kiting activity involving the WWD account at MGSL.[278]

According to the teletype, Mr. Banks had informed the FBI that he intended to research the referral and analyze the 300 documentary exhibits submitted by the RTC.[279]

On October 8, 1992, officials from FBI Headquarters and Main Justice met to discuss Criminal Referral C0004.[280] Present at the meeting were Mr. Raphaelson; Robert Mueller, Assistant Attorney General, Criminal Division; [281] Fred Verinder, Deputy Assistant Director, Criminal Division, at FBI Headquarters; [282] Mr. Kendrick; and Thomas Kubic, Section Chief, Banking Crimes Unit. Mr. Mueller indicated that even though the referral on its face did not contain enough information for the Justice Department to render an opinion, the FBI should investigate the matter to determine whether the case had merit.[283] As a result of the meeting, FBI Headquarters instructed its Little Rock Field Office to conduct a limited investigation into the matters described in the Criminal Referral C0004 and specifically directed the office to review the exhibits.[284]

Although Mr. Bank assured the FBI that he would review the 300 exhibits, neither he nor Mr. Dodson ever reviewed them.[285] On October 16, 1992, Mr. Banks wrote to Donald Pettus, Special Agent in Charge of the FBI Little Rock Field Office, to inform him that the U.S. Attorney's Office would not participate in any investigation regarding Criminal Referral C0004 until after the 1992 presidential election.[286] Mr. Banks indicated that he believed no prosecutable case existed against any of the witnesses, and that "the only allegations having any credibility are against the McDougals and Anspaugh." [287]

On the same day, the FBI Little Rock Field Office also notified Mr. Kendrick at FBI Headquarters by teletype that the limited data "may indicate criminal activity on the part of the captioned subjects, James and Susan McDougal, and Lisa Anspaugh. However, USA is holding opinion of prosecutive opinion regarding these subjects in abeyance." [288]

Based on the decision of the U.S. Attorney's Office to defer any prosecutorial consideration, the Field Office also adopted a non-investigative posture on Criminal Referral C0004.[289]

B. Criminal Referral C0004 gets lost at the Justice Department

Criminal Referral C0004 remained in the U.S. Attorney's Office until January 27, 1993, when Mr. Banks requested, in a letter to Donna Henneman, Ethics Program Manager at the Executive Office for U.S. Attorneys, that Main Justice assume responsibility for any further action.[290] Mr. Banks believed that his office had a conflict of interest because of its unsuccessful criminal prosecution of Mr. McDougal in 1990.[291] Mr. Banks concluded that "[a] limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh should be considered," and that interviews of these individuals should determine whether there is merit to further investigation.[292]

On February 9, 1993, Anthony Moscato, Director of the Executive Office of United States Attorneys, forwarded Mr. Banks' request to

Stuart Gerson, then Acting Attorney General, through Douglas Frazier, Principal Associate Deputy Attorney General.[293] Mr. Frazier prepared a recusal package and sent it to the Criminal Division for its recommendation.[294]

On February 22, 1993, Gerald McDowell, Chief of the Frauds Section at Main Justice, directed a young trial attorney, Mark MacDougall, to analyze the criminal referral.[295] Just one day later, on February 23, 1993, without even reviewing the 300 exhibits, Mr. MacDougal prepared a memorandum in which he concluded that Criminal Referral C0004 did not appear to warrant any criminal investigation.[296]

Main Justice officials decided against rendering an opinion on the merits of the referral. Instead, Main Justice rejected Mr. Banks' request for recusal and returned the referral to Mr. Banks to let his office decide whether to investigate further or to decline prosecution.[297]

On March 19, 1993, Acting Assistant Attorney General John Keeney prepared a memorandum for Mr. Frazier rejecting recusal:

> We have reviewed the material in the package and have concluded that there is no identifiable basis for recusal by the United States Attorney. Further, we would not question a decision by the United States Attorney to decline further substantive action on the referral.[298]

Main Justice wanted Mr. Banks to make the ultimate decision on the referral. Allen Carver, Deputy Chief of the Fraud Section, Criminal Division, testified that the memorandum prepared by Mr. MacDougall did not constitute a conclusion by Main Justice not to prosecute the case,[299] and that the matter was sent to the U.S. Attorney's Office for a determinative opinion.[300]

Although Mr. Frazier believed that he should have received Mr. Keeney's memorandum in March, he did not receive it until the end of May or June, when it suddenly "appeared out of nowhere."[301] Thus, for more than two months, Mr. Banks was not advised of Main Justice's decision to reject his request for recusal.[302]

By May 1993, the U.S. Attorney's Office still had not sent a response to Ms. Lewis on whether a decision had been made to decline or prosecute Criminal Referral C0004. After Mr. Banks' resignation in March 1993,[303] Ms. Lewis wrote to Acting U.S. Attorney Richard Pence in Little Rock to inquire about the status of the referral. Mr. Pence notified Ms. Lewis that the matter had been referred to Main Justice.[304]

Ms. Lewis then contacted Ms. Henneman of the Executive Office for U.S. Attorneys to ask about the status of Criminal Referral C0004. After a number of inquiries, Ms. Henneman located, within the Fraud Section at Main Justice, the March 19 memorandum declining Mr. Banks' request for recusal. Ms. Henneman then forwarded a copy of the memorandum to Mr. Frazier.[305] Finally, in July 1993, Main Justice sent a package of materials, including the March 19 memorandum, to the U.S. Attorney's Office in Little Rock.[306]

Mr. Pence discussed Criminal Referral C0004 with Assistant United States Attorney Fletcher Jackson.[307] He took no other action. Mr. Jackson advised Mr. Pence that he wanted to review the

referral exhibits to determine whether any of the Madison Guaranty transactions were related to his ongoing investigation of David Hale and Capital Management Services, Inc.[308]

Although a decision on a criminal referral is usually issued within 60–90 days after submission, the U.S. Attorney's Office did not render a prosecutorial opinion on Criminal Referral C0004 until October 27, 1993—over one year after its submission—when Ms. Casey formally declined the referral.[309] The length of time that it took for the referral to be acted upon was unusually long in the experience of Mr. Iorio and Ms. Lewis. Mr. Iorio testified that the normal time period for a United States Attorney to act on an RTC criminal referral was around 60 days;[310] Ms. Lewis testified that she generally received responses within 30 to 45 days.[311]

The final decision to decline prosecution was made without anyone having reviewed the exhibits. Indeed, no one at the U.S. Attorney's office in charge of handling Criminal Referral C0004 ever reviewed or analyzed the 300 exhibits.[312]

III. Interference with the RTC's ongoing investigation of Madison

From May through August 1993, while Crminal Referral C0004 was in the hands of the Justice Department, Ms. Lewis, at the express direction of her supervisors—Mr. Ausen and Mr. Iorio—continued to investigate Madison Guaranty.[313] RTC Kansas City investigators Mike Caron, Ed Noyes, and Randy Knight joined Ms. Lewis in this effort.[314]

According to Ms. Lewis, this phase of the RTC's investigation uncovered:

> several transactions involving insider abuse, self-dealing, money laundering, embezzlement, diversion of loan proceeds, payments of excessive commissions, misappropriation of funds, land flips, inflated appraisals, falsification of loan records and board minutes, chronic overdraft status of various subsidiaries, joint ventures and real estate investments, regulatory violations of investments in subsidiaries, wire fraud, and illegal campaign contributions.[315]

As a result, the RTC prepared nine new criminal referrals concerning Madison Guaranty.[316] These referrals were completed on September 24, 1993.[317]

The 1993 referrals alleged the commission of crimes involving, among other things, bank fraud, conspiracy, false statements, false documents, wire fraud, aiding and abetting, and misuse of position.[318] The nine referrals identified multiple suspects of criminal wrongdoing—including Mr. and Mrs. McDougal, several former Madison Guaranty officers and borrowers, Mr. Tucker, and the Bill Clinton Political Committee Fund.[319] President and Mrs. Clinton were listed as witnesses in three referrals,[320]; Beverly Bassett Schaffer, the former Commissioner of the Arkansas Securities Department, was listed in one referral;[321]

Criminal Referral #730CR0192 alleged that Mr. McDougal embezzled money from Madison Guaranty, by channelling it through the Whitewater account.[322] In April 1985, Mr. McDougal transferred $30,000 from the Whitewater account at Madison Guaranty to former Senator J.W. Fulbright.[323] As the balance of the

Whitewater account was $270, this transfer caused the account to be overdrawn.[324] Later that month, the overdraft was cured when Madison Financial deposited $30,000 into the Whitewater account.[325] According to minutes of a Madison Financial Board of Directors' meeting, the $30,000 was supposedly a prepayment of Mr. McDougal's annual bonus.[326]

The referral stated that "the unauthorized prepayment of McDougal's annual bonus was simply a method to allow McDougal to embezzle funds through manipulation of the accounts which he controlled. He clearly used the White Water account to pay his unknown obligation to J.W. Fulbright and schemed to deprive Madison Financial Corporation of funds to reimburse the White Water account." [327]

President and Mrs. Clinton were listed as potential witnesses to suspected criminal activity.[328] Ms. Lewis testified that the Clintons were included as potential witnesses because, as owners of the closely-held Whitewater corporation, they might "have had knowledge of what was going on with the finances of their corporation." [329]

A second referral, number 730CR0196, alleged that "James B. McDougal, and MGS&L shareholder and former Director, Charles Peacock III, . . . conspired to misappropriate thrift funds for the purpose of making illegal campaign contributions to the benefit of Arkansas Governor Bill Clinton." [330] The referral named Mr. McDougal, Mr. Peacock, and the Bill Clinton Political Committee Fund as criminal suspects.[331]

The referral identified four $3,000 checks, all of which were dated April 4, 1985, drawn on Madison Guaranty accounts, and deposited in the Bill Clinton Political Committee account at the Bank of Cherry Valley.[332] The first check was written by Mrs. McDougal on the McDougals' personal checking account at Madison Guaranty and made payable to the "Bill Clinton Political Committee." [333] The second check, a Madison Guaranty cashier's check purchased in the name of J.W. Fulbright, was also made payable to the "Bill Clinton Political Committee." [334] The referral alleged that this check was funded by a check issued by Flowerwood Farms, one of the McDougals' companies.[335]

The third and fourth checks were each $3,000 cashier's checks drawn on Madison Guaranty. The checks were purchased in the names of Ken Peacock and Dean Landrum, respectively, and made payable to Bill Clinton.[336] The referral alleged that former Madison Guaranty director Charles Peacock III, the father of Ken Peacock and the business partner of Mr. Landrum, purchased these checks by diverting part of the proceeds of a $50,000 Madison Guaranty loan.[337] The three cashier's checks were numbered sequentially—Q2496, Q2497 and Q2498—[338], and Mr. Landrum's first name, Dene, was misspelled on the check.[339]

The referral further suggested that Mr. McDougal may have received benefits from then-Governor Clinton in exchange for $6,000 in campaign contributions. The referral observed that during the month the $3,000 checks were written, Mrs. Clinton, then a partner in the Rose Law Firm, had sent a letter to the Arkansas Securities Department seeking approval of Madison Guaranty's plan to issue a class of preferred stock.[340] The referral noted that the plan

was approved the next month by the Arkansas Securities Commissioner, Beverly Bassett Schaffer, who had been appointed to her post by then-Governor Clinton.[341] The referral also remarked that Madison Guaranty's request for approval to issue preferred stock came at a time when Madison Guaranty was badly in need of additional capital.[342]

The referral named both Mrs. Clinton and Ms. Schaffer as possible witnesses.[343]

Ms. Lewis believed that "there was a very strong possibility of a quid pro quo in the selection of Ms. Bassett into [her] position"[344] and that "there was a possibility of a quid pro quo situation" with respect to "Mrs. Clinton and the Rose firm representing Madison."[345]

The nine referrals were submitted to the Justice Department on October 8, 1993.[346]

The verdicts in the McDougal and Tucker trial prove that actual criminal activity was identified in the RTC referrals. On August 17, 1995, a federal grand jury convened in the Eastern District of Arkansas returned a twenty-one count indictment against Mr. and Mrs. McDougal, and Governor Tucker alleging conspiracy, bank fraud, mail fraud, wire fraud, misapplication of funds, and the making of false statements and false entries.[347] The Office of the Independent Counsel ("OIC") prosecuted the three defendants and, on May 28, 1996, after a lengthy trial, a jury in Little Rock convicted Mr. McDougal on 18 of 19 counts in the indictment, Mrs. McDougal on four counts, and Governor Tucker on two counts.[348]

Many of the felony counts on which the defendants were convicted were based on suspected criminal activity identified in the RTC referrals. Count one of the indictment, a criminal conspiracy charge on which both Mr. McDougal and Governor Tucker were convicted, involved a $260,000 loan obtained by Mr. Tucker from Madison Guaranty and the "flip" of property at 1308 Main Street in Little Rock. This count closely tracked allegations made in RTC Criminal Referrals #730CR0190 and #730CR0198.[349] The jury also convicted Mr. McDougal on charges of misapplication of funds (counts 17 and 18) and making false record entries (count 19) related to the land flip at 1308 Main Street—the suspected crime described in Criminal Referral #730CR0198.[350]

Three additional charges on which Mr. McDougal was convicted—count 5 (mail fraud), count 6 (fraud), and count 7 (false statement), tracked the suspected criminal activity identified in Criminal Referral #730CR0199. That referral outlined suspected crimes committed by Mr. McDougal in connection with his development of resort property on Campobello Island, off the coast of New Brunswick, Canada.[4]

Finally, five of the counts on which the jury returned guilty verdicts—counts 1, 13, 14, 15, and 16—related to a fraudulent $300,000 loan made to Mrs. McDougal's company, Master Marketing, from Capital Management Services.[351] The proceeds of that loan were tracked in the first Madison Guaranty referral, Criminal Referral C0004.

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[4] Another suspect identified in the referral, Larry Kuca, pleaded guilty to a misdemeanor charge of conspiracy to misapply funds.

Despite the proven success of the Kansas City investigators' efforts, they encountered a concerted effort to hamper their investigative efforts. Both Ms. Lewis and Mr. Iorio testified that obstacles were placed in the way of the RTC's investigation into Madison Guaranty and Whitewater. Ms. Lewis "believe[d] there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison."[352]

Mr. Iorio shared that view.[353] He also described as "unprecedented" the "scrutiny that had been focused on the efforts of preparing the referrals and the subsequent review of the referrals."[354] He explained:

> Through this arduous process, the Kansas City office of investigations has been subjected to an alteration of the work environment that included instigation of special procedures, a new review critique mechanism, a slow down of information flow, information leaks, and for us, Jean Lewis, Lee Ausen, and myself, the uncertainty of being placed on administrative leave, without prior notification to RTC investigations management in Washington, D.C. At that point, the review of our work appeared to be more than an effort to confirm or deny our findings. Instead, it appeared that three of us had become the messengers of unwanted news, and if history serves as a guide, are often the targets of attack meant to deflect attention from the information the messengers bring.[355]

Part of the pattern of intimidation, interference, and outright obstruction was the subjecting of the second set of criminal referrals to an unprecedented written "legal review" by the Professional Liability Section ("PLS") of the RTC. The second set of nine criminal referrals related to Madison Guaranty were completed and signed by September 24, 1993, and the Kansas City RTC investigators had planned to send the referrals to the Justice Department on October 1, 1993.[356]

On September 30, 1993, however, Julie Yanda, the Chief of the Professional Liability Section[5] in the RTC Kansas City office, demanded that her staff be given the opportunity to conduct a "legal review" of the referrals.[357] Ms. Lewis was concerned that the review was "a delay tactic,"[358] and, on October 4, 1993, she shared her concerns with RTC Regional Inspector General Dan Sherry.[359]

Two senior RTC PLS attorneys, Karen Carmichael and Philip Adams, prepared this so-called "legal review"—a 13-page memorandum, dated October 7, 1993, and addressed to Ms. Yanda.[360] For each referral, the memorandum posed between six and 12 brief questions stemming from the authors' "concerns" about the referrals.[361] The memorandum did not answer or analyze the questions it raised. And, it offered no suggestions for revising the referrals, gave no conclusions about the referrals, and contained no recommendations with respect to what action the RTC should take.[362]

On October 8, 1993, PLS provided its legal review to the criminal investigators,[363] and the nine referrals were submitted to the Unit-

[5] The RTC's Professional Liability Section was responsible for handling civil claims relating to the legal liability of professionals, such as accountants, appraisers, and attorneys. (Lewis, 10/30/95 Dep. p. 125.)

ed States Attorney's Office.[364] Thus, the only effect of this legal review was to delay the submission of the referrals by one week. The referrals were submitted exactly as they had been written prior to the PLS review.[365]

Ms. Lewis and Mr. Iorio both described PLS's request to delay the submission of criminal referrals for a legal review as "unprecedented."[366] According to Ms. Lewis, PLS had never before reviewed any other criminal referrals prepared by the Kansas City criminal investigations unit.[367] Mr. Iorio similarly testified that "[t]he request to do a critique of the referrals, that was the first time this had happened and it was with regard to the nine Madison criminal referrals."[368] He also stated that subsequent referrals were not reviewed prior to their submission in all cases.[369]

Ms. Yanda claimed that her request for a legal review of the Madison Guaranty referrals was based on a June 17, 1993 RTC memorandum on the handling of criminal referrals.[370] That memorandum stated: "[e]xcept in rare circumstances, criminal referrals shall be reviewed by RTC Investigations and Legal Division Criminal Coordinators before they are delivered to the U.S. Attorney and the FBI or any other investigative agency."[371]

Other RTC officials had a different view of the June 17, 1993 memorandum than Ms. Yanda. Mr. Iorio did not read the memorandum to require that the submission of criminal referrals be delayed pending PLS's review. According to Mr. Iorio, under the June 17 memorandum, PLS was "to be provided with a copy of any outgoing criminal referrals for their review as a means to exchange information, but you are not dependent upon them critiquing your referrals and telling you it's all right to send them."[372] Mr. Iorio's understanding was based on conversations with Mr. Dudine and Carl Gamble, the criminal coordinator in the RTC Washington, D.C. office, who he understood to have authored the memorandum.[373] Also, Kenneth Donahue of the RTC Office of Investigations in Washington, D.C., told Ms. Yanda that he helped draft the June 17, 1993 memorandum, and that it had not been intended that PLS would prepare legal reviews of all referrals prior to their submission to the Justice Department.[374]

Soon after the nine new criminal referrals were sent to the U.S. Attorney's Office, Ms. Lewis began to encounter more difficulties in conducting the Madison Guaranty investigation. In October 1993, Ms. Lewis was removed from the Madison Guaranty "communications loop" by the PLS criminal coordinator.[375] That same month, Mr. Iorio advised Ms. Lewis that PLS personnel had complained that she communicated directly with the U.S. Attorney's Office and the FBI in Little Rock, concerning Madison Guaranty.[376]

On November 9, 1993, at the direction of Ms. Yanda, Ms. Lewis was removed from the position as lead investigator on the Madison Guaranty criminal case.[377] According to Mr. Iorio, "[t]here was some friction between Jean and Julie's criminal coordinator, Karen Carmichael, and Julie came to me and asked me to remove Jean."[378] When asked about this meeting, Ms. Yanda claimed that she "laid out for Mr. Iorio a series of events that had troubled me greatly concerning Ms. Lewis and her failure to act as a team member and work with the legal division in concert to try to move matters along successfully to the benefit of the RTC."[379]

Mr. Iorio and Mr. Ausen told Ms. Lewis that she was being removed from the Madison Guaranty investigation "to avoid me taking a bullet I didn't deserve."[380] On November 10, 1993, Ms. Lewis wrote in an e-mail, "[j]ust a heads up to let you know that Mike Caron, Senior Criminal Investigator, is now the lead investigator on Madison . . . The Powers that Be have decided that I'm better off out of the line of fire (and I ain't arguing)."[381]

The removal of Ms. Lewis from the Madison Guaranty investigation was only part of a larger pattern of interference by senior officials in the RTC's investigation. April Breslaw, a PLS attorney, was at the center of this effort. Throughout 1994, Ms. Breslaw sought to discourage RTC employees from investigating Madison Guaranty and informed RTC investigators that senior RTC officials preferred that any such investigation reach a certain outcome.

Ms. Breslaw's first contact with Madison Guaranty was in 1989. In March 1989, Ms. Breslaw—then an attorney in the FDIC Directors and Officers Liability Section—retained the Rose Law Firm to handle a malpractice suit against Madison Guaranty's former independent accountants, Frost & Company.[382] In January 1990, Ms. Breslaw was detailed to the RTC's Professional Liability Section.[383] In April 1991, the Frost case was settled.[384] In January 1994, Ms. Breslaw was put on a team of RTC attorneys reviewing Madison civil claims.[385] In March 1994, Ms. Breslaw recused herself from the Madison case.[386]

In late 1993 and early 1994, after public allegations arose that the Rose Law Firm had a conflict of interest, Ms. Breslaw's decision to hire the Rose Law Firm to represent the FDIC (and later the RTC) came under considerable scrutiny.[387] In September 1993, Sue Schmidt, a Washington Post reporter, contacted Ms. Breslaw about Rose's representation of the RTC.[388] Later that fall, the FDIC Legal Division commenced a review of the hiring of the Rose Law Firm for the *Frost* case.[389] The Office of Investigations in the Kansas City RTC office also began that fall to examine Madison civil issues, including Rose Law Firm conflicts issues.[390] In January 1994, the RTC Office of Contractor Oversight and Surveillance also started to investigate Rose conflicts issues.[391]

On January 12, 1994, Ms. Breslaw sent an e-mail message to Mr. Iorio and James Thompson, the Vice President of the Kansas City RTC office responsible for investigations.[392] In the e-mail, Ms. Breslaw stated that "[i]t's my understanding that Kansas Investigations has attempted to evaluate the decision to hire the Rose Law Firm to represent the government against Frost & Co."[393] She then attempted to persuade Mr. Thompson and Mr. Iorio to call off the investigation:

> [Y]ou should be aware that the FDIC is conducting its own investigation of this matter. Trial attorneys from their Special Litigation unit are in the process of both evaluating relevant documents and interviewing witnesses. By all indications, this project is being handled in a professional manner. . . . In light of all of this, I suggest that Investigations discontinue its inquiry into this matter.[394]

Within days of sending this e-mail, Ms. Breslaw warned RTC investigator Gary Davidson against pursuing an investigation of

Madison, saying that certain RTC managers would take a "dim view" of such an investigation.[395] In a February 18, 1994 memorandum addressed to Mr. Iorio, Mr. Davidson recounted his conversation with Ms. Breslaw:

> On January 11, 1994, you requested that I conduct a preliminary investigation into Madison Guaranty, for possible Civil Fraud claims. . . . On January 13th or 14th, I called the assigned PLS attorney, April Breslaw, for the purpose of asking whether she knew of any fraudulent activity that was not addressed in the Criminal Referrals.
>
> Before I could ask my intended question, April asked if I was conducting an investigation into Madison Guaranty. After acknowledging that I was, she indicated that what she was about to tell me was being stated as politely as she could. April felt that I should know there are some RTC people in management positions that would take a "dim view" of me investigating Madison Guaranty. She also advised that I should be very careful of who I talk to and what I say, because of the people associated with Madison Guaranty.[396]

Mr. Davidson came to Mr. Iorio within a few days after he had received Ms. Breslaw's warning that RTC management "would take a 'dim view' of [him] investigating Madison Guaranty."[397] Mr. Iorio told Mr. Davidson to memorialize what Ms. Breslaw had said because he "thought it was very unusual."[398] Mr. Davidson interpreted Ms. Breslaw's comments as "definitely a threat."[399]

Ms. Breslaw recalled a conversation with Mr. Davidson but denied telling him that some RTC managers would take a "dim view" of him investigating Madison.[400] She remembered only cautioning Mr. Davidson about speaking to the press.[401] But Ms. Breslaw's testimony is contradicted by a July 12, 1994 memorandum she wrote to RTC Deputy General Counsel Andrew Tomback. In that memorandum, Ms. Breslaw admitted that she had told Mr. Davidson that some people "would take a dim view" of an investigation in Rose Law Firm conflicts issues:

> Gary called me in 1994 to quiz me about the Rose Law Firm. In response, I reminded Gary that the FDIC had taken responsibility for evaluating Rose Firm conflicts and that it was not appropriate for RTC Kansas investigations to go further into that matter. I believe I told Gary that the senior people would take a dim view of further Kansas inquiry into Rose Law Firm conflicts issues.[402]

On February 2, 1994, at the direction of Mark Gabrellian, Counsel for the Legal Division of the RTC, Ms. Breslaw traveled to the Kansas City RTC Office of Investigations to review Madison documents in connection with the RTC's recently reopened Madison civil investigation.[403] That afternoon, Ms. Breslaw and Ms. Lewis spoke for approximately 40 minutes.[404] Ms. Lewis recorded their conversation.[6] On the tape, a speaker who Ms. Lewis identified as Ms. Breslaw stated:

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[6] Ms. Lewis testified that she did not intend to record the conversation initially. She testified that the tape recorder turned itself on, and that at some point during the conversation she no-

> I think if they can say it honestly, the head people—Jack Ryan and Ellen Kulka, would like to be able to say "Whitewater did not cause a loss to Madison." We don't know, you know, what Fiske is going to find and we don't offer any opinion on it. But the problem is nobody has been able to say to Ryan and Kulka, "Sure say that, that's fine." [405]

At the time, Mr. Ryan was the RTC's CEO and Ms. Kulka was its General Counsel.

Ms. Breslaw also was recorded saying:

> Well, you know, as I say—I feel self-conscious asking that, because in some ways it is kind of a silly question. But it's the kind of thing, they're looking for what they can say, and I do believe they want to say something honest, but I don't believe at all, and I don't want to suggest at all, that they want us to move to certain conclusions. I really don't get that feeling. But there are answers they would be happier about, you know, because it would get them, you know, off the hook, you know, and that would sense Whitewater. So that is why we keep getting asked the same things.[406]

In Ms. Lewis's view, "it is clear that Ms. Breslaw was there to deliver a message that 'the people at the top would like to be able to say Whitewater did not cause a loss to Madison.' " [407]

Ms. Breslaw initially denied having made this statement to Ms. Lewis. On March 24, 1994, Representative James A Leach stated on the floor of the House of Representatives that "[o]n February 2, 1994, the day Roger Altman briefed the White House on Madison Guaranty, April Breslaw, RTC Senior Attorney, visited the Kansas City office and said that Washington would like to say that Whitewater caused no losses to Madison." [408] [7] That same day, Ms. Breslaw sent an e-mail to several persons within the RTC, saying "[a]s you may know, Congressman Leach made a statement regarding the so-called 'Whitewater' affair on the floor of the Congress today. At one point he made specific reference to me. I want you to know that I categorically deny making the statement which he attributed to me. . . . I did not say that anyone from Washington 'would like to say' anything." [409]

On March 25, 1994, the day after Representative Leach made his statement, Ms. Breslaw met with Ms. Kulka and Assistant General Counsel Thomas Hindes to discuss Representative Leach's statement. The notes of Ms. Kulka's secretary, Wilma Lekan,[410] reflect that at the meeting Ms. Breslaw stated that she had discussed Whitewater with Ms. Lewis and mentioned both Ms. Kulka and

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ticed that it was on but chose to continue the recording. (Lewis, 10/30/95 Dep. pp. 157–158, 196–197.)

Ms. Breslaw was unaware that the conversation was being recorded. (Breslaw, 11/30/95 Hrg. p. 69.)

Ms. Lewis turned the original tape over to the Office of the Independent Counsel ("OIC") on March 31, 1994. (Lewis, 10/30/95 Dep. p. 241.) The OIC produced a copy of the tape to the Special Committee on November 20, 1995.

[7] Ms. Lewis testified that because she believed "there was an effort underway to control, manipulate and even obstruct the Madison investigation," she met with Rep. Leach on February 18, 1994, and played the tape for him. (Lewis, 11/29/95 Hrg. p. 23); (Lewis, 10/30/95 Dep. p. 236.)

Mr. Ryan but denied saying that the two wanted a particular outcome:

> April said that she told Jean that we had been getting inquiri[es] in Washington about Whitewater. She said she told her that Ellen and Jack Ryan had been getting inquiries (she said that she was thinking of the tolling agreements and the D'Amato letter.) April said that this was the only point where she mentioned Ellen Kulka and Jack Ryan.
>
> April says that she denies saying that Ellen Kulka or Jack Ryan wanted a particular outcome or wanted the loss numbers to be anything.[411]

Before the Special Committee, Ms. Breslaw recalled speaking to Ms. Lewis on February 2, 1994,[412] but she claimed that she did not recall making the statement that "if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison."[413] [8]

Ms. Breslaw claimed that she was "not sure" whether it was her the voice on the tape recording.[414] She implausibly testified that "I don't know what my voice sounds like on the tape, or on a tape,"[415] and that "I guess all I can say is that I don't know what I sound like on tape."[416] She finally admitted "I have no reason to think that this is not my voice."[417]

In an e-mail dated June 28, 1994, Ms. Breslaw expressed concern about any production of documents to the Senate related to her conversation with Ms. Lewis:

> I have the impression that we're in the midst of producing doc's to the Senate banking committee in anticipation of the hearing scheduled for the end of July. If anybody is considering producing anything that has anything to do with my conversation with Jean Lewis, I'd like to talk about whether its responsive to the committee's request. It's my understanding that the Senate rejected amendments which might have brought this incident into the scope of the hearings.[418]

On August 15, 1994, the three Madison investigators were placed on administrative leave for two weeks.[419] The RTC took this action without any warning or explanation. On that fateful day, after Mr. Ausen and Mr. Iorio arrived at work, they were summoned to an office and told that they had been placed on administrative leave.[420] The three investigators then were escorted to their offices and finally out of the building.[421] They were told to stay off RTC property.[422] Their offices were locked and sealed.

On the night of August 15, Ms. Lewis, then in the hospital, received a call from Edward Noyes, a member of the Madison investigative team, who advised her Mr. Iorio and Mr. Ausen had been placed on administrative leave.[423] Mr. Noyes told her that "the

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[8] In prior testimony, Mr. Ryan has stated that he has no recollection of indicating to anyone at the RTC that he would prefer to be able to say that Whitewater did not cause losses to Madison. (Ryan, 6/21/95 Dep. p. 42.) Ms. Kulka has also testified that she never indicated to Ms. Breslaw that she would prefer to be able to say that Whitewater did not cause a loss to Madison. (Kulka, 6/23/95 Dep. p. 31.)

purge has begun."[424] He telephoned later to let Ms. Lewis know that she had also been placed on leave.[425]

The three Madison investigators each received an identical one-page memorandum, dated August 12, 1994, from Mr. Hindes.[426] The memorandum stated "[y]ou are hereby placed on Administrative Leave to be effective immediately upon receipt on August 15, 1994" but offered no explanation for the adverse employment action.[427] Although the August 12th memorandum indicated that "[i]f you have any questions you may contact Randi L. Mendelsohn, Chief, Employee Relations, OHRM [Office of Human Resource Management]," Ms. Mendelsohn refused to advise Mr. Iorio's counsel why he had been placed on administrative leave.[428] Ms. Mendelsohn refused offers to have Mr. Iorio answer questions, provide documents, answer charges, or otherwise provide assistance.[429] According to Ms. Lewis, the three were not contacted for interviews or information.[430]

On August 29, 1994, Mr. Iorio, Mr. Ausen, and Ms. Lewis were told to return to work.[431] The three still did not receive any explanation for why they were put on administrative leave.[432]

The RTC never provided an explanation to Ms. Lewis, Mr. Ausen and Mr. Iorio, although Mr. Iorio believed the action was related to the Madison investigation.[433]

In August 1994, Mr. Iorio and Ms. Lewis through counsel requested that the RTC OIG investigate the matter.[434] John J. Adair, the Inspector General of the RTC, testified that in August 1994 his office received requests from attorneys for two or three of the Madison investigators and from Mr. Ryan to investigate the matter.[435]

On the Friday before the administrative leave of the three Madison investigators was to end, Mr. Adair, received a telephone call from Andrew Tomback, Assistant General Counsel, and RTC attorney Erica Cooper,[436] who "indicated to me that perhaps my office would want to, my agents would want to search the offices of the three individuals."[437] Mr. Adair told Mr. Tomback and Ms. Cooper that such a search "didn't seem to be an appropriate thing for us to do absent any really good reason to do that."[9] [438]

Before the RTC OIG could proceed with the investigation, the OIC advised that inquiry by the RTC IG into the administrative leave matter would interfere with the his work.[439] Accordingly, the RTC OIG suspended its investigation.

IV. Paula Casey delays her recusal from Madison, handles the Hale pleas negotiations, and declines to prosecute Criminal Referral C0004

A. Investigations of Capital Management and David Hale

During the summer of 1993, even before the RTC submitted its second set of criminal referrals relating to Madison Guaranty, the U.S. Attorney's Office for the Eastern District of Arkansas began investigating David Hale, a Little Rock municipal judge who owned

[9] Patrick I. Noble, the former Deputy Assistant Inspector General for the RTC, testified that Mr. Adair advised him of this conversation. (Noble, 10/20/95 Dep. pp. 33-34.) Mr. Noble recalled that Mr. Adair had said that "it was not appropriate for the Inspector General's office to search those offices, and I believe he said he didn't believe there was any basis for that." (Noble, 10/20/95 Dep. p. 28.) Mr. Noble added that Mr. Adair's response was that a search would have been "[i]nappropriate in the sense [that] there was no legal basis for it." (Noble, 10/20/95 p.28).

a Small Business Investment Corporation ("SBIC") called Capital Management Services, Inc. ("CMS"). Mr. Hale was accused of fraudulently obtaining SBA loans.

On July 20, 1993, the date of Vincent Foster's death, the FBI obtained a search warrant and seized loan documents from Mr. Hale's CMS offices. Some of the documents contained references to Mr. Tucker, as well as a $300,000 loan to Mrs. McDougal d/b/a Master Marketing.[440] As a result of information obtained in its investigation of Mr. Hale, by August 20, 1993, the Little Rock FBI had opened a separate fraud investigation of Mr. Hale and Mr. McDougal.[441]

The SBA certified CMS as a Specialized SBIC on March 14, 1979.[442] Over the next 14 years, the SBA examined CMS eleven times.[443] Although five examinations found no improprieties, six identified various areas of regulatory concern. Specifically, the SBA raised concerns about CMS's financing of businesses that did not qualify as socially or economically disadvantaged.[444] The SBA also faulted CMS for lending to businesses that were controlled by Mr. Hale's associates.[445]

In late 1992, despite its spotty compliance record, CMS and Mr. Hale applied for $6 million in additional leverage from the SBA.[446] Mr. Hale represented to the SBA that he had a $13.8 million increase in CMS assets[447] in the form of non-cash assets that investors had provided to CMS.[448] On October 28, 1992, the SBA rejected Mr. Hale's application for financing, and requested additional information relating to donated assets. Mr. Hale then informed the SBA that the donated assets consisted of $11.5 million in medical receivables of an investment pool and $2.3 million in stock of a company named National Building Supply.[449] On December 8, 1992, the SBA gave Mr. Hale conditional approval for the capital increase—that is, to accept the donated assets.[450] The SBA, however, informed Mr. Hale that the assets could only be used for regulatory purposes—i.e, to support the $6 million in additional financing—until the assets were converted to cash and their value had been validated.[451]

On February 19, 1993, at Mr. Hale's request, Wayne Foren, then the SBA's Associate Administrator for Investment, met with Mr. Hale in Washington, D.C. to withdraw his application for additional SBA financing for CMS.[452] According to Mr. Foren: "In other words, he wanted the problem to go away. He didn't want to answer the questions of where did the assets come from."[453] But Mr. Foren persisted in questioning Mr. Hale about the donated assets: "And I said David, why would anybody give you tens of millions of dollars worth of assets? Doesn't make sense. . . . Either these assets are not worth the represented value, in which case you are perpetrating a fraud on SBA, or you are being bribed."[454]

Mr. Hale told Mr. Foren that he was close to the current governor of Arkansas, Jim Guy Tucker, and to President Clinton,[455] and "[t]hat he had access to both."[456] "His answer was people gave him the money, would give him the money because he could do things for them in Arkansas."[457] Mr. Hale elaborated that an individual, who was interested in starting an insurance company in Arkansas, had put money into CMS by routing the funds through the Central Arkansas Community Development Corporation, a non-

profit corporation.[458] The money was given to Mr. Hale for "[g]etting things done in Arkansas" and to "solve problems."[459] When Mr. Foren expressed concern over the arrangement, Mr. Hale replied, "well, Wayne, you have to understand this is the way we do business in Arkansas."[460]

Mr. Foren found Mr. Hale's statements regarding his relationship with Governor Tucker and President Clinton to be credible.[461] Indeed, in May 1993, after Mr. Foren had referred the case to the SBA Inspector General ("SBA IG") for further investigation, Mr. Hale called Mr. Foren and requested that he attend a meeting with Governor Tucker and a representative of the Arkansas Development Finance Authority.[462] Mr. Foren declined to attend the meeting because "[i]t is inappropriate for me to attend a meeting on this kind of a subject called by David Hale while we're—we have made a referral for investigation of his company."[463]

On March 11, 1993, the SBA issued a regulatory compliance report on CMS that "raised questions relative to the donated assets and the values" on those assets.[464] Specifically, the report identified the source of the $11.5 million investment pool certificate as an offshore company incorporated in the Grand Cayman Islands.[465] According to Mr. Foren, the mysterious source of the assets raised "another red flag" for regulators.[466] In addition, the SBA determined from documents that National Building Supply filed with the Securities and Exchange Commission that the stock donated to CMS was worthless; National Building Supply was bankrupt.[467] On March 26, 1993, as a result of the examination report, the SBA sent Mr. Hale an examination letter[468] disclosing the results of the examination and requiring Mr. Hale to provide additional information and/or take corrective action.[469] On April 20, 1993, Mr. Hale responded that he disagreed with the conclusions and findings of the examination.

On May 5, 1993, Mr. Foren referred the matter to the SBA IG for investigation.[470] Arnold Hawkins, the SBA's Regional Inspector General,[471] determined that the case would require considerable investigative resources.[472] Because the SBA IG did not have an office in Little Rock, Mr. Hawkins and other SBA officials decided to refer the matter directly to the FBI on May 20, 1993.[473]

The FBI then proceeded to investigate CMS and Mr. Hale. On June 14, 1993, the FBI requested that the SBA provide documents concerning CMS and Mr. Hale.[474] On July 20, 1993, the FBI obtained a search warrant for CMS records.[475] The next day, the subpoena was served and loan documents were seized from the CMS offices.[476] Some of the documents contained references to Mr. Tucker, while others referred to the $300,000 CMS loan to Susan McDougal d/b/a Master Marketing.[477]

On September 23, 1993, a grand jury indicted Mr. Hale on various federal charges relating to the operation of CMS. Mr. Hale has since pleaded guilty to two federal charges and he cooperated with the investigation by the OIC into alleged criminal conduct arising from the operation of CMS, Whitewater, and Madison.[478]

B. Plea negotiations with David Hale

In May 1993, while the SBA and FBI were investigating Mr. Hale, President Clinton nominated Ms. Casey to be the new U.S.

Attorney for the Eastern District of Arkansas. Ms. Casey had no prior prosecutorial experience,[479] but she had close ties to the President and Mrs. Clinton. She worked on Clinton gubernatorial campaigns[480], attended a law school class taught by President Clinton, and participated in a law clinic with Mrs. Clinton.[481] Governor Clinton also had appointed Ms. Casey to a special commission along with Mrs. Clinton, for the development of a new court system and a new juvenile law code, and to a separate juvenile advisory group.[482]

In addition, Ms. Casey was a longtime personal friend of Mr. and Mrs. Tucker. She had lobbied Governor Tucker's office in 1993 on behalf of the Arkansas Bar Association.[483] Ms. Casey's husband also had worked on Governor Tucker's political campaigns and had donated money to him.[484]

A short time before Ms. Casey took office on August 16, 1993,[485] Randy Coleman, a Little Rock attorney representing Mr. Hale, met with Assistant U.S. Attorney Fletcher Jackson.[486] Mr. Coleman testified that he met with Mr. Jackson "to try to determine what was happening since I didn't know at that point in time. I'd had very little opportunity to visit with my client to educate myself at that point."[487]

Several days later, Mr. Coleman met with Mr. Jackson again.[488] Mr. Coleman expressed concern about the timing of the indictment of Mr. Hale and whether there would be any time for negotiations.[489] At this second meeting, Mr. Coleman told Mr. Jackson that Mr. Hale could offer the government information that might lead the U.S. Attorney's Office to Mr. McDougal and possibly to Governor Tucker and President Clinton.[490] Mr. Coleman recalled that he specifically identified potential areas for cooperation: Madison Guaranty Savings & Loan, James McDougal, Susan McDougal, Master Marketing, President Clinton, Governor Tucker, Castle Water & Sewer, Southloop Construction Company and Campobello Realty.[491] Mr. Coleman was also certain that he mentioned Whitewater to Mr. Jackson.[492]

Mr. Jackson recalled that Mr. Coleman told him that Mr. Hale could help him "get Tucker," and that President Clinton might have some involvement in the Hale transactions.[493] Based on his investigation of the CMS loan files, Mr. Jackson was aware that the Hale investigation might lead to Governor Tucker and President Clinton:

> [I]f I recall the correct words were—that I used were that, from Hale, the path would lead to Mr. McDougal, and then the road would divide, one branch would possibly go over to Mr. Tucker, and the other branch would go over possibly to Whitewater and the Clintons.[494]

Mr. Jackson refused, however, to enter into any plea negotiations until Ms. Casey took office.[495]

After Ms. Casey was confirmed, Mr. Jackson briefed her on the Hale investigation.[496] He advised her that he planned to continue his investigation of other matters involving Mr. Hale that might ultimately lead to Madison Guaranty, the subject of the first RTC criminal referral. Mr. Jackson also informed Ms. Casey that Mr. Tucker might be a target or a witness in that investigation,[497] and

that the RTC expected to make additional criminal referrals relating to Madison Guaranty.[498]

Ms. Casey admitted that "Fletcher told me that his continued investigation of the David Hale matter could possibly involve Governor Tucker. I don't know that he told me specifically what that involvement might be."[499] But, Ms. Casey denied that Mr. Jackson advised her of the specific list of persons about whom Mr. Hale might offer evidence.[500]

On September 7, 1993, Mr. Coleman met with Ms. Casey to discuss a possible plea negotiation for Mr. Hale.[501] In exchange for his cooperation, Mr. Coleman initially requested that Mr. Hale be granted immunity or charged with a misdemeanor.[502] Ms. Casey insisted that Mr. Hale enter a plea to an unspecified felony in exchange for a possible sentence reduction depending on the nature of the information offered.[503]

Mr. Coleman testified that he informed Ms. Casey that Mr. Hale had information regarding important Arkansas political figures.[504] According to Mr. Coleman, he specifically provided Ms. Casey with the names of President Clinton, Governor Tucker, Madison Guaranty, James McDougal, Susan McDougal, Castle Sewer & Water, Southloop Construction Company, Campobello Realty and Whitewater.[505] Mr. Coleman understood that Ms. Casey and Mr. Johnson "had already talked with Fletcher and they were aware of some of these things [names of areas of possible cooperation] before I got there * * *."[506]

Mr. Coleman further testified that he also offered to make an informal or an "attorney" proffer.[507] In an "attorney proffer," Mr. Coleman would essentially provide a more detailed summary of evidence Mr. Hale might offer.[508] Mr. Coleman testified that the government could have accepted his informal proffer without granting immunity to Mr. Hale: "If I make an informal proffer to you through counsel and give you an idea of what is available, the negotiation can carry forward in some form from this point. I'm trying to get a dialogue started with these people, and I'm not getting anywhere."[509] Ms. Casey nonetheless gave no response to Mr. Coleman's offer for an informal proffer at the meeting or during the following week.[510]

Ms. Casey had a markedly different recollection of the September 7 conversation. She claimed that Mr. Coleman provided no names or concrete information,[10] but merely "insinuated that Mr. Hale could give information about people who were too big for me to prosecute."[511] She did not inquire further about the "big people" because "[i]t may have piqued my interest but my understanding of the way the process works is that his client should proffer his testimony to an agent for evaluation."[512] Ms. Casey claimed that even though she met with Mr. Jackson several times after her

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[10] On August 17 and 19, 1993, approximately two weeks before his meeting with Ms. Casey, Mr. Coleman discussed with Associate White House Counsel William Kennedy the federal investigation of Mr. Hale. (Coleman, 11/9/95 Dep. pp. 63-65; Coleman, 12/1/95 Hrg. pp. 10-16; Kennedy, 12/05/95 Hrg. pp. 11-16).

Mr. Kennedy's contemporaneous notes of the two conversations clearly indicate that Mr. Coleman mentioned President Clinton, Mr. Tucker, Madison Guaranty, Whitewater, Southloop and Castle Grande. This documentary evidence adds further credibility to Mr. Coleman's version of the September 7, 1993 meeting.

meeting with Mr. Coleman, she still never inquired about the "big people."[513]

On September 15, 1993, after not hearing from Ms. Casey for a week, Mr. Coleman wrote to her to confirm that he had received no response to his offer of an informal proffer.[514] The letter stated:

> I have offered an informal proffer of Mr. Hale's information for evaluation of its quality and content, but have reached absolutely no interest in the process.[515]

Ms. Casey sent back a letter stating that plea negotiations were at "an impasse"—reiterating the government's insistence that Mr. Hale plead guilty to a felony.[516]

On September 20, 1993, Mr. Coleman sent another letter to Ms. Casey, in which he reiterated that he had provided a list of names to Mr. Jackson.[517] When asked about this letter, Ms. Casey denied again that she ever received any specific names from Mr. Coleman, and claimed that the letter did not prompt her to discuss the matter with Mr. Jackson.[518] Mr. Johnson similarly claimed that Mr. Coleman never offered any specific information during plea negotiations.[519]

Thus, according to Mr. Coleman, he (1) provided specific names to Mr. Jackson and Ms. Casey—including the President and Governor Tucker—as areas of cooperation; (2) offered Ms. Casey an informal or attorney proffer; and (3) reiterated in writing that he had offered an informal proffer and given specific areas of cooperation. Yet, Ms. Casey did not notify Main Justice of, or express any interest in Mr. Coleman's overtures.

Because of Ms. Casey's unwillingness to enter into plea negotiations, Mr. Coleman suggested in his September 15th letter that Ms. Casey recuse herself from the case:[520]

> I cannot help but sense the reluctance in the U.S. Attorney's office to enter into plea negotiations in this case. . . I cannot help but believe that this reluctance is borne out of the potential political sensitivity and fallout regarding the information which Mr. Hale would provide to your office, but at the same time it is information which would be of substantial assistance in investigating the banking and borrowing practices of some individuals in the elite political circles of the State of Arkansas, past and present. . .
>
> Would it not be appropriate at this point for your office to consider terminating participation in this investigation and to bring in an independent prosecutorial staff, who are not so involved with the histories and personalities and circumstances of this case?[521]

Mr. Coleman believed that Ms. Casey's recusal was appropriate because of her extensive involvement in Arkansas politics:

> I knew Paula had been active in the political arena over the years. I knew her husband had. I think, at least it was my impression, that all of us were fairly aware at that point in time that there were some substantially prominent folks involved here.
>
> You could look at the receipt on the search warrant and the nature of the records that the FBI seized from Mr.

> Hale's office and certainly gather at least that Mr. Tucker's name was prominently displayed.[522]

However, according to Ms. Casey, she did not need to recuse herself because Mr. Coleman did not proffer any specific information.[523] Mr. Johnson seconded Ms. Casey's position.[524]

By this time, Ms. Casey knew that Governor Tucker was referenced in both the Hale investigation and the ongoing Madison investigation.[525] In addition, as early as August, Ms. Casey told Mr. Jackson that if the U.S. Attorney's Office prosecuted Governor Tucker or if the anticipated set of RTC referrals named Governor Tucker, she would have to recuse herself.[526]

Ms. Casey never discussed Mr. Coleman's request for plea negotiations or immunity with Main Justice or notified Main Justice of information that Mr. Coleman said Mr. Hale could proffer.[527] Even though Mr. Jackson told her that "there was the potential that [Hale] could lead to some people," Ms. Casey claimed that "for that matter I suppose every loan file at SBIC was a potential defendant."[528]

On September 17, 1993, New York Times reporter Jeff Gerth contacted a high ranking Justice Department official, Irv Nathan, Associate Deputy Attorney General,[529] and an FBI Little Rock Field Agent, Robert M. Satowski, to inform them of his interview with Mr. Hale.[530] Mr. Gerth told them that Mr. Hale was prepared to furnish specific information about sensitive matters, possibly involving the Clintons, including information about a $300,000 loan to Mrs. McDougal that was funneled to Whitewater Development Corporation.[531]

On the same day, FBI Little Rock sent a teletype to FBI Director Louis Freeh about Mr. Hale's allegations. The teletype indicated that "Gerth alluded that this was why the United States Attorney Casey would not deal with Coleman when he was attempting to work out a suitable deal for his client."[532] In a separate memorandum, dated September 21, 1993, to FBI Director Freeh, Mr. Keeney outlined the substance of Mr. Hale's allegations that Mr. McDougal and then-Governor Clinton "encouraged Hale to provide funds to Madison Guaranty, prior to the audit, to bring the Whitewater loans acceptably up to date. Thereafter Hale, through his Small Business Investment Corporation, lent $300,000 to Susan McDougal, dba Madison Marketing."[533]

Meanwhile, on September 20, 1993, after learning of Mr. Hale's allegations about President Clinton, Mr. Keeney met with other high ranking officials at Main Justice to discuss the need for Ms. Casey to recuse herself from both the SBA fraud case against Mr. Hale and the investigation into Mr. Hale's allegations about Governor Tucker, the McDougals and President Clinton, as well as Criminal Referral C0004 relating to Madison Guaranty.[534] Mr. Keeney, Principal Deputy Attorney General, Gerald McDowell, Chief of Frauds Section, and Joseph Gangloff, Chief of the Public Integrity Section, all agreed that Ms. Casey should recuse herself from the matter.[535]

According to Mr. Gangloff, the criteria for recusal include past personal, political or financial relationships between the United States Attorney and the subject of an investigation. In fact, the mere appearance of a conflict justifies recusal.[536] According to Mr.

Gangloff, Main Justice officials knew Ms. Casey was close to President Clinton and, thus, she "obviously" should recuse herself under the circumstances.[537] Mr. Gangloff was "surprised" that Ms. Casey had not advised Main Justice of Mr. Hale's allegations about the President, and believed that Main Justice should have been involved in the case sooner.[538]

Mr. Keeney also believed Ms. Casey "certainly should not be involved in the matter" because "she was the U.S. Attorney in Little Rock, Arkansas. She was appointed by the Clinton Administration. And we had a situation where somebody who was under investigation was suggesting . . . that he had information which would implicate the President who appointed her."[539] Mr. Keeney testified that it was important to him that "she would in fact recuse herself, and that she would not be involved in taking any sort of proffer from David Hale" or make any more substantive decisions on the case.[540] Mr. Carver and Mr. McDowell also agreed.[541]

At the time, Mr. Keeney based his opinion solely on the fact that Ms. Casey was appointed by President Clinton.[542] Mr. Keeney testified that although Ms. Casey may have "said something" about her relationship with Governor Tucker, she did not disclose the nature of her relationship with President Clinton.[543] Ms. Casey did not disclose her August conversation with Mr. Jackson about the expected set of new referrals that might involve Governor Tucker or the fact that the Hale investigation would likely involve Madison Guaranty.[544]

Mr. Keeney called Ms. Casey and told her that she should recuse herself from the Hale and Madison matters.[545] Mr. Keeney expressed his opinion in "strong terms."[546] Even though Mr. Keeney was Acting Assistant Attorney General and Ms. Casey was a newly appointed U.S. Attorney with no prior prosecutorial experience, she refused his advice to recuse herself.[547] Mr. Keeney recalled that Ms. Casey told him: "Well, she said, in essence, I'm a fair person, I'm a person of integrity, I can handle this, this matter as my oath of office requires me to do so."[548]

According to Mr. Keeney, Ms. Casey told him that she "would have to think about" recusal.[549] Ms. Casey did not recall that she was considering recusing herself at the end of the conversation.[550] Mr. Johnson opposed recusal by the office.[551] Ms. Casey never contacted Mr. Keeney again to discuss the recusal matter.[552]

During the same September 20th conversation with Mr. Keeney, Ms. Casey "indicated that Coleman refused to make a proffer to the office in Little Rock because he didn't trust them."[553] Accordingly, Mr. Keeney thus advised Ms. Casey to convey to Mr. Coleman that he could make the proffer to Main Justice.[554] Mr. Gangloff similarly testified that he understood that Ms. Casey would send a letter to Mr. Coleman to inform him that he had "recourse to Washington" and could make a proffer to Main Justice; he recalled "detailed discussions" about ensuring that Mr. Coleman knew about this option.[555]

Ms. Casey did not recall any such request by Mr. Keeney. Although Ms. Casey did not dispute Mr. Keeney's recollection, she claimed that Mr. Keeney may have directed Mr. Johnson, not her, to relay this information to Mr. Coleman.[556] Mr. Johnson also be-

lieved that Mr. Keeney may have suggested that he advise Mr. Coleman of Mr. Hale's recourse to Main Justice.

Neither Ms. Casey nor Mr. Johnson followed Mr. Keeney's direction to inform Mr. Coleman that he had the option of dealing with Main Justice. None of the letters that Ms. Casey or Mr. Johnson sent to Mr. Coleman on September 20 or 21, 1993 advised Mr. Coleman that he could contact directly Main Justice if he did not trust the U.S. Attorney's Office.[557]

Ms. Casey and Mr. Johnson both admitted that they did not convey Mr. Keeney's message to Mr. Coleman.[558] Mr. Coleman similarly testified that no one from the U.S. Attorney's Office ever informed him that he could speak to someone at Main Justice.[559]

On September 23, 1993, the Arkansas Democrat-Gazette published Hale's allegations involving President Clinton, Mr. McDougal and Governor Tucker.[560] That same day, the grand jury indicted Mr. Hale on two counts of conspiracy and two counts relating to the submission of false statements to the SBA.[561]

C. Ms. Casey's declination of Criminal Referral C0004

Even after her September 20, 1993 discussion with Mr. Keeney, Ms. Casey continued to participate actively in the Hale and Madison Guaranty investigations. By August 20, 1993, the FBI Little Rock Field Office had opened an investigation of Mr. McDougal and Mr. Hale as a result of information developed during the investigation of Mr. Hale.[562] In July or August of 1993, an investigation was launched involving Dean Paul, Ltd. and Castle Grande and touching on Madison Guaranty and Mr. McDougal.[563]

On September 24, 1993, only four days after Mr. Keeney advised Ms. Casey to recuse herself, FBI agents met with Ms. Casey to discuss the investigation of Madison Guaranty and Mr. Hale, as well as whether Ms. Casey should recuse herself from these matters because of her close ties to Governor Tucker, Seth Ward and Stephen Smith.[564] According to SSA Irons, he and Mr. Jackson told Ms. Casey that her "good friends" were either subjects or material witnesses of the ongoing investigations.[565] Ms. Casey admitted that they discussed allegations involving President Clinton and the McDougals.[566] SSA Irons indicated in a memorandum, memorializing the meeting, that Ms. Casey stated that she would need to recuse herself from the matter because of her close friendship with Governor Tucker, Mr. Ward and Mr. Smith.[567]

Ms. Casey agreed with SSA Irons' account except with respect to Mr. Ward. She testified, "I told them that if the investigations led to Governor Tucker, that I would recuse. I don't know Seth Ward. I am an acquaintance of Steve Smith's."[568]

Yet, once again, Ms. Casey did not provide the Special Committee with any real reason for her sudden change of mind regarding her recusal. Ms. Casey claimed that at the time of this meeting, she "realized" that the investigation had progressed to a point that "there was a real" possibility that Governor Tucker would become a subject of the investigation.[569] Ms. Casey claimed that even though she knew that she had to recuse herself, she still had to decide the "best time" to do so.[570] Mr. Johnson continued to urge Ms. Casey against recusal.[571]

For some unknown reason, despite her conversation with Mr. Keeney only four days before, Ms. Casey did not advise officials at Main Justice that she had changed her position on recusal.[572]

In addition, on October 5, 1993, after a briefing on the Hale investigation, the Director of the FBI indicated to senior FBI officials that he wanted Ms. Casey to recuse herself.[573]

For the balance of September and October, Ms. Casey took no steps to recuse herself from the Hale or Madison investigations or her office.[574] Rather, Ms. Casey continued to participate in the investigation and, amazingly, even attended a plea negotiation meeting with Mr. Coleman on October 21, 1993.[575] Mr. Keeney testified that once Ms. Casey had decided to recuse herself, "she should not be making any decisions with respect to the matter." [576] Thus, as of September 24, 1993, Ms. Casey should not have participated in any way in the Hale and Madison investigations.

When pressed about her continued involvement in such matters, Ms. Casey claimed that even though she "knew I was going to recuse myself," she still wanted to wait for the receipt of the new referrals. She explained: "If there was a case against—if there was a case against Tucker or Steve Smith, that's what I was going to do. And I expected those referrals to give me that." [577]

On October 8, 1993, the RTC forwarded nine new criminal referrals concerning Madison Guaranty to the U.S. Attorney's Office in Little Rock.[578] Ms. Casey reviewed the second set of referrals.[579] According to Ms. Casey, "when the referrals came in, I probably talked with Michael again about the fact that they were there, that the names were there and I needed to recuse." [580] Mr. Johnson still advised Ms. Casey not to recuse herself from the case.[581]

Again, Ms. Casey did not contact any official at Main Justice either to notify them that Governor Tucker was a target of an investigation or to inform them of her "recusal." [582] Ms. Casey offered no coherent reason for not advising Main Justice immediately, claiming only, "I was waiting to talk—I was going to the orientation in November. I wanted to talk to someone at the Department of Justice whose opinion I could also trust." [583]

In September and October 1993, while Main Justice and FBI were urging Ms. Casey to recuse herself, the Little Rock U.S. Attorney's Office took no action on the first RTC Referral, number C0004. Ms. Casey testified that when she first read Criminal Referral C0004 in late August or September of 1993, she probably noticed Governor Tucker, Mr. McDougal and President Clinton were mentioned. But, the only action she took was to place the referral back into "the vault." [584]

On October 27, 1993—over a year after the RTC had sent the referral to the U.S. Attorney's Office and at least two months after she first read it—Ms. Casey formally declined prosecution on Criminal Referral C0004.[585] It is unclear why Ms. Casey believed that it was appropriate for her to make a substantive decision on the referral when she knew that she was going to recuse herself. Mr. Keeney testified that issuing the declination letter was a "substantive decision" that someone who supposedly had recused herself from the case should not have made.[586]

Ms. Casey could not explain why she did not defer action on the first referral until after she had recused herself from the new set

of referrals—which either had already arrived at the U.S. Attorney's Office or would arrive shortly thereafter: "It was just a question of closing the books on the particular referral. Because, in my opinion, the books had already been closed on it. It was just a matter of relating that decision to the RTC." [587]

Even more peculiar, Ms. Casey's declination letter gave the impression that Main Justice had decided to decline the referral: "*I concur with the opinion of the Department attorneys* (emphasis added) that there is insufficient information in the referral to sustain many of the allegations made by the investigators or to warrant the initiation of a criminal investigation." [588] In fact, Main Justice had not made any decision on the referral, but had returned it to the Little Rock office.

When confronted with the fact that she reviewed the March 19, 1993 memorandum from Mr. Keeney to Mr. Frazier prior to sending the declination letter, Ms. Casey admitted that she made the "decision" to decline prosecution on the referral.[589][11] Mr. Carver, Principal Deputy Chief of Fraud Section, Criminal Division, was "amazed" when he read a press article stating "Paula Casey didn't participate in the decision making with regard to C0004" because he knew she had been involved in the decision to decline the referral.[590] Moreover, Justice Department officials testified that the referral was returned to the U.S. Attorney's Office earlier in 1993 for a decision,[591] and that Main Justice never reviewed the declination letter before Ms. Casey sent it.[592]

Neither Ms. Casey nor Mr. Johnson, her First Assistant, ever reviewed the exhibits to the referral prior to declining prosecution. [593] Mr. Carver believed that Ms. Casey should have conducted an independent review of the evidence prior to declining Criminal Referral C0004.

As of early November 1993, as Main Justice was "vigorously" pursuing allegations about Mr. Hale, the McDougals and Mr. Ward [594], Ms. Casey still had not contacted Main Justice about her recusal.

On November 3, 1993, Philip Heymann, Deputy Attorney General, called Ms. Casey to a meeting with other high ranking DOJ officials for the purpose of persuading Ms. Casey that she should recuse herself. [595] Mr. Heymann told Ms. Casey that she should recuse herself. This view was expressed by all Justice Department officials in attendance. [596]

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[11] Q: Well, when you pulled the referral, you saw that the referral, in fact, had not been acted upon in Washington but had been returned to Little Rock for purposes of a final decision; correct?

A: No, that's not the way I look at it—my view of that at the time was that it had been acted upon in the sense that it had been reviewed and that the opinion of the Department was it was not a good referral and should not be prosecuted. But that decision had never been relayed to RTC.

Q: Didn't the memo actually indicate that although there would be no objection if the Little Rock office declined prosecution, it was to be a decision left in the hands of the Little Rock U.S. Attorney's office?

A: That's what—that was—after I pulled Keeney's memo back out that was what I saw in his memo.

Q: So you understood?

A: Would not question the decision to decline, but there was no reason for the office to be recused.

Q: So it became your decision; right?

A: Yes.(Casey, 11/01/95 Dep. p. 183).

Even though Ms. Casey earlier explained that her reason for not recusing herself immediately after reviewing the second set of referrals was that she needed to receive advice from a Justice Department official whom she could trust, Ms. Casey told Mr. Heymann that she would "think it over" and get back to them.[597] As of the end of the meeting, Ms. Casey still had not committed to recusal.[598]

Thus, notwithstanding the advice of the Deputy Attorney General and other high-ranking Justice Department officials, Ms. Casey still waited another two days before she finally recused herself on November 5, 1993.[599]

On November 9, 1993, the day after Ms. Casey's formal recusal, Mr. Keeney announced that Donald Mackay, a career prosecutor for the Justice Department, would lead the investigation of Mr. Hale and Madison Guaranty.[600] Mr. Mackay subsequently entered into plea negotiations with David Hale.[601] On January 3, 1993, Mr. Mackay sent a letter to Mr. Coleman outlining what the Justice Department would require as the terms of a proffer agreement.[602] After Special Counsel Fiske was appointed in January 1994, he entered into negotiations with Mr. Hale, and Mr. Hale entered a plea agreement on March 19, 1994.[603]

PART II: WHITE HOUSE INTERVENTION IN FEDERAL INVESTIGATIONS

Throughout the conduct of the various inquiries relating to Whitewater, Madison, and other matters relating to the Clintons, the White House engaged in a clearly discernible pattern of improper contacts, undue interference and, at times, outright obstruction with respect to the federal investigations.

The pattern of abuse began with attempts to use the resources of the White House, especially the White House Counsel's Office, to gather as much information as possible on the pending investigations. The Office of the White House Counsel, in effect, served as Clintons' private law firm defending their personal interests. Beyond the impropriety of such diversion of public resources, attempts by White House lawyers to obtain information compromised the integrity of the federal investigations.

The interests of the United States with respect to these investigations were potentially adverse to the private interests of the Clintons as witnesses or potential targets. Yet, whenever possible, White House lawyers obtained confidential information relating to the progress of the investigations and prospects for prosecution. The White House lawyers not only used the information to defend the private interests of the Clintons, but also shared the improperly obtained confidential information with the Clintons' private lawyers directly to assist in the coordinated defense effort.

I. White House Contacts Relating to Investigations of Madison and David Hale

A. The White House receives information on the ongoing SBA investigation of Mr. Hale

In early May 1993, SBA Associate Administrator Wayne Foren, a career SBA employee, contacted Erskine Bowles, President Clinton's nominee for SBA Administrator, to discuss the agency's ongo-

ing investigation of Capital Management Services and David Hale.[604] According to Mr. Foren, he called Mr. Bowles on May 3, 4 or 5—right before Mr. Bowles' confirmation.[605] Mr. Foren contacted Mr. Bowles because Mr. Hale, the president of CMS, had claimed to have access to President Clinton, Governor Jim Guy Tucker, and Arkansas Senator Dale Bumpers, then the chairman of the Senate Small Business Committee.[606]

Mr. Foren realized the sensitivity of the matter and, accordingly, concluded that the only means to answer questions he had about the operations of CMS was to make "a referral to the Office of the Inspector General so that they could proceed on an investigation and in an attempt to obtain the information."[607] According to Mr. Foren, "[k]nowing that Erskine's confirmation hearing was imminent, I felt it was appropriate that he be briefed on this issue."[608] After Mr. Foren told Mr. Bowles about the case, Mr. Bowles "agreed that the transfer [of the case to the Inspector General] should occur prior to the confirmation and that he wanted a briefing paper."[609] Mr. Foren referred the matter to the Inspector General on May 5, 1993.[610]

At Mr. Bowles' instruction, Mr. Foren then prepared a briefing paper entitled "Capital Management Services, Inc, Little Rock, Arkansas, License No. 06/06–5207."[611] The document outlined David Hale's 1992 application for additional funds from the SBA and stated that the value of the donated assets Mr. Hale used to justify additional funds from the SBA was "questionable."[612] The briefing paper noted that "the matter has been referred to the Inspector General for investigation."[613] Mr. Foren provided the briefing paper to Kris Swedin, the SBA's Assistant Administrator for Congressional Relations.[614] In Mr. Foren's view, the Hale investigation was "very sensitive" and "very important."[615]

On May 7, 1993, Mr. Bowles was confirmed as SBA Administrator.[616] After Mr. Bowles' confirmation, Mr. Bowles advised Mr. Foren that he had briefed White House Chief of Staff, Thomas "Mack" McLarty, a longtime friend of the President, on the status of the CMS case.[617] Mr. Foren advised his deputy, Charles Shepperson, of Mr. Bowles' communication of information to Mr. McLarty.[618] Mr. Shepperson confirmed this account:

> My recollection was that Wayne had come back from a meeting with Mr. Bowles on a subject I can't remember, he had come back and said that Erskine had taken him aside and indicated that he had spoken to Mr. McLarty, and that Mr. McLarty had indicated that we should just do what you normally do in situations like this.[619]

Mr. Bowles testified that he could not specifically deny Mr. Foren's and Mr. Shepperson's account, although Mr. Bowles could not recall Mr. Foren briefing him on CMS in May 1993.[620] He recalled that Mr. Foren and others briefed him at the Old Executive Office Building on SBA programs; he was not certain of the date, but believed that the briefing did not occur between May 4 and May 7.[621] He remembered at some point being told that the Hale/CMS matter had been referred to the Inspector General or the Justice Department.[622] He did not recall seeing the briefing paper that Mr. Foren used to brief him in May 1993.[623]

In addition, Mr. Bowles did not recall advising Mr. Foren that he had spoken with Mr. McLarty about the CMS referral.[624] Mr. Bowles recalled, however, that he saw Mr. McLarty on the morning of his confirmation hearing, when he visited the White House.[625] Indeed, Mr. McLarty's schedule for May 6, 1993, contained the following entry: "Erskine Bowles & his family will be touring the West Wing and will be stopping in very briefly to say hello some time around 8:45–9:00 a.m."[626]

More important, Mr. Bowles saw Mr. McLarty on May 7, 1993, the date of his confirmation. According to Mr. Bowles, "I saw Mack again, I believe on the 7th, the day I was actually confirmed by the Senate. And at that time, I went over there to get my marching orders, how should I go forward, how should I report, what do I do."[627] Mr. McLarty's schedule for May 7, 1993 confirmed that, at 1:00 p.m., he had a meeting with Mr. Bowles.[628] Yet, Mr. Bowles denied that he discussed not discuss CMS with Mr. McLarty. "I don't believe I've ever discussed Capital Management with Mack McLarty."[629]

On May 19, 1993, Mr. Foren again briefed Mr. Bowles on CMS, when the SBA initiated foreclosure and liquidation proceedings against Capital Management.[630] According to Mr. Foren, "[t]he event that occurred between the 5th and the 19th was an event where Capital Management defaulted on debentures, and we were then going to proceed to foreclose collateral and throw the company into liquidation."[631] Mr. Foren provided Mr. Bowles with a revised version of his earlier briefing paper, entitled "Capital Management Services, Inc, Little Rock, Arkansas, License No. 06/06–5207, May 19, 1993."[632]

On August 5, 1993, Mr. Shepperson received a copy of a draft indictment of Mr. Hale from the U.S. Attorney's Office in Little Rock.[633] He sent the draft indictment to Mr. Foren.[634] On August 9, Mr. Foren sent yet another memorandum to Mr. Bowles on the progress of the investigation and attached a copy of the draft indictment to the memorandum.[635] The memorandum, designated "Privileged and Confidential," was signed by Mr. Foren and Deputy General Counsel Martin D. Teckler and addressed to Erskine Bowles.[636]

Mr. Bowles did not recall receiving Mr. Foren's August 9 memorandum,[637] although "Wayne very well could have sent it to me."[638]

In September 1993, Mr. Foren provided another briefing to Mr. Bowles about the Hale/CMS investigation, this time to advise him that Mr. Hale's indictment was imminent.[639] Mr. Foren also provided Mr. Bowles with a memorandum,[640] dated September 21, 1993, advising that on September 20, 1993, the SBA had closed CMS's bank accounts and seized its assets.[641] The memorandum further advised that the U.S. Attorney's office is "scheduled to make a presentation to the Grand Jury on Tuesday, September 21, 1993, at 3:00 p.m. and [is] expecting indictments to be returned on Tuesday or Wednesday, September 21 or September 22, 1993 against Judge Hale and two other individuals."[642]

Mr. Bowles did not recall receiving multiple briefings or memoranda from Mr. Foren on the Hale/CMS investigation, although he admitted to receiving the May 1993 briefing and a later briefing by Martin Teckler, the Deputy General Counsel of the SBA.[643] Accord-

ing to Mr. Bowles, in September 1993, Mr. Teckler "told me that we were getting ready to indict Judge Hale down in Arkansas for defrauding the SBA, and said that I might want to call the White House and give them a heads-up."[644] Mr. Bowles asked Mr. Teckler to describe a "heads-up,"[645] and Mr. Teckler told him "it was simply notification in case they got some inquiries."[646] Mr. Bowles claimed that he questioned the propriety of such notification, and Mr. Teckler replied that "it was standard."[647] Although Mr. Bowles told Mr. Teckler he would give a "heads up" to the White House, Mr. Bowles maintained that he never called the "White House" about the case. He explained:

I was often asked to take things to the White House. I often said I'll take care of it. Sometimes I felt the right way to take care of it was to throw it in the trash can. Sometimes it was to call somebody lower down. Sometimes it was to call somebody higher up. Sometimes I did it, sometimes I didn't. I just made a judgment.[648]

In November 1993, Mr. Bowles claimed that he learned from news accounts that Mr. Hale alleged that, in 1986, then-Governor Clinton had pressured Mr. Hale into making an illegal SBA loan to Susan McDougal.[649] After hearing of this allegation, Mr. Bowles decided to recuse himself from the case. He communicated this decision orally to General Counsel John Spotila, but did not memorialize his recusal in writing until months later, on March 3, 1994.[650] In fact, Mr. Spotila continued to provide Mr. Bowles with information concerning the Hale/CMS investigation in the weekly SBA Administrator's report through June 27, 1994, more than six months after Mr. Bowles purportedly decided to recuse himself from the CMS/Hale matter.[651]

On April 11, 1994, Mr. Bowles responded to an inquiry by Congresswoman Jan Meyers, then the Ranking Member of the House Committee on Small Business, about his recusal from the CMS investigation.[652] Mr. Bowles advised that he had verbally recused himself from the matter in late fall 1993, and had memorialized this decision in writing on March 4, 1994.[653] Mr. Bowles specifically claimed: "I have never reviewed the Capital Management file."[654] The assertion was contradicted by Mr. Bowles' own admission that he was occasionally briefed on the CMS/Hale investigation.[655] Mr. Foren believed that Mr. Bowles, as a practical matter, was knowledgeable about what was in the file.[656] When asked about the seeming discrepancy between his letter to Congresswoman Meyers and his testimony, Mr. Bowles maintained that his statement to Congresswoman Meyers was accurate: "I hadn't reviewed the file. I hadn't studied the file. I hadn't spent a long time going over it."[657]

B. Mr. Hale's lawyers contact the White House about Mr. Hale's "mutual interest" with President Clinton.

On August 20, 1993, the Little Rock Field Office notified FBI Headquarters that the RTC planned to submit new referrals on Madison Guaranty.[658] Special Agent Steven Irons advised Headquarters that "Assistant United States Attorney assigned to the matter reported being told a Little Rock Attorney had traveled to Washington instant date to meet with unknown officials to attempt to have the investigation quashed."[659] Mr. Irons testified that

Fletcher Jackson told him that Richard Mayes, a Little Rock attorney had traveled to Washington to get the Hale investigation quashed.[660] Mr. Irons advised FBI Headquarters to "be alert if someone within the Department asked some questions about the Hale case or the upcoming Madison referrals," and in particular a close associate of President Clinton, Webster Hubbell, now the third highest official in the Department.[661]

Mr. Hubbell had lunch or dinner with Mr. Mayes once or twice between January and September 1993.[662] Mr. Mayes denied that he talked to Mr. Hubbell about the David Hale investigation or indictment.[663]

On August 17, 1993, in the middle of the SBA's and the Justice Department's investigations into Capital Management and David Hale, Randy Coleman, Mr. Hale's attorney, called Associate Counsel to the President William Kennedy to advise the White House that the ongoing federal investigations might pose problems for President Clinton.[664] Mr. Coleman told Mr. Kennedy that he wanted to talk about "the mutual interests of our clients."[665]

The conversation was brief.[666] Mr. Coleman told Mr. Kennedy that the FBI had raided Mr. Hale's CMS office and confiscated records containing information on the Clintons, Governor Tucker, the McDougals, Whitewater and Madison.[667] Mr. Coleman told Mr. Kennedy that if Heidi Fleiss was the "madam to the stars, David Hale was the lender to the political elite in Arkansas."[668]

Mr. Kennedy's notes indicate that Mr. Coleman mentioned President Clinton and Governor Tucker.[12]

Mr. Kennedy was familiar with Madison and Whitewater from his work at Rose Law Firm and from his understanding of the Clintons' circle of friends.[669]

Mr. Coleman and Mr. Kennedy had different recollections of the conclusion of the conversation. Mr. Coleman testified that after outlining some of the names contained in Mr. Hale's files,[670] he informed Mr. Kennedy that he would be meeting with SBA officials in Washington, D.C., the next week and could also meet with Mr. Kennedy to discuss the matter further.[671] According to Mr. Coleman, Mr. Kennedy then asked him whether there was anything that he wanted him to do.[672] Mr. Coleman responded, "I said I'm just trying to figure out where everybody is on this matter, and he said that he would visit with his clients and get back to me.[673]

Mr. Coleman did not expect Mr. Kennedy to do anything "helpful" for Mr. Hale.[674] Instead, Mr. Coleman contacted Mr. Kennedy because the investigation might involve "folks other than just my client, and where that was the case it was always my habit to start making contact with attorneys for other people who might be in-

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[12] (White House Document S7375–S7377).
A. *David Hale*—SBIC
B. *Investigation:* Place raided and records seized, Loan Transactions
Governor Tucker
Heidi Fleiss Back door lender to the politicians
Corollary:
President—*Governor Tucker*
David Hale criminal allegations not been indicted
Feds: U.S. Attorney
SBIC:
Regulations:
Seizure two weeks Ago
* *Asking for Anything.*

volved to see where everybody stood and what the landscape looked like."[675] Mr. Coleman also believed that he might be able to confirm Mr. Hale's suspicion that "there were some folks in the executive branch that wouldn't be, oh, looking out for his best interests."[676] Mr. Coleman wanted to make a "provocative phone" call because White House officials "had shown a propensity to make an ill-advised phone call or two in times past."[677]

Mr. Kennedy had a different recollection of key elements of the phone call. First, he denied offering to do anything for Mr. Coleman.[678] Instead, he claimed that he was "uncomfortable" talking to Mr. Coleman because he thought that Mr. Coleman might be seeking improper involvement on the part of the White House.[679] Mr. Kennedy said that "I told him I wasn't sure I could talk to him, but I would inquire and get back to him."[680]

The last entry in Mr. Kennedy's notes of the telephone call, however, appears to corroborate Mr. Coleman's testimony: "*Ask for anything."[681] Mr. Kennedy claimed that he did not know what he meant by this entry.[682] Mr. Kennedy's notes do not indicate that Mr. Coleman was "looking" for something or expected Mr. Kennedy to do something "helpful" for Mr. Hale.[683]

Second, Mr. Kennedy denied saying that he had to get back to his "clients"—presumably President and Mrs. Clinton.[684] But Mr. Coleman vividly remembered that Mr. Kennedy said "clients" in the plural because the reference struck him as odd since the entire discussion up to that point had been in terms of their respective individual clients.[685]

After the telephone call, Mr. Kennedy spoke to Mr. Nussbaum.[686] Mr. Kennedy claimed that he was concerned that it would be inappropriate for him to engage in any substantive discussion with Mr. Coleman.[687] Mr. Nussbaum agreed,[688] and instructed Mr. Kennedy to tell Mr. Coleman that the White House could not help him—but, somewhat inconsistently, also to find out "a little more about what was going on."[689]

Two days later, on August 19, 1993, Mr. Kennedy contacted Mr. Coleman.[690] Mr. Kennedy asked Associate White House Counsel Beth Nolan to listen to the conversation.[691] According to Mr. Coleman, this conversation lasted five or ten minutes.[692] Mr. Coleman testified that Mr. Kennedy wanted to know more specific information about the investigation.[693] Mr. Coleman recalled that Mr. Kennedy particularly wanted to know whether Mr. Hale was trying to "negotiate" with the U.S. Attorney's Office[694] and would allege any "face-to-face meetings" with the President.[695]

Mr. Kennedy claimed that he essentially told Mr. Coleman at the beginning of the call that he could not assist him.[696]

But Mr. Kennedy's and Ms. Nolan's respective notes of the conversation clearly indicate that Mr. Kennedy was "engaged in a discussion during which [Kennedy] asked [Coleman] a series of questions including, among other things, what was the anticipation of what David Hale would be charged with, where was this going to go, a conversation in which among other names mentioned were Whitewater Development and Jim Guy Tucker with which were familiar."[697] Mr. Kennedy also admitted that he sought to obtain information about the extent to which Mr. Hale was connected to Madison.[698]

The notes of Ms. Nolan and Mr. Kennedy both indicate that Madison and Whitewater were discussed in detail.[699] Mr. Kennedy's notes appear as the following:

> "*Nature of Investigation*—propriety of loans made past few years
> Informed that are loan transactions that relate to *Madison Guaranty*
> All records liquidation of SBIC
> Both of them's names cropped up
> *Whitewater Development Corp.*: *not stopping w/David/Hale*
> *Xactions: Southloop Castle Grande Water*."[700]

Mr. Kennedy claimed that he did not know at the time that Southloop and Castle Grande were Tucker real estate projects financed by Madison.[701] Ms. Nolan's notes also indicate that Mr. Kennedy asked Mr. Coleman whether bad loans were "parked" at Madison:

> BK: You mean Madison have parked bad loans w/ David?
> RC: Yep. You bet . . . The Madison deal is coming back to life.[702]

Ms. Nolan's notes indicate that Mr. Coleman told Mr. Kennedy that "they're not stopping at Whitewater, I can guarantee you that."[703]

Mr. Kennedy offered no explanation for his returned call to Mr. Coleman other than to admit that he sought "to know a little bit more before" he definitively could decide the propriety of other discussions.[704] Mr. Kennedy explained, "I didn't think we would be able to help him, but I couldn't respond sort of fully until I knew a little bit more about what he was talking about, and he opened up a little bit."[705]

Although Mr. Kennedy claimed that he did not ask Mr. Coleman about plea negotiations or whether Mr. Hale would allege any "face-to-face meetings" with President Clinton,[706] Ms. Nolan's notes indicate that the U.S. Attorney's office is "going to know about mtgs. taking place."[707]

Mr. Kennedy's notes indicate that he discussed the President and Mrs. Clinton with Mr. Coleman: "All records liquidation w/SBIC [arrow] both of them's names cropped up Whitewater Development Corp.: Not stopping w/David Hale."[708] Ms. Nolan's notes also contain the following entry: "your C's name has cropped up [arrow] both of 'em, Whitewater Develop. Corp."[709] Mr. Kennedy denied that "both" refers to the President and Mrs. Clinton.[710]

Ms. Nolan's notes specifically indicate that at the end of the conversation Mr. Kennedy thanked Mr. Coleman for the "head's up."[711]

After the second telephone conversation, Mr. Kennedy again briefed Mr. Nussbaum.[712] Mr. Kennedy claimed that he told Mr. Nussbaum that he had never heard of "the stuff" in connection with Whitewater during the campaign and that, as a result, Hale's allegations were not credible.[713] Mr. Kennedy claimed that he did nothing other than to report Mr. Coleman's information to Mr.

Nussbaum.[714] Mr. Kennedy maintained that Mr. Nussbaum took no further action.[715] Mr. Kennedy denied that he ever told President Clinton or Mrs. Clinton or anyone else at the White House.[716]

Bruce Lindsey, then Director of Presidential Personnel, claimed that he first learned of Mr. Kennedy's conversations with Mr. Coleman from *New York Times* reporter Jeff Gerth.[717] Mr. Lindsey then sought confirmation,[718] and Mr. Kennedy told Mr. Lindsey that Mr. Coleman had told him that he "had a client who had mutual interests" and suggested that they discuss the matter.[719] Mr. Lindsey understood the "client" to be President Clinton.[720]

C. The White House Obtains More Information About the Hale Investigation

In late August or early September, Mr. Kennedy advised then-Associate Attorney General Webster Hubbell of the Coleman phone call.[721] Mr. Hubbell's phone log indicates he had a ten-minute conversation with Mr. Kennedy on August 18th.[722] According to Mr. Hubbell, Mr. Kennedy wanted to know whether he had learned of any connection between Mr. Hale and Madison and James McDougal.[723] Mr. Hubbell mistakenly told Mr. Kennedy there was no connection; Mr. Hubbell later remembered that he had become aware of such a connection in the course of representing the RTC in litigation against Madison's former accountants.[724]

Mr. Kennedy claimed that in the course of a conversation with Mr. Hubbell about another matter, "I simply asked him had he heard the name David Hale in connection with Whitewater, and he said no, and that was the sum and source of it."[725] Mr. Kennedy claimed that he asked Mr. Hubbell about the Hale matter because he knew that Mr. Hubbell was familiar with the Whitewater issue from the 1992 presidential campaign.[726] [13]

On September 20, 1993, Jeff Gerth met with Senior White House officials Bruce Lindsey and Mark Gearan, and conveyed the same information.[727] Mr. Gerth told Mr. Lindsey and Mr. Gearan that Mr. Hale alleged that he had three meetings with then-Governor Clinton in 1985 and 1986. According to Mr. Gerth, prior to meeting with Governor Clinton, Mr. Hale had several meetings with Mr. Tucker and Mr. McDougal.[728] Mr. McDougal told Mr. Hale that Madison Guaranty was strapped for cash and scheduled to be audited, and that "friends in the political family needed help."[729]

At the first meeting, on the steps of the Arkansas Capitol, Governor Clinton allegedly approached Mr. Hale and said something like "are you going to be able to help Jim and I out? . . . I would really appreciate it."[730]

The second meeting allegedly took place at Mr. McDougal's trailer office at the Castle Grande land development.[731] Governor Clinton, who was dressed in a jogging outfit, and Mr. McDougal asked Mr. Hale to make a loan from CMS to "clean up the books" at Madison Guaranty.[732] Governor Clinton warned Mr. Hale that his name could not "show up anywhere," but that he might be able to provide security for the loan with some property in Marion County—the county where Whitewater was located.[733]

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[13] Mr. Kennedy claimed that Mr. Nussbaum did not instruct him to speak with Mr. Hubbell, and that he did not report back to Mr. Nussbaum his conversation with Mr. Hubbell. (Kennedy, 12/5/95 Hrg. p. 104.)

Mr. Gerth then explained that Mr. Hale subsequently made a $300,000 SBA loan to Susan McDougal d/b/a Master Marketing on April 3, 1986.[734] Mr. Hale understood that some of the money would be advanced to Whitewater. Indeed, records show that a portion of the proceeds from the loan was used by Whitewater to purchase land from International Paper Corporation in 1986.[735]

At the third meeting, then-Governor Clinton allegedly saw Mr. Hale at a Little Rock shopping mall and asked him "Have you heard what that f————-w———— Susan has done with the money?"[736] Mr. Gearan and Mr. Lindsey both claimed that Mr. Gerth was the first to tell them of Mr. Hale's allegations against President Clinton.[737] Both senior White House officials further asserted that they learned for the first time of Mr. Kennedy's telephone calls with Mr. Coleman a month earlier.[738]

After the meeting with Mr. Gerth, Mr. Lindsey asked President Clinton about Mr. Hale's allegations. The President denied that any of the meetings occurred.[739]

On the same day, Mr. Lindsey called James Blair, the General Counsel of Tyson Food and a close associate of the President, twice to discuss Whitewater.[740] Mr. Lindsey's contemporaneous notes of the first conversation indicate that Mr. Blair had previously contacted Mr. Heuer, Mr. McDougal's attorney, to discuss whether Mr. McDougal would be implicated in any case against Mr. Hale. Specifically, the notes indicate that Mr. Heuer "asked Brent Bumpers [Assistant United States Attorney for EDAR] ...whether indictment against Hale, not McDougal."[741] Mr. Lindsey's notes of the second conversation shows: "Fletcher Jackson-in charge of case-*immunity* leaked. McDougal might become target. Blair Heard that $300,000 had been deposited in McDougal's account, jumped pretty high."[742] Mr. Lindsey could not interpret these entries in his notes, and particularly the notation "jumped pretty high."[743]

Mr. Blair had no recollection of speaking with Mr. Lindsey, but admitted that they may have discussed David Hale.[744][14] He also could not recall any conversation with Mr. Heuer about whether Mr. McDougal would be indicted along with Mr. Hale, but admitted "[t]hat's certainly a possibility. I have discussed with Heuer at times whether McDougal was actually going to be reindicted after his first acquittal."[745] When asked whether he relayed the results of any conversation with Mr. Heuer back to the White House or elsewhere, Mr. Blair carefully claimed, "I don't have any recollection of that. I'm not saying if I didn't hear something interesting, I might not have passed it on to Bruce Lindsey, but I have no specific recollection of that."[746]

When asked about any conversation between Mr. Heuer and Assistant U.S. Attorney Bumpers about the indictment of Hale, Mr. Blair professed that he did not "know anything about any conversa-

[14] Mr. Blair's memory lapse, however, appeared to be selective because he did recall other portions of his alleged conversation with Mr. Heuer. (Blair, 11/20/95 Dep. 11–14.) Mr. Blair also recalled another conversation with Mr. Heuer, most likely prior to Mr. Hale's indictment, in which Mr. Heuer informed him that "Hale had supposedly been to see McDougal and tried to get McDougal to lie about various things that Hale wanted to claim was reality." (Blair, 11/20/95 Dep. p. 13) This other conversation between Mr. Blair and Mr. Heuer corresponds to a separate entry in the same page of Mr. Lindsey's notes. (Hogan & Hartson Document BL011718–011722.)

tions between Mr. Heuer and Mr. Bumpers."[747] Mr. Blair claimed that Mr. Lindsey's notes did not refresh his recollection.[748]

Although Mr. Bumpers did not recall Mr. Heuer asking whether Mr. McDougal would be indicted with Mr. Hale,[749] Mr. Bumpers may have had a brief conversation with another Assistant U.S. Attorney, Fletcher Jackson about Mr. Hale investigation prior to Mr. Hale's indictment.[750] Mr. Bumpers also may have learned of the imminent indictment at a staff meeting.[751]

The Special Committee was not able to depose Mr. Heuer because he was preparing for Mr. McDougal's criminal trial. Messrs. Blair and Bumpers could neither confirm nor deny that any of these conversations occurred. Mr. Lindsey's contemporaneous notes of his conversation with Mr. Blair immediately following Mr. Lindsey's conversation with Mr. Gerth about Mr. Hale's allegations against President Clinton indicate that Mr. Heuer received confidential information about the ongoing federal investigation of Mr. Hale, and that this confidential information was passed on to Mr. Blair and Mr. Lindsey.[752]

II. After Treasury and RTC Officials improperly advised the White House about RTC Referrals mentioning President Clinton and Governor Tucker, President Clinton meets with Governor Tucker at the White House

Attempts by senior White House officials to gather information about investigations touching on the Clintons went beyond contacts with potentially adverse counsel (Mr. Coleman) or with close associates (Mr. Blair). Senior White House officials undertook a concerted and highly improper effort to contact investigative agencies about the ongoing investigations into Madison and Whitewater.

During the period when the submission of the additional RTC referrals on Madison prepared by Ms. Lewis was being held up by the "legal review" by the RTC's Professional Liability Section, the White House received advance information on these referrals. At about the same time that the White House learned of Mr. Hale's allegations against President Clinton, on September 29, 1993, Jean Hanson, the General Counsel of the Department of the Treasury, which oversaw the RTC and its investigations, informed White House Counsel Bernard Nussbaum and Associate White House Counsel Clifford Sloan of the existence of several RTC referrals involving Madison, Whitewater, and the Clintons.[753]

This improper transmittal of confidential RTC information to the White House violated clearly established RTC procedures. In a June 17, 1993 memorandum to all RTC attorneys and investigative staff on the handling of criminal referrals, RTC Director of Investigations James Dudine wrote: "All criminal referrals are sensitive and must be handled with appropriate confidentiality and care."[754] Mr. Dudine advised that criminal referrals derived from records of financial institutions are also subject to the restrictions of the Right to Financial Privacy Act, 12 U.S.C § 3412.[755] William H. Roelle, the RTC Senior Vice President in charge of the Investigations Division,[756] testified that, based on his 25-years of experience with the FDIC and RTC, both the substance and the fact of a criminal referral are confidential.[757] There is no exception for press inquiries.[758]

The Treasury General Counsel, Jean Hanson, improperly conveyed the confidential RTC information about the Madison criminal referrals to the White House.[759] Specifically, Ms. Hanson advised Mr. Nussbaum that the President and Mrs. Clinton were identified as possible witnesses to the suspected criminal activities described in the referrals.[760] She further told Mr. Nussbaum that the referrals referenced possible improper campaign contributions from Madison to one of Mr. Clinton's gubernatorial campaigns.[761] Mr. Nussbaum admitted that Ms. Hanson provided him with nonpublic information about the referrals.[762]

The next day, on September 30, Ms. Hanson called Mr. Sloan to amplify on the confidential information she had provided to Mr. Nussbaum.[763] Mr. Sloan's notes of this conversation recorded the following:

> "9 referrals—allegations re: Fulbright—
>
> • Jim Guy Tucker
> • attempt to divert funds."[764]

Mr. Sloan's notes further stated that the charges of conspiracy to divert funds were the "most serious allegation[s]," [765] that the referrals named the Clinton 1985 campaign as "co-conspirators," [766] and, most important, that the "Clintons [were] mentioned in other charges as potential witnesses." [767]

Mr. Nussbaum instructed Mr. Sloan to relay Ms. Hanson's information to then Director of Presidential Personnel Bruce Lindsey, who was not a member of the press office, but rather a "damage control" specialist.[768] Mr. Sloan did so on the same day, September 30, or shortly thereafter.[769] Inexplicably, Mr. Lindsey claimed that Mr. Sloan did not advise him that Governor Tucker was named in the referrals as a target.[770] Instead, Mr. Lindsey asserted that he did not learn that Governor Tucker was mentioned in the referrals until October 7 or 8, 1993.[771]

On October 4 or 5, 1993, Mr. Lindsey passed the confidential RTC information directly to the President.[772] When asked about the President's response, Mr. Lindsey claimed implausibly that "it was certainly nothing other than just sort of, 'hmmmmmmm.'" [773]

Curiously, on October 6, 1993, President Clinton had a meeting at the White House with Governor Jim Guy Tucker.[774] Former Deputy Assistant to the President Keith Mason testified that he attended this meeting,[775] which was held late in the afternoon and lasted 30 to 45 minutes.[776] Mr. Mason asserted that no discussions occurred at the meeting about Whitewater, Madison or RTC criminal referrals.[777] Prior to the meeting, Mr. Mason escorted Governor Tucker to the office of White House Chief of Staff Mack McLarty.[778] Mr. Mason was present during part, but not all, of a meeting between Governor Tucker and Mr. McLarty.[779] Mr. Mason claimed that at least while he was present Governor Tucker and Mr. McLarty did not discuss Madison Guaranty, the RTC criminal referrals or Whitewater.[780]

Although Mr. Lindsey testified that he did not know that the criminal referrals mentioned Governor Tucker as of October 6 and therefore did not pass this information onto the President, such information hardly would have been necessary. Notes taken by Susan Thomases during the 1992 campaign indicate that President Clin-

ton had clear knowledge of the link between Whitewater and Governor Tucker. In notes taken of a February 22, 1992 conversation relating to Whitewater, Ms. Thomases wrote:

> "Have Gerth call Tucker
> BC tell me to call Tucker" [781]

On March 9, 1992, Jeff Gerth of the *New York Times* wrote to Ms. Thomases seeking additional information for his article on Whitewater and Madison. In the margin of the letter, Ms. Thomases had taken notes, apparently of a conversation with Bill Clinton.[15] In one such note, next to Mr. Gerth's allegation that Mr. McDougal was subsidizing the Clintons' interest in the Whitewater investment, Ms. Thomases wrote: "Call Jim Guy Tucker." [782] Tellingly, as of the date of Ms. Thomases' notes, there had been no public allegation suggesting any link between Mr. Tucker and Whitewater, Madison, or Mr. McDougal.

The Special Committee did not obtain testimony from Governor Tucker because he, along with James and Susan McDougal, was a defendant in a federal criminal proceeding. The Whitewater-related charges prosecuted by Independent Counsel Kenneth Starr in the Tucker-McDougal trial stemmed directly from the RTC criminal referrals prepared by Ms. Lewis—the substance of which was conveyed from Ms. Hanson, through Mr. Sloan and Mr. Lindsey, to President Clinton. On May 28, 1996, an Arkansas jury convicted Governor Tucker of conspiracy and mail fraud in connection with transactions involving Mr. McDougal and Mr. Hale; President Clinton testified as a defense witness in the trial.[783]

On October 8, 1993, the RTC Professional Liability Section completed its legal review of the criminal referrals.[784] On the same day, the criminal referrals were transmitted to the U.S. Attorney's Office in Little Rock without any change from their original versions prepared by Ms. Lewis.[785]

On October 14, 1993, senior White House officials met again in Mr. Nussbaum's office with senior officials from the Department of the Treasury to discuss the criminal referrals.[786] Mr. Lindsey, Mr. Nussbaum, Mr. Sloan, Associate White House Counsel Neil Eggleston and White House Director of Communications Mark Gearan met with Ms. Hanson, Department of the Treasury Chief of Staff Joshua Steiner and Assistant Secretary of Treasury for Public Affairs Jack DeVore.[787] Mr. Devore testified that it "appear[ed] that someone in either Nussbaum's or Hanson's office called my secretary and asked her to schedule this meeting." [788] During the meeting, Mr. DeVore explained to the group that he had received press inquiries about the criminal referrals, and a detailed description of the criminal referrals ensued. In a memorandum to file, entitled "Whitewater Development Corporation," [789] Mr. Lindsey indicated that one of the referrals "involved four cashiers checks—each for $3,000, two made payable to the Clinton for Governor Campaign and two made payable to Bill Clinton." [790] Mr. Lindsey further wrote that "DeVore confirmed with the RTC that the referrals had been received in the Washington office, but had already forwarded on to the Little Rock U.S. Attorney's office." [791]

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[15] One margin note stated: "BC has no recollection." Willkie, Farr & Gallagher Document ST000047.

III. A Pivotal Event: The November 5, 1993 Meeting Between White House Officials and the Clintons' Private Lawyers

On November 5, 1993, armed with details of the confidential RTC criminal referrals and Mr. Hale's allegations against President Clinton, senior White House officials met with the Clintons' private lawyers. The stated purpose of this meeting was "to impart information to the Clinton's personal lawyers." [792] The White House officials in attendance were Mr. Eggleston, Mr. Lindsey, Mr. Nussbaum, and Associate White House Counsel William Kennedy.[793] The private lawyers were David Kendall of Williams & Connolly, Little Rock attorney Steven Engstrom, and James Lyons, the author of the Clinton campaign's 1992 Whitewater report.[794] According to Mr. Lindsey, who characterized the gathering as a legal defense meeting, "[t]he purpose of the meeting was Whitewater Development Corporation." [795]

Mr. Kennedy's notes of the meeting, which the Committee obtained after a protracted dispute with the White House,[796] indicated that the White House officials provided the Clintons' private lawyers with much of the information they possessed concerning Whitewater, including confidential information relating to ongoing investigations by the SBA, RTC, and Justice Department.[797] In essence, the White House officials used confidential information they gained by virtue of their positions of public trust to further the Clintons' private legal defense.

A significant part of the discussion related to the ongoing RTC investigation of Madison.[798] Among the principal topics of the meeting was the referral related to illegal contributions to Mr. Clinton's gubernatorial campaign.[799] [16] Coincidentally, Mr. Lindsey, in his October 20 memorandum, appeared to be particularly concerned about one of the referrals, which "involved four cashier checks—each for $3,000, two made payable to the Clinton for Governor Campaign and two made to Bill Clinton." Mr. Kennedy claimed, however, that Mr. Lindsey indicated during the meeting that the source of the information was press accounts: "Basically, that Bruce is outlining, sort of the allegations, that the press was reporting wherein the referrals." [800]

White House officials also discussed the fact that Governor Tucker was a target of the referrals. In two separate entries, Mr. Kennedy wrote "Could be that JGT is target of RTC referral" [801] and "RTC-people trying to get BC and JGT." [802] Mr. Lindsey testified that he first learned that Mr. Tucker was a target in the RTC investigation during the October 14 meeting with RTC officials: "I believe in the October 14th meeting that we had with certain people

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[16] The notes appear as follows in the White House's typed version of Mr. Kennedy's notes:
"III. RTC referral w/r/t McDougal
Included a reference to 4 campaign checks 4/85 BC personally
Campaign Committee
3 checks written on Madison—all $3,000 4th check on McDougal personally—signed by Susan McDougal." (White House Document S12530).
Later, his notes reflect the following entry:
"Charles Peacock—proceeds went from Charles for Clinton campaign—85
made a donation (?)
$3,000–$12,000 * Could all come from Charles Peacock
Loan—$ siphoned off from the Loan
Charles Peacock (Ken Peacock?)
$1500 per election—$3,000
Primary and general." (White House Document S12534).

from the Treasury Department, that they indicated that Jeff Gerth had indicated that to them."[803] Notes taken by Susan Thomases indicate, however, that at least President Clinton identified Mr. Tucker with Whitewater in February and March 1992. In notes taken from a February 22, 1992 conversation relating to Whitewater, Ms. Thomases wrote:

> "Have Gerth call Tucker
> BC tell me to call Tucker"[804]

Likewise, Ms. Thomases' notes, apparently of a conversation with then-Governor Clinton, taken on a March 9, 1992 letter from Mr. Gerth seeking information on Whitewater recorded: "Call Jim Guy Tucker."[805] Mr. Tucker's ties to the McDougal and to Madison had not been publicized at the time.

Another principal topic of discussion raised by Mr. Lindsey was Madison's retention of the Rose Law Firm and Mrs. Clinton's representation of Madison in connection with Madison's proposal for a preferred stock offering.[806] [17] Mr. Kennedy testified that Mr. Lindsey "[i]s giving history, and it's basically that she has given authority for Madison to do both things, and Bruce is talking about, you know, the perception about Beverly Bassett." G5807 Under "Beverly Basset," Mr. Kennedy wrote: "too much coziness." G5808

Although senior White House officials' claimed that they communicated only general background information concerning Whitewater and Madison during the November 5th meeting, Mr. Kennedy's notes detail the financing of the Clintons' investment in Whitewater. Almost four pages of Mr. Kennedy's notes relate to the reconstruction of the Whitewater loans and transactions.[809] The attendees were particularly interested, according to Mr. Kennedy's notes, in James Blair's involvement in the sale of the Clintons' interest in Whitewater in 1992,[18] as well as Mr. Blair's possible involvement in Christopher Wade's payment of the outstanding bank

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[17] At the very beginning of Mr. Kennedy's notes appears the following entry:
"HRC representation of Madison—not much activity representing people before agencies
2 RLF letters Beverly Bassett
1. Madison
2. PP of pfd stock
Beverly Basset—Responded w/auth to do both
Recently appointed BB as Sec Cer
Brother early supported
Too much coziness
RLF—answered questions
Did reconstruction." (White House Document S12529).
Later, in his notes, there is an entry related to the Rose Law Firm's retainer:
"+ RLF—Madison Guaranty—Retainer at $2,000 per month
ANN + Check drawn on WWDC—payable to HRC
Bernie + Believe that it believes prob. represents confirmed payment of $2,000 # of months for 17 months
[15 months for $2,000 per month—Retainer] Webb Hubbell." (White House Document S12533)

[18] Mr. Kennedy's notes show:
"Blair could have knowledge Could be source of money to allow McD to purchase stock." (White House Document S12531.)
On the same page, the following entry appears:
"¾ Times Heuer Blair contact
Heuer
⅔, 1992 Have 1
Involved w/VF
Try to arrange sale." (White House Document S12531.)

loan on which the Clintons were guarantors.[19] Mr. Blair had provided James McDougal with the $1000 to purchase the Clintons' Whitewater stock on December 22, 1992.[810] The senior White House officials and the Clintons' private lawyers also discussed tax issues related to the Clintons' investment in Whitewater,[20] and the chain of custody of certain Whitewater records that were used during the 1992 campaign to piece together specifics of the Clintons' investment.[21]

Curiously, a notation at the bottom of the first page of Mr. Kennedy's notes suggested a possible link between the FBI's investigation of CMS, which allegedly made an illegal loan to James and Susan McDougal in 1986 at the request of then-Governor Clinton, and the death of President Clinton's friend and counsel, Vincent Foster. Mr. Kennedy wrote:

> "*July 20th*: FBI issued subpena & took records of municipal judge named Hale
> Also the day that VF killed himself Factor"[811]

Mr. Kennedy claimed that "by factor" he meant: "Simply that the coincidence had become a factor in all of the intense speculation surrounding Vince's suicide."[812]

The November 5th meeting also concerned "a division of labor between personal and White House counsel for handling future Whitewater issues."[813]

In the middle of Mr. Kennedy's notes appears a cryptic reference to a remark by Mr. Kennedy that suggests the possibility of an effort to suppress critical evidence concerning Whitewater.[814] Mr. Kennedy wrote:

> "Vacuum Rose law Files WWDC Docs—*subpoena*
> **Documents—never know go out*
> *Quietly*(?)"[815]

Mr. Kennedy claimed to the Special Committee that "vacuum" was used in this meeting as a noun, not a verb:

> We were referring to at the meeting that there was an information vacuum, that when you tried [to] get your arms around Whitewater, in this case referring to the real

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[19] Mr. Kennedy's notes read:
"Not Reconstruction—
$11,000—
Clinton not released until Fall of 1992
Blair up—Chris Wade." (White House Document S12537).
Although Mr. Wade assumed the McDougal's interest in Whitewater in 1985, the Clintons were not released from their obligation until the balance of the debt was paid off.

[20] The following entry appears in Mr. Kennedy's notes:
"Report: Clinton had taken the deductions that WWDC had not taken
Tax advantage of $2500
Not repay government yet promise." (White House Document S12529).

[21] Mr. Kennedy's notes indicate the following discussion:
"End of '86—asked for records
—McDougals say that all of
Corp records to HRC
Issue in campaign—86—Records to HRC
RLF—Campaign Jim Lyons
Loretta Lynch
—Betsy Wright had those records—Took em home
—Betsy Wright
WH retrieved—records from BW
Been at WH—Sent files related to WW
Make a more complete reconstruction." (White House Document S012533-S012534.)

> estate investment, it is impossible to do. The records were a shambles. I had personal knowledge of that. You are dealing with an information vacuum. The Rose Law files, as they related to Whitewater documents, would—if you had gotten you hands on them, they would not have meant anything to you because of the condition of the records." [816]

Mr. Kennedy denied that the entry "WWDC Docs—*subpoena*" reflected the concern of senior White House officials over the possibility that Whitewater records might be subpoenaed.[817] Instead, Mr. Kennedy claimed:"The discussion was that if a subpoena were issued, files that had once been at the Rose Law Firm would no longer be there, with regard to Whitewater." [818] Mr. Kennedy asserted that "**Documents—never go out/Quietly(?)*" actually referred to the handling of Rose Law Firm files during the campaign: "It relates to the fact that there is—as far as I know, still is—a mystery about how the Whitewater documents—again I wish to stress these are the corporate records and real estate records relating to Whitewater as an investment—got from the Rose Law Firm to the campaign in 1992." [819]

Regardless of whether "vacuum" is a verb or noun, records relating to Whitewater and Madison had been systematically removed from the Rose Law Firm during and after the 1992 campaign. After questions arose about the Clintons' investment with the McDougals in Whitewater and Mrs. Clinton's representation of Madison Guaranty before a state agency, Vincent Foster collected all the information he could on the Madison representation. At the conclusion of the campaign, the Madison files, which were by now the property of the RTC as conservator of Madison, as well as the files of other Rose clients for whom Mrs. Clinton had performed legal services, were secretly removed from the firm by Webster Hubbell. Mr. Hubbell removed these files, at times taking the firm's only copies,[820] without obtaining the consent of the firm or client.[821]

Also during the 1992 presidential campaign, Mr. Foster or Mr. Hubbell ordered the printing of billing records relating to the Rose Law Firm's representation of Madison Guaranty. These important records revealed the extent of Mrs. Clinton's legal work for Mr. McDougal's S&L, including her telephone call to Beverly Bassett Schaffer, the Arkansas Securities Commissioner appointed by Governor Clinton, about the troubled thrift's controversial proposal to raise capital by issuing preferred stock. The records also reflected Mrs. Clinton's work on the IDC or Castle Grande transaction, which federal regulators described as a series of fraudulent land flips. [822] The records contained the handwritten questions of Mr. Foster to Mrs. Clinton and notations by Mr. Hubbell. [823] Mrs. Clinton has recently stated through her lawyer that she may have reviewed the records during the 1992 presidential campaign.

After federal investigators began to look into matters relating to Madison Guaranty and Whitewater, a number of subpoenas were issued for these Rose Law Firm billing records. By then, however, the records were nowhere to be found. Despite extensive searches conducted by the law firm, neither the originals nor copies were discovered.[824] They were not in the firm computers, its client files, or the firm's storage facility. [825] The billing records, long lost, fi-

nally turned up in August 1995 in the Book Room of the White House Residence.

When asked about Mr. Foster's removal of documents from the Rose Law Firm, Mr. Kennedy admitted that he knew Mr. Foster had searched for Madison files during the 1992 campaign,[826] but claimed that he was not aware of whether Mr. Foster had removed the files from the Rose Law Firm.[827]

Mr. Kennedy also claimed that he wrote "quality," not "Quietly," in his notes, and was talking about the condition of "the Whitewater records that I once had in my possession, received from Ms. Clinton."[828] Mr. Kennedy admitted that the Rose Law Firm did not have custody of any Whitewater documents, but claimed that, "The Whitewater files were Rose files when they were in my possession when I was performing legal work for Ms. Clinton."[829]

Finally, Mr. Kennedy's notes recorded the following command: "Try to find out what's going on in Investigation,"[830] a directive that would inform the actions of White House officials throughout the Whitewater defense effort.

IV. The White House Obtains Confidential SBA Documents Relating to Mr. Hale and Capital Management

At the November 5 meeting, senior White House officials and the Clintons' private lawyers discussed David Hale and his allegations against President Clinton. For example, under the heading "David Hale," Mr. Kennedy's notes reflect the following notations:

> "Tunnel at Capitol—Clinton says McD will call you—DH—hope you'll help em
> 145 Street Trailer—Jogging Shorts
> Shopping Malls—Clinton says do you know what bitch Susan did with money-sed."[831]

The notations reflect Mr. Hale's allegation that he saw then-Governor Clinton three times in 1986. At the first meeting, on the steps of the Arkansas Capitol, Governor Clinton allegedly approached Mr. Hale and said that James McDougal would call Mr. Hale; Governor Clinton allegedly hoped that Mr. Hale would help Mr. McDougal.[832] The second meeting allegedly took place at Mr. McDougal's trailer office on 145th Street in Little Rock.[833] Governor Clinton, wearing a jogging outfit, asked Mr. Hale to make a loan to Mr. McDougal. Finally, in the third meeting, at a Little Rock shopping mall, Governor Clinton, agitated, allegedly asked Mr. Hale: "Do you know what that bitch Susan did with the money?"[834] Mr. Kennedy's notes recorded that:

> "David Hale did make a $300,000 loan to Susan McD. Jim McD says purchase land in Pulaski Co from IP purchased in name of WW in 10/86."[835]

Three days after the November 5 Whitewater defense meeting, on November 8, Mr. Nussbaum directed Mr. Eggleston to a November 6 Washington Post story about a request from John LaFalce, Chairman of the House Committee on Small Business, to Mr. Bowles for information relating to CMS.[22] [836] The report, according

[22] After Mr. Hale's allegations against the President was made public, the Capital Management investigation predictably attracted considerable attention. On November 4, 1993, Con-

to Mr. Eggleston, noted that Chairman LaFalce asked for the requested information by November 15, 1995.[837]

Mr. Bowles responded to Chairman LaFalce's inquiry on November 15, 1993 in a four-page letter that provided a detailed summary of the investigation into CMS and responded to the specific questions set forth in Chairman LaFalce's November 4, 1993 letter.[838] More importantly, Mr. Bowles' letter was accompanied by twelve sets of attachments, which included, among other things, lists of all loans provided by CMS, all portfolio financing reports submitted by CMS in connection with its SBA loans, all eleven reports of SBA audits of Capital Management, Mr. Foren's May 5, 1993 referral of the case to the Inspector General, and the September 23, 1993 criminal indictment against David Hale.[839] In short, the attachments, "approximately a foot high,"[840] essentially comprised the entire SBA file on the operation, regulation, and investigation of CMS and David Hale.

On the morning of November 16, 1993, the day after Mr. Bowles replied to Chairman LaFalce, Mr. Eggleston called the SBA and spoke with the Office of Legislative Affairs.[841] The SBA directed Mr. Eggleston's inquiry to John Spotila, the SBA General Counsel. Mr. Spotila advised that the SBA had responded to Chairman LaFalce's request late the night before.[842] According to Mr. Eggleston, Mr. Spotila sent Mr. Eggleston via facsimile a copy of Mr. Bowles' letter to Chairman LaFalce at 11:20 a.m.[843] Mr. Spotila followed up with another facsimile at 3:20 p.m., enclosing an SBA press release about Mr. Bowles' response.[844] According to Mr. Eggleston, he then asked Mr. Spotila "whether it would be appropriate for the White House to have whatever had been provided to Congress."[845]

John Spotila was a classmate of President Clinton at Georgetown. According to Mr. Spotila, "I have known the President for quite a while. I was a classmate of his at Georgetown, and briefly at Yale, although my third year was his first year at the [law] school."[846] He also knew Mrs. Clinton.[847] Mr. Bowles testified that he selected Mr. Spotila as general counsel partly on Mrs. Clinton's recommendation.[848]

On November 16, 1993, Mr. Spotila testified that he "faxed a copy of the press release that had been done and then the cover letter."[849] After receiving the facsimiles, Mr. Eggleston asked Mr. Spotila whether he could have the attachments that accompanied Mr. Bowles' letter.[850] Mr. Spotila testified that he consulted with Mark Stephens of his staff, who erroneously told Mr. Spotila that "all of the documents were entirely routine and nonsensitive."[851]

In fact, at the top of the first page, Mr. Bowles' letter to Chairman LaFalce in bold type, contained the following notice:

> The information contained herein has been determined to be confidential in nature and therefore not releasable to unauthorized parties. Disclosure of this information may violate Federal law (e.g., Privacy Act of 1974, the Right to

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gressman John LaFalce, the Chairman of the House Committee on Small Business, wrote to Mr. Bowles and requested "a full written report on Capital Management Services, Inc., including its licensing, private capital, ownership, SBA leverage, and individual financings made, including profit and loss statements." (SBA Document Not numbered). In addition, Chairman LaFalce asked that the SBA provide, under section 10(e) of the Small Business Act, the staff director and counsel of the Committee on Small Business with copies of the SBA's files on Capital Management. (SBA Document Not numbered).

> Financial Privacy Act of 1978, and 18 U.S.C. §1905). Utmost discretion should be exercised.[852]

Beyond this, Mr. Spotila's one sentence transmittal letter to Mr. Eggleston also specified that the information was confidential: "Enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce (with confidential attachments)."[853]

While Mr. Eggleston was seeking this confidential SBA information, he was also speaking with other senior White House officials. He left a message for Bruce Lindsey advising him of the confidential documents attached to the LaFalce letter:

> Neil Eggleston said the additional information is at SBA and is approximately a foot high. He has a call in to SBA to find out if it contains reference to either the President or Hillary. He can obtain a copy of the documents if it appears necessary but does not believe it is problematic.[854]

Mr. Eggleston did not recall talking with Mr. Lindsey on November 16 about the SBA documents. Indeed, Mr. Eggleston implausibly claimed the message he left for Mr. Lindsey message led him to believe that he did not talk to Mr. Lindsey: "I don't remember actually doing it, and this document leads me to conclude that I probably didn't, and that I communicated with Mr. Lindsey through his secretary, which happened fairly frequently because Mr. Lindsey is extremely difficult to get in touch with."[855] This testimony leaves open the obvious question of how Mr. Lindsey would have known what "additional documents" Mr. Eggleston was referring to in his message, if the two had not communicated previously about obtaining documents from the SBA.

That afternoon, November 16, Associate White House Counsel Eggleston personally went over to the SBA offices and picked up the "approximately a foot high"[856] set of attachments from Mr. Spotila. When he returned to the White House, he curiously left another message for Mr. Lindsey, at 4:58 p.m. The message—captioned "important" by Mr. Lindsey's secretary—stated: "Has some Whitewater documents to go over with you. Will come by about 6:00 p.m."[857]

Mr. Eggleston did not recall talking with Mr. Lindsey. "As I've said repeatedly, I don't actually remember that happening. This would certainly make it seem as if I had two communications with his secretary on that day with regard to these documents, and that makes a lot of sense. I mean, that's the reason I was getting these."[858] Mr. Eggleston claimed that he did not show documents to Mr. Lindsey:

> I did not, as I recall, I never got to him with these documents. I don't remember whether he got back to me himself or through his secretary, but I recollect—and again I don't know what Mr. Lindsey's recollection is—but I recollect that I never showed him these documents.[859]

Mr. Lindsey did not believe that he saw the records.[860]

Back at the SBA, Mr. Spotila met with Mr. Bowles and told him that he had provided the confidential documents to the White House.[861] Immediately, Mr. Bowles said, "I don't know if this is right or wrong, good or bad, up or down, but you better check with

somebody with the Justice Department to see if it's okay."[862] Mr. Spotila instructed Mark Stephens to contact the Justice Department.[863]

The next day, November 17, 1993, Allen Carver, Principal Deputy Chief of the Justice Department's Fraud Section, called Mr. Stephens to obtain a copy of Mr. Bowles' November 15 response to Chairman LaFalce.[864] Mr. Stephens advised Mr. Carver of the transfer of the confidential SBA documents.[865] Mr. Carver and Mr. Stephens agreed to meet on November 18 at Mr. Carver's office with another attorney from the Fraud Section and an FBI agent working on the matter to discuss both Mr. Bowles report to Chairman LaFalce and the SBA's transfer of documents to the White House.[866]

At that time, the Justice Department instructed the SBA to retrieve from the White House the confidential documents and any White House materials analyzing those documents: "Carver said get docs back + get their notations as well as all copies + list of people w/access to docs."[867] The notes also explained the reason for the Justice Department's objection: "Due to scope, they—part of investigative body of material related to allegedly naming Pres. WH should not get docs or apprised of investigation."[868]

The next day, November 19, Mr. Carver talked with Mr. Stephens to ascertain the progress of the document retrieval. According to Mr. Carver's contemporaneous memorandum about the call, Mr. Stephens said that "he called and spoke with Neal Eggleston earlier in the day, about 1:55 p.m., and Mr. Eggleston said that he would discuss the matter with the Deputy Attorney General and would discuss the matter further with Mr. Stephens early the next week."[869]

Immediately, Mr. Carver called his supervisor, Fraud Section Chief Gerry McDowell, to advise him of Mr. Eggleston's conversation with Mr. Stephens. According to contemporaneous notes of the conversation, Mr. McDowell said, "I've got to believe the WH counsel have done an incredibly stupid thing!"[870] Mr. McDowell immediately notified the Associate Deputy Attorney General David Margolis.[871] Mr. McDowell also talked directly with the Deputy Attorney General Phillip Heymann, who agreed with Mr. McDowell that this "could be an influence type situation."[872]

According to contemporaneous notes, Mr. Eggleston called Mr. Heymann that day and talked to Mr. Nathan, Mr. Heymann's deputy. Mr. Nathan apparently conveyed Mr. Heymann's strong sentiment to Mr. Eggleston, who, after the conversation, "wanted to get the documents back to the SBA as soon as possible."[873] Curiously, White House Counsel Bernard Nussbaum, Mr. Eggleston's supervisor, called Associate Attorney General Webster Hubbell at 10:29 a.m. on November 19.[874]

Although Mr. Eggleston was instructed specifically by the Justice Department to return the confidential documents immediately, he inexplicably waited for several days.[875] Mr. Eggleston claimed that "[b]y that time, it was obvious that we would return the documents, but I had to talk to my supervisor before agreeing to do so."[876] After speaking with the Justice Department, Mr. Eggleston stated that he became "quite concerned, and spoke fairly quickly

thereafter to Mr. Nussbaum and then worked hard to get the documents back as soon as I could."[877]

On May 21, Mr. Eggleston finally reached Mr. Stephens, and arranged for the return of the documents.[878] Mr. Stephens met Mr. Eggleston at the street corner in front of the SBA, where Stephens took back the box of SBA documents.[879]

Mr. Eggleston reviewed the SBA documents. He did not, however, "see any documents that I thought were particularly sensitive or that would have alerted me to the notion that Department of Justice might have had a problem."[880] The career Justice Department prosecutors, however, had a different view of the matter. Because the documents concerned a case involving allegations against the President, Mr. Carver believed that the White House had no right to any confidential documents or to be apprised of facts relating to the ongoing investigation.[881]

The Justice Department immediately commenced an investigation into the transfer of confidential information to the White House. On November 19, Mr. Carver discussed the investigation with the FBI. The FBI Chief of the Governmental Fraud Unit, Richard Wade, "expressed concern over the possibility that the White House-SBA action, however, well-intended, could look like White House intervention."[882] Mr. Carver recommended that the FBI interview Mr. Eggleston,[883] and also interview Mr. Kennedy concerning his conversations and contacts with Mr. Hale's attorney, Mr. Coleman, about the case.[884]

This matter is still under investigation by the Office of the Independent Counsel.

V. The White House Begins to Hold Whitewater Defense Meetings

By late 1993, in the wake of new revelations, members of Congress and the national press began to call for the appointment of a special counsel to investigate Whitewater and Madison Guaranty. At that time, although the statute governing a judicial appointment of an Independent Counsel had lapsed, the Attorney General could appoint a special counsel to investigate the matter.

During the first weeks of January 1994, senior officials of the White House met twice daily in Whitewater Response Team meetings.[885] Present were Deputy Chief of Staff Harold Ickes, who was hired in part to coordinate the Whitewater defense effort; Chief of Staff Thomas Mack McLarty; White House Counsel Bernard Nussbaum; Deputy White House Counsel Joel Klein; Senior Advisor to the President George Stephanopoulos; Counselor to the President David Gergen; Associate White House Counsel Neil Eggleston; and Director of White House Communications Mark Gearan.[886] Significantly, Mrs. Clinton and her Chief of Staff, Margaret Williams, attended some of the meetings.[887]

During the Banking Committee hearings in the summer of 1994, senior White House officials provided evasive answers when asked to describe the purpose of the meetings.[888] Mr. Lindsey and Mr. Nussbaum both failed to mention any specific subject discussed other than the handling of press inquiries related to Whitewater.[889]

The Special Committee, however, obtained evidence this year that White House officials discussed far more than press inquiries at these twice daily meetings.[890] Contemporaneous and detailed

notes of these meetings, prepared by Mr. Gearan reflect an extensive debate over whether an independent or special prosecutor should be appointed, and, if so, the scope and duration of such an independent investigation.[891] The notes also reflect the willingness of senior White House officials to attempt to interfere in ongoing investigations, particularly regarding former Arkansas Securities Commissioner Beverly Bassett Schaffer's regulation of Madison.[892] Finally, the notes indicate yet another instance of government lawyers providing private legal services to the President and Mrs. Clinton.

A. Senior White House officials debated the appointment of a Special Counsel

Mr. Gearan's notes reflect considerable debate within the White House on the appointment of a special counsel versus independent counsel. At a January 4, 1993 meeting, Mr. Gergen observed that the difference between independent counsels, appointed by a panel of federal judges, and special prosecutors, appointed by the Attorney General, is that independent counsels "take on a life of their own."[893]

The next day, January 5, 1993, the debate continued. Mr. Nussbaum argued strenuously that no substantive difference existed between an independent counsel and a special prosecutor.[894] In Mr. Nussbaum's view, both an independent counsel and a prosecutor are "subject to no control [and] come [with the] desire to get someone."[895] Mr. Nussbaum expressed his "adamant" opposition to the appointment of any independent prosecutor.[896]

Mr. Gearan recalled that Mr. Nussbaum, again continuing to exhibit his concern about control, compared an independent or special prosecutor to "somewhat of an unguided missile."[897] To illustrate his point, Mr. Nussbaum envisioned two scenarios—the "good-hearted" prosecutor and the "bad-hearted prosecutor."[898] The "good hearted" prosecutor would conduct an investigation and simply document his findings.[899] In contrast, the "bad-hearted" prosecutor "goes in & decides a smell of corruption & can show some things of those people close around the principal."[900] According to Mr. Gearan, the "principal" was President Clinton.[901]

A significant, if not dominating, concern of the White House officials during the Whitewater defense meetings was Mrs. Clinton's opposition to the appointment of either an independent or a special prosecutor. Mr. Gearan's notes of January 4, 1994 show that Mrs. Clinton joined the meeting—already in progress—and said "this looks like a meeting I might be interested in."[902] Mrs. Clinton stayed for approximately 15 minutes,[903] and opposed the appointment of a special counsel.[904] After she left several officials expressed the view that it was pointless to debate the merits of an independent counsel versus a special counsel given Mrs. Clinton's steadfast opposition to the appointment of either type of prosecutor.[905]

On January 5, Mr. McLarty and Mr. Ickes both supported Mrs. Clinton's position.[906] Mr. McLarty advised that the group move off the discussion of a special prosecutor or counsel because "HRC and BC don't want it."[907] Harold Ickes stated that the discussion "was the biggest f——— waste of time."[908] Before the Special Commit-

tee, Mr. Ickes testified that, although he could not recall the specific meeting, "it was well known that Mrs. Clinton had very, very grave reservations" about the appointment of any type of prosecutor.[909]

On January 7, senior White House officials discussed attempting to persuade Mrs. Clinton to reverse her position on the appointment of a special counsel.[910] Mr. Ickes advised that Secretary of State Warren Christopher or attorney Robert Barnett might attempt to convince Mrs. Clinton that a prosecutor should be appointed.[911]

Ultimately, however, Mr. Ickes thought that it was "impossible" to "reopen" the discussion with Mrs. Clinton.[912] Mr. Gearan recalled that everyone in attendance at the meeting agreed that it would be "impossible" for anyone, including the President, to change Mrs. Clinton's mind.[913]

Later that day, Mr. Ickes again stated Mrs. Clinton's strong opposition to the appointment of any prosecutor.[914] Mr. Gearan's notes of this second meeting indicate that Mr. Ickes regarded Mrs. Clinton's "adamant[] oppos[ition]" as one of the major problems with calling for a special counsel.[915]

Senior White House officials and Mrs. Clinton feared that a special counsel might indict persons close to President Clinton. According to Mr. Gearan's notes of a January 7, 1993 meeting, Mr. Nussbaum said, "Indictments will be Betsy Wright."[916] Ms. Wright was Governor Clinton's former Chief of Staff in the 1980s and handled damage control for Whitewater and other Arkansas-related matters during the 1992 Clinton presidential campaign.[917] Mr. Gearan implausibly denied that any concern was expressed that Ms. Wright would be indicted: "[A]t no time was I present in any conversation where Mr. Nussbaum suggested that there is any basis for Ms. Wright to be charged with anything like this."[918] Mr. Gearan claimed that Mr. Nussbaum identified Ms. Wright as an extreme example of someone who might face prosecution by a special counsel investigating Madison Guaranty and Whitewater.[919]

In any event, senior White House officials were concerned about possible indictments. A White House document, entitled "Confidential: Second Draft, Summary of Arguments Re: Whitewater," dated January 10, 1994, lists reasons against the appointment of a prosecutor.[920] The memorandum specifically states that a special counsel investigation "may result in focus on friends and associates of the President, begin to squeeze them and may subject some to indictment."[921] Mr. Ickes admitted that there "may well have been" concern among White House officials over possible indictments,[922] and "a lot of names came up" in the discussion of persons who might be "squeezed" or "hurt" by an investigation.[923]

Evidently Mr. Nussbaum, too, believed that associates of the Clintons might be vulnerable to criminal prosecution.[924] Mr. Gearan's notes of a January 5, 1993 meeting indicate that Mr. Nussbaum believed it would be possible for a criminal prosecutor to detect "a smell of corruption and can show some things of those people close around the principal."[925] Mr. Gearan recalled this statement and admitted that "principal" referred to President Clinton.[926]

During the debate over the appointment of a special counsel, senior White House officials apparently attempted both to influence Attorney General Reno's decision on the matter and to negotiate the scope of an impending investigation. As early as the January 4 meeting, White House officials feared that Attorney General Reno would appoint an independent prosecutor without the White House's input on the matter.[927] Mr. Gearan's notes of the January 7 meeting indicate discussion about Attorney General Reno's decision,[928] and preference for "fewer [questions] to lessen the exposure."[929]

Later, that day, Mr. Gearan noted that all meeting participants agreed, except for Bernard Nussbaum, that "Reno is boxed once Ind[ependent] C[ounsel] starts."[930] Mr. Gearan confirmed that senior White House officials feared that after the Attorney General appointed an independent counsel, the matter would be "out of her hands" with regard to the duration and scope of the investigation.[931] The notes suggest that a problem with calling for a special counsel is that "Reno has shut the door."[932] Mr. Gearan denied that this entry referred to any rejection by Ms. Reno of attempts by the White House to influence her decision on the support of a special counsel.[933]

On January 8, 1994, Mr. Ickes expressed displeasure with regard to how career Justice Department prosecutors—Donald Mackay and Alan Carver—were handling the ongoing federal investigations of Madison Guaranty and Whitewater.[934] Mr. Ickes described Mr. Carver as a "bad guy" because he put the Clintons' private counsel, Mr. Kendall, on a speaker phone with two FBI agents and another prosecutor, Jim Nixon, on the other end.[935] Mr. Ickes believed that the career Justice Department prosecutors "are f———— us blue."[936]

Mr. Gearan claimed that Mr. Ickes' strong remarks were actually complimentary. Mr. Gearan asserted that his reference to "Those guys are f———— us blue" meant that the Justice Department officials were "tough" on the White House and had acted "independent[ly]."[937]

Mr. Ickes similarly claimed that "Those guys are f———— us blue" meant that "they were probably doing an effective job."[938] Mr. Ickes denied that his remarks reflected White House irritation with Justice Department officials for spurning White House attempts to influence their investigation.[939]

This testimony is contradicted, however, by handwritten notes of Roger Altman, Deputy Treasury Secretary and Interim CEO of the RTC. In fact, Mr. Altman's support the inference that certain White House officials sought to negotiate the scope of any investigation of Madison Guaranty and Whitewater, but that Attorney General Reno rebuffed their efforts.[940]

Mr. Altman's notes record two conversations that he had with Mrs. Clinton's Chief of Staff Margaret Williams during the same period in which the Whitewater Response Team meetings were taking place. According to Mr. Altman's notes, dated January 6, 1994, at or about that time, "Maggie's strong inference was that the White House was trying to negotiate scope of an independent counsel with Reno and having enormous difficulty."[941] Indeed, Ms. Williams told Mr. Altman that Mrs. Clinton herself did not want in-

vestigators "poking into 20 years of public life in Arkansas."[942] According to notes of January 11, 1994, Ms. Williams told Mr. Altman: "On Whitewater, HRC was paralyzed by it. If we don't solve this matter within the next two days, we don't have to worry about her schedule on Health Care."[943]

David Kendall, the Clintons' personal attorney, also participated in the White House discussions over the appointment of a special counsel, including whether the desirability of "attempting to impose limitations" on the investigation.[944] In fact, Mr. Kendall drafted the very letter that Mr. Nussbaum ultimately sent to the Attorney General Reno requesting the appointment of a special counsel.[945]

On January 12, 1994, after the President called for a special counsel, Attorney General Reno appointed Robert B. Fiske, Jr., to conduct the investigation into "whether any individuals or entities [had] committed a violation of any federal criminal or civil law relating to [the Clintons'] relationship with Madison Guaranty Savings & Loan Association, the Whitewater Development Corporation, or Capital Management Services, Inc."[946]

B. White House contacts with former Arkansas Securities Commissioner Beverly Bassett Schaffer

Senior White House officials feared that Beverly Bassett Schaffer, the Arkansas Securities Commissioner who regulated Madison Guaranty in the mid-1980s, would contradict Mrs. Clinton's statements concerning the nature and extent of Mrs. Clinton's representation of Madison Guaranty before the state regulator—as Ms. Schaffer did in testimony before the Special Committee. During the January 1994 Whitewater Response Team meetings, for example, senior White House officials recognized the importance of Ms. Schaffer's "story" and considered measures to ensure that she would continue to do a "good job" telling it.[947]

During the 1992 presidential campaign, Ms. Schaffer's regulation of Madison became an issue.[948] Ms. Schaffer allegedly ignored evidence of the S&L's insolvency and failed to close down Madison Guaranty.[949] News reports also claimed that Ms. Schaffer approved a novel proposal submitted by Mrs. Clinton and her law firm on behalf of Madison Guaranty to raise needed capital by issuing preferred stock.[950]

Questions also arose about whether Mrs. Clinton improperly benefitted from her representation of Madison.[951] Mrs. Clinton wrote to Ms. Schaffer on behalf of Madison Guaranty on the novel preferred stock issue.[952] Only two weeks later, in a letter to Mrs. Clinton addressed, "Dear Hillary," Ms. Schaffer approved the proposal.[953] Mrs. Clinton forwarded Ms. Schaffers' letter of approval to James McDougal, the Clintons' Whitewater business partner and the owner and operator of Madison Guaranty.[954]

These contacts between Mrs. Clinton and Ms. Schaffer, and Mrs. Clinton and Mr. McDougal, raised the issue of the propriety of the Governor's spouse attempting to influence a state regulator appointed by her husband on behalf of a client and business partner.

Mrs. Clinton and Ms. Schaffer both denied allegations that Madison Guaranty had received any special treatment. The Clinton campaign issued statements, attributed to Mrs. Clinton, expressly

claiming that "she had done legal work for Madison Guaranty, but that it was not related to the Savings & Loan's dealings with state regulators."[955] Ms. Schaffer, with the assistance of the Clinton campaign, composed statements, including two memoranda to the *New York Times,* denying any special treatment for Madison Guaranty.[956]

In October 1993, the RTC sent a criminal referral to the U.S. Attorney's Office in Little Rock suggesting a connection between the preferred stock issue and campaign contributions to Governor Clinton.[957] The referral noted that during the same month that Mrs. Clinton wrote to Ms. Schaffer, several questionable $3,000 Madison Guaranty cashier checks were written to the Bill Clinton Campaign.[958] The referral stressed that Madison's preferred stock plan was approved quickly, and that Madison Guaranty's request to issue preferred stock occurred when Madison badly needed additional capital.[959] The referral identified both Hillary Rodham Clinton and Beverly Bassett Schaffer as possible witnesses to criminal misconduct.[960]

On September 29, 1993, the White House received a "heads up" about the substance of these referrals.[961] At the November 5, 1993 meeting at Williams & Connolly, senior White House officials and private attorneys for the Clintons discussed Mrs. Clinton's representation of Madison Guaranty before the Arkansas Securities Department,[962] particularly the "coziness" of the relationship.[963]

On December 20, 1993, the New York Times published an editorial, entitled "Open up on Madison Guaranty."[964] The editorial described the close relationship between the McDougals and the Clintons and stated: "Others, however, are mildly troubled by the fact that Mr. Clinton did not order his regulators to crack down on Mr. McDougal even after he was advised by his own banking commissioner in 1983 that the savings & loan operator was engaged in imprudent banking practices.[965] In the margin of the editorial, the President wrote: "This is important to be on top of. Bassett did a good job in [campaign] on this—can she now?"[966] The President then forwarded copies of the editorial containing his handwritten marginalia to Messrs. Lindsey and McLarty.[967]

One week later, President Clinton and Mr. Lindsey attended a basketball game at the University of Arkansas with Ms. Schaffer and her husband.[968] At the game, Mr. Lindsey asked Mr. Schaffer if she would be willing to answer press inquiries "with respect to her role and what she did and get that story out."[969] Mr. Lindsey could not recall whether the President participated in the conversation.[970]

On January 6, 1994, senior White House officials discussed Ms. Schaffer's role in connection with Madison's issuance of preferred stock.[971] Associate White House Counsel Neil Eggleston recalled discussions about the importance to the President and Mrs. Clinton of Ms. Schaffer's statements "about her role" during the mid-1980s in regulating Madison Guaranty.[972]

The next day, January 7, senior White House officials again discussed Ms. Schaffer. This time, White House officials considered sending Mr. Lindsey, Washington lawyer Michael Waldman, and Paul Berry, a former roommate of President Clinton, "to [Arkansas] to meet [with] Beverly Bassett."[973] Mr. Waldman recalled that the

officials discussed "sending people down to talk to" Ms. Schaffer.[974] Mr. Berry, a lobbyist for Union National Bank of Little Rock, had instructed Harry Don Denton, the Bank's loan officer, to make a $20,000 Whitewater loan to Bill Clinton in 1978 because he was "an up and coming political star;"[975] Mr. Denton testified that he would not have made the loan absent Mr. Berry's urging.[976]

At a second January 7 meeting, senior White House officials expressed a sense of urgency about Ms. Schaffer's story beyond simple concern over a misperception in the press.[977] According to Mr. Gearan's notes, Mr. Ickes exclaimed: "[Beverly] Bassett is so f—— important. [I]f we f—- this up, we're done."[978] Mr. Ickes added, "[L]et's not talk it to death-let's just get it done."[979]

Mr. Ickes and Mr. Gearan both claimed that Ms. Schaffer's story "was so f——— important" because the White House did not want "to misstate anything."[980] Neither could recall the meaning of Mr. Ickes' comment "let's get it done."[981] Mr. Eggelston recalled, however, that "people recognize[d] that if [Ms. Schaffer] were suddenly to change what she had said publicly . . . and change her story about it, that would be a bad development."[982] Mr. Eggleston confirmed that senior White House officials were concerned that Ms. Schaffer would "change" her "story."[983]

After the discussion of Ms. Schaffer's importance, the senior White House officials again discussed sending an emissary to Ms. Schaffer.[984] Although Mr. Ickes rejected the earlier idea to send Messrs. Berry, Waldman, and Lindsey because "it will come out,"[985] he still wanted someone to go over her statement "item by item" to "make sure her story is [okay]."[23] [986]

The senior White House officials feared that the press might discover that the White House had dispatched operatives to contact Ms. Schaffer and the appearance of impropriety.[987] Mr. Ickes was concerned that such a contact could "create an appearance that there was an effort to influence her."[988]

Both Mr. Ickes and Mr. Gearan denied that a decision was made to send someone to see Ms. Schaffer to "make sure her story is ok."[24] [989] In the end, the White House decided not to "send people who were connected with the White House to talk to Ms. Schaffer."[990] Mr. Ickes claimed: "As far as I know, no one was sent from the White House to talk to Ms. Schaffer."[991]

Within a week of the January 9, 1994 meeting, however, at least two attendees reached out to Ms. Schaffer.[25] According to an Associated Press article, Ms. Schaffer resisted pressure from Messrs. Lindsey, Begala, and Rutherford to hold a press conference in 1994 concerning her contacts on Madison's preferred stock offering.[992]

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[23] Instead of sending someone connected with the White House, the defense team discussed sending John Tisdale, Mr. Lindsey's former law partner; Skip Rutherford, a 1992 Clinton presidential official who continued to informally assist the White House regarding public relations aspects of Whitewater; a New York lawyer friend of Paul Begala; and Jack Quinn, Chief of Staff to Vice President Gore. (Rutherford, 2/29/96 Dep., pp. 5–10, 21–23; White House Document S020577.)

[24] Mr. Ickes notes of the Whitewater Response Team tasking memorandum included the task of researching whether the President used pressure to aid Madison Guaranty—one of the issues involving Ms. Schaffer's actions. (Ickes, 2/22/96, Hrg. pp. 86–87.)

[25] In addition to contacts with persons from Arkansas, the Schaffers attended a movie at the White House on January 28, 1994 at 8:30 p.m. Attendees included, among others, the President, the First Lady, Mr. Lindsey, and Paul Berry, a close friend and confidant of the President. Mr. Berry was also a close friend of the Schaffers and has known the Bassett family since the early 1950s. (Berry, 5/10/96, Dep. p. 59.)

In January 1994, Ms. Schaffer spoke to John Tisdale, the Clintons' attorney in Little Rock, and he suggested that she help prepare a chronology for the White House.[993] In the second week of January 1994, Mr. Tisdale forwarded a series of memoranda to Mr. Lindsey.[994] It is unclear whether Mr. Lindsey had requested that these memoranda be prepared. A January 13, 1994 memorandum reflects communications between Mr. Tisdale's firm and Ms. Schaffer.[995] It includes the background of Ms. Schaffer's dealings with Mrs. Clinton and "is based on our discussions with [Ms.] Schaffer."[996]

Also in January 1994, Skip Rutherford, a public relations advisor to the White House on Whitewater-related matters, contacted Ms. Schaffer and her husband, Archie, to discuss the possibility that Ms. Schaffer might hold a press conference.[997] Ms. Schaffer stated that while Mr. Rutherford did not specifically indicate he was calling on behalf of the White House, she was aware that Mr. Rutherford was "helping" Chief of Staff McLarty in some capacity.[998] Deputy Chief of Staff Ickes denied knowledge of Mr. Tisdale's or Mr. Rutherford's contacts with Ms. Schaffer.[999]

At the same time that White House officials were meeting twice daily to coordinate the Whitewater defense effort, Betsey Wright, the 1992 Deputy Campaign Director and longtime associate of the President, travelled to Little Rock from Washington, D.C. Although Ms. Wright testified that she went to Little Rock to collect documents, she claimed that she was not asked by anyone at the White House to travel to Little Rock. Rather, Ms. Wright testified that she took it upon herself to collect these documents.

Ms. Wright contacted Mr. Lindsey, Mr. Podesta, and Mr. Kendall and informed them of her intention to travel to Little Rock,[1000] and that the purpose of her trip was to collect campaign finance records.[1001]

When asked why she went to Little Rock, Ms. Wright said, "I was trying to pull together—we kept getting the—the White House and I kept getting press questions about some campaign finance questions."[1002] Ms. Wright testified that the documents would be a "handy reference" and could be used in Washington to ensure that she was speaking with a higher degree of factual understanding.[1003]

While in Arkansas searching through the documents, which were under the control of the Democratic National Committee, she "located a box that when I opened it up it was Whitewater documents, and I brought it back to DC and gave it to Mr. Kendall."[1004] Ms. Wright also retrieved and made copies of the appointment files for Ms. Schaffer and gave those files to Mr. Kendall.[1005] In total, Ms. Wright testified that she had thirteen or fourteen boxes of documents shipped to her from Little Rock.[1006]

On January 6, after locating the documents at the storage facility, Ms. Wright called Mr. Lindsey.[1007] On January 6 or 7, Ms. Wright spoke with Mrs. Clinton.[1008] The First Lady said to Ms. Wright, "there is going to be an independent or special counsel. You need to get a lawyer. And that's how you should handle these documents."[1009]

C. The Whitewater Response Team assigns defense tasks to White House officials

Records of the January Whitewater Response Team meetings reflected specific tasks assigned to the various members of the team.[1010]

Many of these assignments focused on the possible appointment of a special counsel, including the legal, historical, and practical aspects of appointing a special counsel. For example, a memorandum to the "Whitewater Group" from Mr. Ickes, dated January 10, 1994, assigned "2–3 page argument why no special counsel" to the White House Counsel's Office and Michael Waldman.[1011] In addition, however, there were a number of assignments related to the factual and legal issues involving Whitewater. Mr. Ickes claimed that this was all part of the White House effort to respond to press inquiries, but many of the tasks involved the Clintons' private legal defense issues. For example, "synopsis of Whitewater/Madison Guaranty matter" was assigned to the White House Counsel's office, Bruce Lindsey and Mr. Waldman, and "Memo re failure to take deduction on tax return for Whitewater losses" was assigned to Mr. Waldman.[1012] Mr. Ickes also tasked Mr. Waldman to contact Chris Wade, the Whitewater real estate agent, to obtain Whitewater documents.[26]

Finally, Mr. Ickes assigned to the White House Counsel's Office a legal memorandum on the statute of limitation for civil actions to be brought against Mrs. Clinton or the Rose Law Firm in relation to the legal representation of Madison Guaranty. Obviously, this legal memorandum did not relate to press inquiries nor did it relate to the White House Counsel's appropriate role in representing the United States Government. Rather, it was legal analysis to assist President and Mrs. Clinton. After Mr. Eggelston drafted the memorandum, Mr. Ickes forwarded it to Mrs. Clinton.

VI: The Retention and Investigation of Pillsbury Madison & Sutro

In November 1993, Congress enacted the RTC Completion Act of 1993,[1013] which extended the statute of limitations period for the RTC to initiate civil suits against failed savings and loans to February 1994. The statute extended the limitations period only for claims arising from fraud, or from intentional misconduct resulting in unjust enrichment or in substantial losses to the institution.[1014]

On February 4, 1994, the RTC issued an Order of Investigation into potential civil claims against Madison Guaranty. This investigation was intended to determine whether the RTC could bring civil claims against "former officers, directors or others who provided services to, or otherwise dealt with, Madison Guaranty."[1015]

In January 1994, the RTC's General Counsel, Ellen Kulka, decided that the RTC should retain outside counsel to investigate any potential civil claims against Madison Guaranty,[1016] and she selected the law firm of Pillsbury, Madison & Sutro (the "Pillsbury Firm") as outside counsel.[1017] RTC Counsel told Ms. Kulka that Charles E. Patterson and Jay Stephens, former United States At-

[26] Mr. Wade produced documents to the Special Committee, but exercised his Fifth Amendment right against self-incrimination when the Special Committee sent him a subpoena *ad testificandum.*

torney for the District of Columbia, were two of the three partners at the Pillsbury Firm whom they anticipated would handle the investigation.[1018]

A. The White House expresses concern over the retention of Jay Stephens

By February 1994, senior White House learned that the RTC had hired the Pillsbury Firm and Mr. Stephens to investigate Madison Guaranty. On February 25, 1994, George Stephanopoulos, Senior Advisor to the President, and Joshua Steiner, Chief of Staff to Treasury Lloyd Bentsen, discussed the RTC's decision to hire Mr. Stephens.[1019] According to Mr. Steiner, Mr. Stephanopoulos was "angry" and raised his voice during the conversation.[1020] Mr. Stephanopolous told Mr. Steiner that Mr. Stephens should be disqualified from handling the matter because Mr. Stephens had been a critic of the Clinton Administration.[1021]

Jean Hanson, General Counsel to the Department of Treasury, testified that Mr. Steiner subsequently told her: "[D]o you believe those guys, they want to see if they can get rid of Jay Stephens."[1022] Ms. Hanson understood that "those guys" referred to various senior White House officials.[1023] Ms. Hanson further testified that on a separate occasion Mr. Steiner expressed the view that Ms. Kulka should be fired for hiring Mr. Stephens.[1024]

> In his diary, Mr. Steiner described his conversation with Mr. Stephanopolous:
>
> Simply outrageous that RTC had hired him [Stephens], but even more amazing when George then suggested to me that we needed to find a way to get rid of him. Persuaded George that firing him would be incredibly stupid and improper.[1025]

Subsequently, Mr. Steiner disavowed his diary entry, claiming that he merged two conversations in one entry.[1026]

B. Mr. Stephens is removed from the RTC investigation

Mr. Stephens was included in Pillsbury's initial proposal to the RTC as one of the three partners in charge of the matter.[1027] During the early stages of the investigation in February 1994, Mr. Stephens attended meetings and was in daily contact with the RTC.[1028]

However, after numerous press reports describing Mr. Steiner's conversation with Mr. Stephanopolous appeared in the third week of March 1994, Mr. Stephens' role "diminished substantially and probably by the summer of '94, [he] was virtually disengaged from the matter."[1029] Billing records of the Pillsbury Firm confirm that Mr. Stephens' work on the matter dropped off significantly.

After March 1994, Mr. Stephens was told that it was no longer necessary for him to attend meetings with the RTC in Washington, D.C.[1030] In addition, the documents relating to the investigation were moved from the Pillsbury Firm's Washington D.C. office, where Mr. Stephens resided, to its West Coast offices in Los Angeles and San Francisco.[1031]

After March 1994, Mr. Patterson, the partner in charge of managing the Madison Guaranty investigation, did not assign any fur-

ther work to Mr. Stephens.[1032] Mr. Stephens did not draft the reports eventually submitted to the RTC and has no basis for either agreeing or disagreeing with any of the conclusions of the reports.[1033] Mr. Stephens did not attend any presentations to the RTC about the findings in the reports.[1034] Mr. Stephens conducted no depositions and no witness interviews, except for one interview relating to a request for documents.[1035]

Mr. Patterson spoke to Mark Gabrellian, Counsel to the RTC Legal Division, about Mr. Stephens' diminished role, but denied that anyone at the RTC asked him to remove Mr. Stephens from the case.[1036] He did, however, advise Bruce Ericson, the billing partner on the Madison investigation, that Ms. Kulka had disliked something that Mr. Stephens had said during a meeting. Mr. Patterson had the impression that "there was a personality conflict" between Mr. Stephens and Ms. Kulka.[1037] Mr. Gabrellian similarly testified that Ms. Kulka and Mr. Stephens "were not getting along all that well."[1038] Ms. Kulka admitted that she discussed Mr. Stephens with Mr. Patterson, but claimed that her only concern was with the quality of Mr. Stephens' work.[1039]

C. The White House makes inaccurate claims about the Pillsbury report

Although Mr. Stephens was removed from the Madison Guaranty investigation, the RTC still wanted Mr. Stephens to review and approve the final version of the reports in December 1995. Mr. Stephens, however, refused to do so:

> Well in fact the RTC asked me to read the reports when the reports were filed in December, I declined to do that because I had not been involved in the engagement, I thought it was improper and inappropriate for me to review those reports simply so the RTC could have my imprimatur on those reports.[1040]

Mr. Ericson confirmed that Mr. Stephens had no involvement in the handling of the matter after the summer or at the latest fall 1994—over one year prior to the completion of the final reports.[1041]

Moreover, on May 17, 1996, in a hearing before the Special Committee, Mr. Patterson and Mr. Ericson both admitted that Mr. Stephens did not "head the inquiry."[1042] Both partners also agreed that statements indicating that the report was "written by Republican Jay Stephens" are entirely baseless and inaccurate.[1043] The following exchange occurred at the Special Committee's hearings with lawyers from the Pillsbury firm:

> Senator D'Amato: Let me read to you from the Chicago Sun Times. . . . Dated January 21st [1996] . . . Headline: Facts Fight Fiction Over Whitewater.
>
> Mr. Patterson: Yes.
>
> Senator D'Amato: What's the byline?
>
> Mr. Patterson: Hillary Clinton.
>
> Senator D'Amato: Let me take you down to the last sentence in the first page. You want to start reading that?
>
> Mr. Patterson: Would you like me to read it Senator?
>
> Senator D'Amato: Yes, please.

> Mr. Patterson: Since most Americans never heard about this report, let me fill you in.
>
> Senator D'Amato: This is referring to the report that your, this is the Pillsbury, Madison & Sutro report. Go ahead.
>
> Mr. Patterson: It was conducted by the RTC by one of the nation's leading law firms, Pillsbury, Madison & Sutro. It took more than two years to complete and cost nearly $4 million. A prominent republican, former U.S. Attorney, Jay Stephens, headed the inquiry.
>
> Senator D'Amato: Mr. Stephens, did you head this inquiry?
>
> Mr. Stephens: No, I did not.
>
> Senator D'Amato: Mr. Patterson, did he head the inquiry?
>
> Mr. Patterson: No, he did not Senator.
>
> Senator D'Amato: Mr. Ericson, did he head the inquiry?
>
> Mr. Ericson: No.[1044]

Indeed, after Mr. Stephens was identified in public statements as the author of the reports, he raised the following concern:

> On one or two occasions, I probably raised I believe most likely with Mr. Ericson, some concern that I had that the factual record wasn't clear or that I felt it was a little inappropriate that somehow or other either I was getting the credit or the blame for the reports, since I hadn't written the reports.[1045]

However, "the sense was the client [the RTC] did not want to get involved in making public statements about the firm's involvement." [1046]

Contrary to White House claims, the final report of the Pillsbury firm did not exonerate the Clintons. The Pillsbury investigation focused only on the narrow question whether it would be cost-effective for the RTC to bring any civil lawsuits against Madison to recover damages arising from the S&L's failure.[1047] The authors of the Pillsbury report—Mr. Patterson and Mr. Ericson—testified that the reports do not exonerate anyone.[1048] As Mr. Ericson put it, "I don't think our reports exonerated anybody of anything." [1049]

After reviewing a draft of the supplemental Whitewater Report in November 1994,[1050] Mr. Stephens told Mr. Ericson that the report did not consider the "totality of the issues related to Madison because it was looking at Whitewater in isolation rather than looking at sort of the mosaic of real estate transactions that Madison was involved in and how Whitewater might tie in or relate to that." [1051]

> I believe I made some general comment that in my reading through the report that it either didn't highlight or didn't focus on the potential liability that might arise from a difference of equity participation by the partners in the Whitewater venture. . . . And in doing that, the partners still maintain the same general equitable interest in the, or legal interest in the partnership, and as a consequence, one partner was benefitting substantially by the financial

> contributions of the other, and that there may be some issue that really raised a question about liability.[1052]

Mr. Stephens further told Mr. Ericson the Pillsbury Firm should interview more witnesses who "might have added perspective or input in trying to understand those transactions."[1053] According to Mr. Stephens, the report was essentially "an accounting analysis."[1054]

Pillsbury never examined many witness. Some asserted their Fifth Amendment right not to testify: James and Susan McDougal, the Clintons' Whitewater business partners, Jim Guy Tucker, Chris and Rosalee Wade, Whitewater real estate agents.[1055] The OIC asked Pillsbury not to interview John Latham, President and CEO of Madison Guaranty, or David Hale, President of Capital Management Services, Inc.[1056]

Other witnesses who provided important testimony to the Special Committee, however, were simply not contacted by the Pillsbury firm.[1057] Because of the limited scope of Pillsbury's representation, there were a number of areas that they did not explore, and therefore a number of witnesses that the Pillsbury Firm did not interview. For example, the Pillsbury Firm did not interview many of the bankers involved in making or extending the Whitewater loans.[27]

PART III. WHITE HOUSE INTERFERENCE WITH CONGRESSIONAL INQUIRIES

I. Mr. Ickes Provided Incomplete and Inaccurate Testimony to the Senate Banking Committee

Before the Senate Banking Committee in summer 1994, Mr. Ickes testified that he and other senior White House officials did not discuss the statute of limitations for Madison-related civil claims prior to February 2, 1994. Documentary evidence obtained by the Special Committee indicates, however, that, in January 1994, Mr. Ickes and other White House officials were concerned about and discussioned when the statute of limitations would run

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[27] Meanwhile, Frank Burge, James Patterson, and Robert Ritter, all of whom were Presidents of Citizen's Bank of Flippin ("Citizen's Bank") at one time during the existence of the Whitewater loan, provided substantial testimony to the Special Committee on the initial Whitewater loan made by Citizen's Bank. Mr. Burge testified that the Clintons and the McDougals never notified Citizen's Bank that the $20,000 down payment on the Whitewater loan was borrowed from another bank, Union National Bank, and, thus, Citizen's Bank was not aware that the Clintons and McDougals invested no money into the original mortgage. (Burge, 5/8/96 Hrg. pp. 19–20.)

Mr. Ritter testified that he had two meetings with Mrs. Clinton between 1979 and 1982 about the Whitewater mortgage. Mr. Ritter testified that Mrs. Clinton asked several questions about the loans and interest rates and seemed quite knowledgeable about the transaction. (Ritter, 5/8/96 Hrg. pp. 34–35.)

Paul Berry and Donald Denton, Senior Vice Presidents of Union National Bank, also provided illuminating testimony to the Special Committee. Mr. Berry testified that President Clinton approached him about making the $20,000 loan for the down payment on the Whitewater property. Mr. Denton testified that either Mr. Berry, or another bank official, instructed him to make the $20,000 unsecured loan—against his better judgment. (Denton, 5/8/96 Hrg. p. 66.)

After the discovery of the Rose Law Firm billing records in the White House Residence in January 1996, the FDIC Inspector General reexamined Mr. Denton. His memory refreshed, Mr. Denton specifically recalled an April 7, 1986 telephone conversation with Mrs. Clinton relating to Castle Grande, a sham transaction. During the conversation, Mr. Denton cautioned Mrs. Clinton that the transaction may pose a problem because they could violate an Arkansas banking regulation. According to Mr. Denton, Mrs. Clinton "summarily dismissed" Mr. Denton's warning. She replied in a manner he took to mean that "he would take care of savings and loan matters, and she would take care of legal matters." (Denton, 6/11/96 FDIC–OIG Interview, p. 3.)

on possible civil claims the RTC might bring against the Mrs. Clinton and the Rose Law Firm.[1058]

In January 1994, considerable public interest existed in issues relating to Whitewater and Madison. The RTC was investigating possible civil claims arising from the $60 million failure of Madison, and on January 20, 1994, a Special Counsel was appointed to investigate possible criminal conduct relating to Whitewater and Madison. The statute of limitations for Madison-related civil claims involving fraud or intentional misconduct was scheduled to expire on February 28, 1994. On February 12, 1994, Congress enacted Public Law 103–211, which extended the statute of limitations to December 31, 1995.

Prior to the extension of the statute of limitations, the RTC had to decide by February 28, 1994, whether to bring suit, to seek tolling agreements, or to allow the statute to expire without action. Because President and Mrs. Clinton faced potential liability relating to the failure of Madison, information regarding the status of the RTC investigation and its deliberations with respect to the statute of limitations was valuable to the Clintons in their defense effort.[1059]

During its 1994 investigation, the Senate Banking Committee examined the state of knowledge of White House officials in January 1994 with respect to the statute of limitations for Madison-related civil claims.[1060] Mr. Ickes testified about a meeting on February 2, 1994, between senior White House officials and Roger Altman, then Deputy Secretary of the Treasury and Acting Chief Executive Officer of the RTC, and Jean Hanson, General Counsel to the Department of the Treasury.[1061] With respect to discussions about the statute of limitations at that meeting, Mr. Ickes testified: "I, for one, had little knowledge, if any knowledge, about the situation." [1062]

Similarly, when asked by the Inspectors General of the Treasury Department and the RTC about this same February 2, 1994, meeting, Mr. Ickes testified: "Mr. Altman, as I recall, raised the issue of the upcoming—the possible—well, not the possible, but the fact that the statute of limitations, which I knew nothing about at the time, of the RTC in connection with an investigation that was apparently being conducted by the RTC on Madison Whitewater was about to expire." [1063] Mr. Ickes emphasized that White House officials had no knowledge of the statute of limitations issue: "There were questions about the statute of limitations, when it expired, under what conditions it expired. I don't think anybody in the room other than Mr. Altman and Ms. Hanson had a clear picture of what the statute of limitations situation was." [1064]

Evidence uncovered by the Special Committee shows, however, that in January 1994, Mr. Ickes assigned and received a memorandum on the statute of limitations for Madison-related civil claims. Moreover, he discussed the issue with other senior White House officials prior to the February 2 meeting with Mr. Altman and Ms. Hanson.

Among the evidence newly uncovered by the Special Committee is a memorandum to Mr. Ickes from W. Neil Eggleston, Associate Counsel to the President, entitled "Statute of Limitations in Actions Brought by the Conservators of a Financial Institution." [1065]

The memorandum, dated January 17, 1994, discussed the statute of limitations generally applicable to claims filed by the RTC on behalf of failed thrift institutions. More important, Mr. Eggleston's memorandum discussed the statute of limitations as applied specifically to Madison and identified March 2, 1994,[28] as the final date for the RTC to file civil tort claims on behalf of Madison, the type of action usually brought against outsiders in financial institution cases.[1066]

On February 20, 1996, the White House produced to the Special Committee memoranda from Mr. Ickes to the "Whitewater group," dated January 9 and January 10, 1994. Both memoranda, which recorded assignments for various White House officials on matters related to Whitewater, listed the following item:

> "11. Memo re statute of limitations for civil actions (counsel—assigned 1/8)" [1067]

These documents thus indicate that Mr. Ickes assigned Mr. Eggleston to research and write a memorandum on the statute of limitations issue, which Mr. Eggleston completed and submitted to Mr. Ickes on January 17, 1994.

Also on February 20, 1996, the White House produced to the Special Committee notes taken by Mr. Ickes of a Whitewater meeting at the home of Vernon Jordan.[1068] This meeting took place on January 16, 1994, proximate to Mr. Eggleston's memorandum to Mr. Ickes and before the February 2, 1994, meeting with Mr. Altman and Ms. Hanson.

Although Mr. Ickes testified that "I can only recall what I have on my notes," [1069] the notes indicate that the statute of limitations was one of three topics of discussion at the meeting. Those notes read in relevant part:

> "(2) Statute of limitations
> —no allegation that Clintons have broken any law & therefore
> —we don't know what civil refers to
> —always exception for fraud" [1070]

The documentary evidence thus contradicts Mr. Ickes' prior testimony that he did not discuss the statute of limitations issue prior to February 2, 1994.

In addition, Mr. Ickes testified to Senate Banking Committee in July and August 1994 that he did not know whether two memoranda detailing the potential liability of the President and Mrs. Clinton to the RTC had been sent to Mrs. Clinton. The Special Committee has discovered, however, evidence indicating that, at about the same time of Mr. Ickes' testimony, his attorney, presumably based on information from Mr. Ickes, informed the White House Counsel's office that Mr. Ickes had indeed sent the memo-

[28] Mr. Eggleston incorrectly identified March 2, 1989, as the date on which the statute of limitations began to run for Madison-related civil claims. The RTC was appointed conservator of Madison on February 28, 1989, and actual intervention occurred on March 2, 1989. The statute of limitations began to run on "the date of the appointment of the Corporation as conservator or receiver." 12 U.S.C. § 1821(d)(14)(B)(i) (1995).

randa to Mrs. Clinton and that Mrs. Clinton had asked him questions about the memoranda.[1071]

II. The White House Interfered with Treasury IG and RTC IG Investigations into White House-Treasury Contacts

On March 3, 1994, in response to the public disclosure of possible improper contacts between Treasury and White House officials concerning the RTC criminal referrals, Treasury Secretary Lloyd Bentsen publicly announced that he would seek an opinion from the Office of Government Ethics ("OGE") about the propriety of those contacts.[1072] When Secretary Bentsen contacted the OGE about conducting an investigation, the OGE informed him that the agency had no investigation capability, but could opine on the propriety of certain conduct if provided with the factual background.[1073] The OGE suggested that an investigation into the relevant facts be conducted by the RTC's Office of Inspector General ("RTC–IG") and the Treasury Department's Office of Inspector General ("Treasury IG") (collectively "IGs").[1074] Secretary Bentsen then requested that the IGs conduct an "independent" investigation of contacts.

Thus, on July 1, 1994, the RTC–IG and the Treasury IG commenced a joint investigation of the White House-Treasury contacts.[1075] The joint IG investigation included examining White House, Treasury Department and RTC officials to determine "what the purpose of these contacts between the Treasury officials was, whether or not the purpose of the contact was to further some public interest or some private interest." [1076]

A. Independence of IG investigation is compromised

On June 22, 1994, prior to the commencement of the joint IG investigation, James Cottos, the Assistant Treasury IG in charge of the investigation, expressed concerns to the Acting Treasury IG Robert Cesca about involvement in the investigation by Francine Kerner, the Treasury IG Counsel.[1077] Specifically, Mr. Cottos indicated that there might be a conflict because Ms. Kerner, a member of the Treasury's Office General Counsel ("Treasury OGC"), reported to Deputy Treasury General Counsel Dennis Foreman and to Treasury General Counsel Jean Hanson—the persons whose actions were at issue in the investigation.[1078] Mr. Cottos believed that because Ms. Kerner's overall evaluation would be performed by the Treasury OGC's—the very office being investigated—she might have divided loyalties.[1079]

Others involved in the investigation shared Mr. Cottos' concerns about Ms. Kerner's independence. Clark Blight, the chief investigator for the RTC–IG, testified that, "[e]arly on it seemed like she was an advocate for the White House." [1080] Patricia Black, Counsel to the RTC–IG, testified that she "had concerns because she [Kerner] was located organizationally within the Office of General Counsel, and this was an investigation of the highest ranking members of that office.[1081] And John Adair, the RTC Inspector General, was sufficiently concerned about Ms. Kerner's involvement in the investigation that on or around June 2, 1995, he called Acting Treasury IG Robert Cesca, to suggest that Ms. Kerner be removed from the case. Mr. Adair suggested that Ms. Black act as counsel for both offices.[1082] Because, unlike Ms. Kerner, Ms. Black

had no potential conflicts of interests since she was not in a reporting chain with anyone whose conduct was a subject of the investigation.

Although Mr. Cesca refused to remove Ms. Kerner from the investigation, he recognized the need to insulate the investigation from the influence of the Treasury OGC. On June 27, 1994, Mr. Cesca sent a memorandum to Ms. Hanson stating that Ms. Kerner and her staff would "report solely to the Inspector General on any matters relating to the investigation." [1083] In addition, neither Ms. Kerner nor her staff were to "communicate any information about the substance of this inquiry without specific authorization from the Inspector General." [1084] Assistant Treasury IG James Cottos was not satisfied, however, that the terms of the June 27, 1994 memorandum would protect against actual or perceived conflicts of interest related to Ms. Kerner's participation in the investigation, because her overall evaluation "would still be done by the general counsel's office." [1085]

Mr. Cottos became even more concerned about Ms. Kerner's participation in the investigation when he learned that during the course of "three or four" witness interviews, attorneys for witnesses told the IG investigators that they had reached agreements with Ms. Kerner limiting the scope of interviews.[1086]

Ms. Kerner's interaction with witnesses' attorneys raised questions. For example, on July 11, 1994, at 10:44 p.m. the night before the deposition of Treasury Chief of Staff Joshua Steiner, a central figure in the investigation, Ms. Kerner sent an e-mail to Mr. Cottos with proposed questions for the interview.[1087] Ms. Kerner was scheduled to meet with Mr. Steiner's attorney, Reid Weingarten, 15 minutes later, at 11:00 p.m. that same night.[1088] Ms. Kerner did not specifically recall meeting with Mr. Weingarten on the night of July 11th, but she testified that she did have two meetings with him.[1089] Ms. Kerner could not explain why she met with Mr. Weingarten at 11:00 p.m. the night before Mr. Steiner's deposition.

Mr. Cottos knew that Ms. Kerner had met with Mr. Steiner's attorney but he was not aware that she had met with him *after* she had suggested deposition questions to him by e-mail. When he was informed about the timing of the meeting, Mr. Cesca admitted that if she had met with Mr. Weingarten shortly after sending the e-mail, "there is a perception that there could be a compromise." [1090]

Meanwhile, on June 30, 1994, the Assistant Treasury IG James Cottos, Chief Investigator for RTC–IG Clark Blight and their respective investigative staffs learned that Treasury OGC officials wanted to obtain copies of witness interview transcripts to assist in preparing Treasury witnesses prepare for upcoming congressional hearings. According to Mr. Blight, there was "a general agreement on the investigative side that the transcripts would be kept with the investigators, would not be released. And that it is my recollection that Cottos was supportive of that." [1091]

Despite this agreement the Treasury OGC began to receive deposition transcripts form Ms. Kerner in early July. According to Assistant General Counsel Kenneth Schmalzbach, Ms. Kerner provided deposition transcripts to him sometime between July 8, 1994 and July 13, 1994.[1092]

This exchange took place even though Mr. Schmalzbach and Ms. Kerner both knew that the June 27, 1994 memorandum had erected a "wall" with respect to Ms. Kerner's communication to the Treasury OGC.[1093] According to Mr. Cottos, Ms. Kerner was not supposed to communicate with members of the Treasury OGC about the transcripts.[1094].

Because the transcripts contained information about the "substance" of the investigation, this transfer of information from Ms. Kerner to Treasury OGC directly violated the terms of the June 27 memorandum. According to RTC–IG John Adair, the transcripts contained 90% of the substance of the investigation[1095], including sensitive information about the ongoing investigation.[1096]

Ms. Kerner made this prohibited exchange of confidential RTC information without asking any of the other investigators, including Acting Treasury Inspector General Cesca, who only learned that the transcripts were forwarded to the Treasury OGC on July 18, 1994, when Ms. Kerner transferred the transcripts to Mr. Schmalzbach.[1097] Mr. Cottos similarly was not informed about the transfer until July 18.[1098] Neither Mr. Cottos nor Mr. Cesca recalled any conversation with Ms. Kerner about transferring transcripts to the Treasury OGC prior to July 18,[1099] and Mr. Cottos testified that he had objected to providing any transcripts to the Treasury OGC.[1100] This transfer violated the terms of the June 27th memorandum.

Members of the RTC–IG's office working on this "joint" and "independent" investigation were not consulted about Ms. Kerner's surrender of the confidential deposition transcripts to Ms. Hanson's staff.[1101] The RTC–IG was not told about the transfer of the transcripts to the Treasury OGC until they were delivered.[1102] In fact, RTC–IG John Adair had a conversation with Ms. Kerner on July 19, 1994 and she failed to mention the previous day's release of the transcripts to the Treasury OGC.[1103] Mr. Blight, Chief Investigator for the RTC–IG, was surprised that the Treasury OGC had received copies of the transcripts, because he thought that the investigative staffs had agreed during the June 30, 1994 meeting that "nothing would be released until we had a final report."[1104] According to Ms. Black, transferring transcripts to the office that was under investigation violated standard investigatory procedures[1105]: "One the investigation was not complete and as everybody has said, was still open, and the second concern that I had was that the transcripts had privileged information in them . . . information concerning the underlying RTC criminal investigation."[1106]

Mr. Schmalzbach and other members of the Treasury OGC prepared Treasury Secretary Bentsen and other Treasury witnesses, including Mr. Altman and Ms. Hanson, for Congressional testimony.[1107] Mr. Schmalzbach first gained access to Ms. Hanson's deposition transcript "sometime after July 8 but before July 13."[1108] The Senate Banking Committee deposed Ms. Hanson on July 14, 16 and 17, 1994.

Mr. Schmalzbach admitted that he attempted to obtain information from the IGs' investigation and fact finding, and to provide that information to the Treasury witnesses so they could prepare for Congressional testimony.[1109] He further admitted that he knew Mr. Foreman and Ms. Hanson were to be "walled off," but believed

he could use the transcripts to prepare Mr. Foreman and Ms. Hanson without advising them of the source of his information.[1110] Mr. Altman's testimony as to whether he was told that President Clinton was upset about the manner of his recusal changed between the time of his deposition and his hearing testimony.[1111]

The supposedly "independent report" submitted by the IGs to the OGE was edited by Treasury OGC. On July 22, 1995, Acting Treasury Inspector General Cesca sent an initial draft of the joint IG report—the report that would provide the factual basis for the OGE opinion—to Treasury Secretary Bentsen.[1112]

During the drafting process, Mr. Cottos identified signs of bias on the part of Ms. Kerner toward the investigation of Ms. Hanson and others in the Treasury OGC.51113 Ms. Kerner edited the draft IGs report.[1114] Mr. Cottos felt that Ms. Kerner's proposed edits "were slanting the facts or attempting to slant the facts that we had gathered in the initial draft."[1115] Mr. Cottos explained to Ms. Kerner "that we were not the Jean Hanson defense team."[1116] After the OGC obtained a draft of the IGs report, Stephen McHale, Deputy Assistant General Counsel, and two other OGC members sent suggested changes to Ms. Kerner,[1117] and she then sent them to the IGs.[1118]

The suggested edits of the Treasury OGC were offered at a drafting session held by the IGs on July 28, 1995.[1119] Ms. Kerner claimed that at the meeting she identified these as "some suggested edits from Mr. Schmalzbach's office."[1120] According to Mr. Cottos, Ms. Kerner did not state that the suggestions were made by the OGC, but rather that the suggested changes were her own.[1121]

Counsel to the RTC–IG Black was disturbed when she learned what had happened because, "again information had gone outside the investigation." Ms. Black stated that the IGs do not normally give a report to a general counsel's office for commentary.[1122]

Treasury Secretary Bentsen was not aware that members of the Treasury OGC took advance copies of the transcripts or the draft report, or made substantive changes to the draft report that the IGs sent to the OGE.[1123]

At the July 28 meeting, the IGs also agreed that, although the transcripts would be appended to the final report submitted to the OGE, all confidential information concerning the RTC criminal referrals would be redacted.[1124] During the meeting, Ms. Kerner left twice to call Mr. Schmalzbach to inform him that the RTC–IG was insisting that the transcripts be redacted before any public release.

Ms. Kerner also called Mr. Schmalzbach to warn him that Ms. Kulka, General Counsel to the RTC, was threatening to testify that the investigation had come under the sway of the Treasury Secretary's office. In an e-mail to Edward Knight, Secretary Bentsen's Executive Secretary, at 10:44 a.m. on July 28, Mr. Schmalzbach reported:

> I just heard from IG Counsel Francine Kerner, who is meeting with RTC IG people to determine final changes in the IG's chronology. At 11:30, that group will meet with Ellen Kulka, who is expected to argue that the transcripts of the IG's interviews should not be released at all with the IG's report . . . Accordingly you need to place the call

> to Jack Ryan, the deputy CEO at RTC, and not to Jack Adair . . . You also need to be aware of a piece of background. Counsel to RTC's IG, Pat Black, is telling the morning's gathering of the IG people working on the report that if Kulka fails to win on the issue of not making the transcripts public, she is prepared to testify at the hearings that the IGs group has been under the sway of the Secretary in performing their investigation.[1125]

Ms. Kerner admitted that Ms. Black advised her of Ms. Kulka's threat to reveal that the joint IG investigation was under the Treasury Secretary's sway, but she claimed that she did not recall contacting Mr. Schmalzbach to warn him.[1126]

B. Confidential information is provided to the White House

Meanwhile, President Clinton named Lloyd Cutler as Special Counsel to the President to replace Bernard Nussbaum, who had resigned from the position of White House Counsel. The President and White House Chief of Staff Mack McLarty instructed Mr. Cutler to conduct an internal investigation of the propriety of the conduct of White House personnel in connection with the White House-Treasury contacts.[1127]

On June 21, 1994, Secretary Bentsen met with Mr. Cutler and agreed to share information gathered during the joint IG investigation with the White House.[1128] Mr. Cutler indicated to Treasury Secretary Bentsen that the White House would like to obtain all of the IGs' interview transcripts, not just the transcripts of witnesses that the White House did not interview.[1129] Mr. Cutler would coordinate the exchange of transcripts through Mr. Knight or by other members of Mr. Cutler's staff with Treasury Secretary Bentsen's staff.[1130] Although Secretary Bentsen admitted that he had ordered the investigation to be under the control of the IGs, he had two or three meetings with Mr. Cutler about providing transcripts, and he "assured" Mr. Cutler that the Treasury would provide the transcripts to the White House in an expedited manner.[1131]

Mr. Knight testified that he was not aware that Mr. Cutler made a request to Secretary Bentsen to receive copies of the transcripts.[1132] Mr. Knight specifically stated that "as far as requests [for transcripts] coming to me or the Secretary, I am aware of none."[1133] Mr. Knight also denied that he had any discussions with anyone in the White House Counsel's Office about the transcripts in July of 1994.[1134] He went as far to say that, "I think I have a fairly good recollection of when I talked to the counsel to the President of the United States. I have no recollection of talking to him during the month of July. Absolutely none."[1135]

Mr. Knight's testimony, however, was contradicted both by the documentary evidence and the testimony of Mr. Cutler.[29] When asked about a July 5, 1994 meeting between the White House Counsel's Office, OGE, RTC–IG and Treasury IG—a meeting at which White House Special Associate Counsel Jane Sherburne

[29] Phone logs kept by Mr. Cutler's office indicate that Mr. Knight called Mr. Cutler on July 15, 1994 and that Mr. Cutler spoke with Mr. Knight on July 18, July 20, July 21 and July 22. (White House Documents S007922, S007923, S007924, S007928 and S007929.)

asked to receive copies of the transcripts and was rebuffed—Mr. Cutler stated: "I remember calling Mr. Knight on a number of occasions in this time period on the issue of when we were going to receive the transcripts." [1136] Mr. Cutler's calendar indicated that on July 6, 1994 he met with Mr. Knight and Treasury Assistant General Counsel Robert McNamara. Mr. Cutler recalled that the meeting involved a discussion of the White House's "need to get transcripts and the fact that we had an understanding to that effect." [1137] Mr. Cutler stated that the meeting resulted from a previous conversation he had with Mr. Knight about the RTC's objection to providing transcripts to the White House. [1138]

Mr. Cutler stated that his plan in conducting the White House investigation rested on the Treasury's stated willingness to provide its deposition transcripts. Indeed, by early July, officials in the White House Counsel's Office decided not to interview certain witnesses because they would obtain transcripts of those witnesses' depositions from Treasury. [1139]

When asked about any restrictions that may have been put on the use of the transcripts at the beginning of the investigation, Mr. Cutler once again referred to substantive conversations he had with Mr. Knight: "My recollection is I had discussions with Mr. Knight about the timing of when we would receive the transcripts in which he indicated to me that there were some objections from within the Treasury at lower levels as to delivering us the transcripts on a seriatim basis. [1140] Mr. Cutler testified that at the time he began the White House internal investigation in early July, he understood that there was an agreement that the White House would be getting all the transcripts of the all the IGs depositions. [1141]

Secretary Bentsen did not recall whether he consulted either the RTC–IG Adair or the Acting Treasury IG Cesca about his decision to release the transcripts. [1142] Mr. Cesca testified that he was not aware that Secretary Bentsen had agreed to provide the White House with the confidential transcripts. [1143]

During the July 5, 1994, Ms. Black told Ms. Sherburne that the White House could not have the transcripts. [30] [1144] Ms. Black explained that "we were adamantly opposed to the transcripts going outside of the investigatory circle." [1145] Ms. Black testified that handing over the transcripts to either the Treasury OGC or the White House would have "violated our processes, it was not a normal investigative technique and of course, it can affect other witnesses' testimonies if they know what other witnesses have said." [1146]

Mr. Cottos expressed similar concerns stating, "I objected from the beginning about transcripts being given to anyone." [1147] He worried about "other witnesses being able to read someone's testimony and possibly tailoring their own" testimony before the Senate Banking Committee.[1148]

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[30] In addition, Ms. Sherburne first requested that White House attorneys be able to sit in on OIG depositions. Ms. Black strongly opposed this suggestion, because she wanted to keep the investigation independent, and she stated, "if we agreed to have them (the White House Counsel) sitting in on the interviews, that would be contrary to our standard method of conducting investigations." (Black, 10/12/95 Dep. 77.) Ms. Black stated that "although we conduct all investigations by the book, this one, above all other investigations, had to be conducted by the book in order to give any validity to whatever we found. (Black, 10/12/95 Dep. p. 62.)

Ms. Black informed RTC Inspector General Jack Adair that the White House made a request for transcripts, and that Ms. Sherburne's request had been rebuffed. Mr. Adair believed that the issue had been settled.[1149] Neither Mr. Adair nor Ms. Black were consulted prior to the surrender of the transcripts to the White House.[1150]

On July 18, 1994, Ms. Kerner sent Mr. Cottos an e-mail informing him that Ms. Sherburne had requested again to see IGs' transcripts to determine "whether there are inconsistencies with White House interviews."[1151] On July 19, Mr. Cottos stated his opposition to Ms. Sherburne's request, and noted that, if anything, the IGs should be given copies of the White House's interviews.[1152] Thus, as of at least July 19, 1995, Ms. Kerner was on notice that Mr. Cottos opposed providing the White House with deposition transcripts.

Nevertheless, on July 23, 1994, Treasury OGC delivered copies of IG transcripts to members of the White House Counsel's Office.[1153] On July 23, 1994, Mr. McHale of Treasury OGC sent a transmittal letter to Ms. Sherburne that documented that the Treasury OGC provided the White House copies of transcripts of depositions taken by the IGs' investigators. pursuant to certain restrictions placed on the use of the transcripts.[1154] These transcripts contained confidential information related to the RTC criminal investigation of Madison Guaranty.[1155]

Secretary Bentsen testified that he "made the final judgment" to send the transcripts to the White House.[1156]

Acting Treasury IG Cesca, testified that on July 23, 1994, he learned that Mr. Cutler had requested the transcripts, and that this request came to him via the Treasury Secretary's office.[1157] Mr. Cesca decided that it was not appropriate to release the transcripts to the White House. As he put it, "[m]y concern centered around the fact that that was the essence of what we were investigating"[1158] and would raise the "same issue that we were investigating in terms of contacts between the Treasury and the White House."[1159]

Shortly thereafter, Mr. Cesca had a conference call with Ms. Kerner and Mr. McHale, who told him that Mr. Knight had called to inform him of "the [Treasury] Secretary's desire to release the transcripts to Lloyd Cutler."[1160] Following this conversation, Mr. Cesca agreed to release the transcripts with certain restrictions.[1161]

Whether or not the Acting Treasury IG's approval was needed is unclear in light of the testimony given by Mr. Cutler and Treasury Secretary Bentsen that they had already reached an agreement that the White House would receive the transcripts. According to Mr. Knight, he did not know about the agreement to provide the transcripts until November 7, 1995,[1162] the day before his testimony before the Special Committee. Mr. Knight claimed that he was approached by the Acting Treasury IG to ask Secretary Bentsen's opinion as to whether the transcripts should be released,[1163] and that the Secretary then told him that he thought it would be reasonable to cooperate with Mr. Cutler.[1164]

Although Mr. Cottos was the Treasury IG investigator responsible for investigation, and despite his previous objections to releasing the transcripts, he was not told about the transfer until two

days after it occurred.[1165] Mr. Cottos was "not very happy about" the transfer, and asked why he had not been consulted.[1166] Mr. Cottos was still of the opinion that the transcripts should not have been released to anyone outside the investigation, "whether it be the White House, the Secretary, anyone else."[1167]

The RTC–IG officials testified that they were "shocked" when they learned that the transcripts had been turned over to the White House.[1168] Ms. Black was "astounded" and "angry" when she was told of the transfer.[1169] According to Ms. Black:

> We had vehemently objected to that, and it was done over our expressed objections without any consultation. And this was—again, to go back to the fundamentals, this was an investigation that we were doing into Treasury's leak of information to the White House, and they had done it again.[1170]

Similarly, Mr. Blight was "shocked that it happened . . . It is not something you do . . . The investigation was still open. I mean the investigation was about the Treasury giving information to the White House, and here it goes again, the same thing."[1171] Mr. Adair emphasized that it was not appropriate for the White House to seek access to unredacted transcripts because the "unredacted transcripts contained information about the criminal referrals, which basically was the reason we were conducting the investigation in the first place, to see whether any of that information had been provided by Treasury to the White House."[1172]

The transmittal letter accompanying the transcripts contained the stipulation that the transcripts "are being provided solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committees."[1173] But, according to a May 8, 1995 Associated Press story, Mr. Cutler used the confidential transcripts to brief witnesses at the White House prior to their testimony before the House and Senate Banking Committees.[1174] The article revealed that Mr Cutler stated that he would "confront" witnesses about discrepancies in their testimony, but denied that he would tell witnesses where he got his information; Mr. Cutler was quoted as saying, "I think it was perfectly appropriate to say that 'this is your testimony to us. There is conflicting testimony. Are you sure that's what you said?'"[1175].

Before the Special Committee, Mr. Cutler initially tried to distance himself from the comments attributed to him in the Associated Press story. He stated that despite the suggestion in the May 8 article that the White House used the information they learned from the transcripts to prepare witnesses before they appeared before the Senate Banking Committee, they "did not do so."[1176] But Mr. Cutler ultimately admitted that, "[w]e had the information from the transcripts in our heads and all we did was to say there may be some conflicting testimony, are you sure of what you've told us?"[1177] In addition, the transcripts were used in preparing a report that was shown during a July 24, 1994 meeting at the White House for the private lawyers for the White House witnesses. The report contained a White House "version" of the events.[1178]

The Treasury OGC also transmitted summaries of deposition transcripts[31] to the White House.[1179] Inexplicably, these summaries were sent without a transmittal letter.[1180] Mr. McHale, who supervised the preparation of the summaries,[1181] did not know how the summaries were sent to the White House.[1182] Four other Treasury witnesses—Mr. Knight, Mr. Schmalzbach, Mr. McHale and Mr. Dougherty—also did not know.[1183] Mr. Dougherty, an OGC attorney, denied that he delivered the summaries to the White House, stating, "I have no recollection of ever providing any summaries to anyone."[1184]

In a July 27, 1994 memo to Ms. Sherburne, Sharon Conaway, an attorney in the White House Counsel's Office, described a conversation she had with Mr. Dougherty. Ms. Conaway wrote that Mr. Dougherty "gave me summaries of the transcripts he did not realize we did not have and told me that the transcripts could be given to witnesses and their counsel."[1185] Mr. Dougherty did not recall saying that to Ms. Conaway.[1186] Ms. Sherburne testified that:

> On July 27th, 1994, I asked Sharon Conaway, a lawyer on our team, to ask Treasury whether it had lifted its condition on our use of the IG transcripts so that we could send the transcripts of Mr. Katsanos's IG testimony to counsel for Ms. Caputo (Mrs. Clinton's press secretary). I recall that Ms. Conaway informed me that she spoke with David Dougherty, a lawyer in the general counsel's office at Treasury. He advised her that Treasury had not lifted the restrictions on the transcripts themselves, but she told me that Treasury had a form of summary that it evidently believed did not raise the same concerns that caused it to restrict the use of the underlying transcripts. And that there accordingly were no restrictions on the dissemination of these summaries. Ms. Conaway told me that Dougherty offered to give these summaries to our review team, and that he did so. She also told me based on Mr. Dougherty's advice, she sent the summary of Katsanos's IG deposition to Ms. Caputo's lawyer.[1187]

Ms. Sherburne claimed that the White House received the summaries with the understanding that they were unrestricted.[1188] Secretary Bentsen testified, however, that the summaries should have been subject to the same restrictions that applied to the transcripts.[1189] That is, they could "be used only by his [Mr. Cutler's] staff and only for his testimony before the committee."[1190]

At least one deposition summary was sent directly to William Taylor, an attorney for a White House witness, Lisa Caputo, the Press Secretary to the First Lady.[1191] The transfer of transcripts to the lawyers for one of the White House officials directly violated the restrictions contained in the July 23 transmittal letter, which

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[31] The summaries were prepared when the OGC knew that the IG objected to the transfer of transcripts. (Dougherty, 11/8/95 Hrg/. p. 156.) Mr. Cottos testified that he had not been consulted about the propriety of the summaries. (Cottos, 11/8/95 Hrg. p. 29.) Not surprisingly, Ms. Kerner was aware that Mr. McHale and others in the OGC, were working on the summaries, and was actually given a copy of them. (Kerner, 11/8/95 Hrg. p. 29.) Sarah Jones, a Tres. OGC attorney who worked on the team that summarized the transcripts, reported directly to John Bowman, Jean Hanson's Assistant General Counsel for Banking and Finance. (Dougherty, 11/6/95 Dep. p. 27.) Mr. Bowman was also a fact witness in the investigation.

prohibited the White House from disclosing the transcripts "to individuals (other than Mr. Cutler) who may be called as witnesses by either Committee. Similarly, you have agreed not to disclose these transcripts to counsel for any such individuals." [1192]

During the 1994 Congressional hearings, held on the propriety of White House-Treasury contacts, Mr. Cutler also relied on the OGE opinion as evidence that no White House personnel had engaged in improper conduct.[1193] Mr. Cutler represented to the Senate Banking Committee on August 4, 1994 that he had found no evidence of wrongdoing, and he said that the OGE had "informally concurred" with his conclusion that "no violation of any ethical standard . . . occurred." [1194]

According to Stephen Potts, the Director of OGE, the OGE "did not do an analysis of the conduct of White House officials as to whether or not they violated the code of conduct." [1195] In a November 8, 1995 letter, Mr. Potts confirmed that the "OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of ethical standards occurred by any White House official." [1196] Another OGE official, Jane Ley also testified that, "we didn't make any conclusions about the conduct of individuals in the White House." [1197]

When confronted with Mr. Potts' statements that the OGE had not "informally concurred" with Mr. Cutler's findings that no White House officials had violated any ethical standards, Mr. Cutler admitted:

> Now, I may have gone too far when I testified before this Committee on August the 5th . . .. When I said that the Office of Government Ethics has informally concurred that they don't think any White House official has violated these ethical standards.[1198] [32]

When he was directly questioned about the inconsistencies between his August statements, and the assertions made by the OGE in November 8, 1995, letter, Mr. Cutler again admitted he may have "transgressed.[33]"

III. White House Interfered with the Special Committee's 1995–96 Investigation

On January 5, 1994, in the midst of White House discussions over the appointment of a special counsel, James Hamilton advised President Clinton:

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[32] On May 20, 1996, more than six months after he testified before the Special Committee, Mr. Cutler provided the Special Committee with a letter in which he sought to recast the sworn testimony that he gave on both August 5, 1995, before the Senate Banking Committee, and on November 9, 1995, before the Special Committee.

[33] Chairman D'Amato: "I suggest to you that, when you come as the White House counsel and you say that informally that we have been—we being the White House—White House officials have the blessing of the Office of Government Ethics as it relates to no violations of any ethical standards occurred, and thereafter every—just about every White House official comes in and waves it, that was just not accurate.

Mr. Cutler: What I said in my testimony before you on August the 5th was that the OGE had reviewed the factual findings of the Treasury Inspector General and issued its formal opinion concurring that no violation of any ethical standard—these are the so-called standards of ethical conduct for the executive branch—occurred by any current Treasury or RTC official. Then I said, I have reached the same conclusions as to White House officials, and based on the facts as I reported to them to this nonpartisan Office of Government Ethics, that office has informally concurred. Now that may have been where I transgressed. (Cutler, 11/9/95 Hrg. pp. 33–34.)

> The White House should say as little and produce as few documents as possible to the Press. Statements and documents likely will be incomplete or inconclusive, and could just fuel the fires.[1199]

Clearly, senior White House officials followed Mr. Hamilton's advice in producing documents to the Special Committee.

On June 2, 1995, the Special Committee sent its first request for documents to the White House. Documents continued to trickle in from the White House until as late as May 11, 1996. Some agencies, notably the RTC and the Justice Department, should be applauded for their efforts to produce documents. The RTC produced more documents than any agency and did so in a timely manner. Unfortunately, the White House and various persons associated with the White House were not nearly as forthcoming in producing their documents. The Special Committee was forced to engage in protracted efforts to obtain documents. Even worse, documents often were produced months after they were first requested or subpoenaed.

A. The refusal of William Kennedy to comply with the Special Committee's subpoena for his notes of the November 5, 1993 White House defense meeting

In response to a subpoena from the Special Committee on October 26, 1995, commanding the production of all documents in the White House's custody or control related to Whitewater, Madison Guaranty, CMS and related matters, the White House advised the Special Committee on November 2, 1995, that it would not produce a number of responsive documents on the grounds of privilege. The withheld documents included notes taken by former Associate Counsel to the President William Kennedy at an important November 5, 1993 meeting of White House officials and the Clintons' private attorneys concerning Whitewater and Madison Guaranty.

On December 5, 1995, Mr. Kennedy, citing the attorney-client privilege, refused to answer the Special Committee's questions about the substance of meetings.[1200]

On December 8, 1995, the Special Committee issued a subpoena *duces tecum* to Mr. Kennedy directing him to "[p]roduce any and all documents, including but not limited to, notes, transcripts, memoranda, or recordings, reflecting, referring or relating to a November 5, 1993 meeting attended by William Kennedy at the offices of Williams & Connolly." Mr. Kennedy refused to comply with the Special Committee's subpoena. On December 14, 1995, after careful consideration, the Chairman overruled the objections to the subpoena, and the Special Committee voted to order Mr. Kennedy to produce the responsive documents by 9:00 a.m. on December 15, 1995. After Mr. Kennedy failed to comply with this order and after unsuccessful efforts to reach agreement with the White House, the Special Committee voted on December 15, 1995, to report the matter to the Senate.[1201]

On December 20, 1995, the full Senate adopted Senate Resolution 199, directing the Senate Legal Counsel to initiate a civil action in federal District Court pursuant to 28 U.S.C. § 1365 (1994), for an order requiring the witness to produce the subpoenaed documents. If the district court determines that the witness has no

valid reason to withhold the subpoenaed documents, the court would direct the witness to produce them. If a witness disobeys that order, the witness could be found in contempt of court. The district court, in its discretion, could order sanctions against the witness to induce compliance with its order to produce the documents.

On December 22, 1995, before the Senate Legal Counsel commenced a civil contempt proceeding, the White House reversed course, and Mr. Kennedy produced his notes to the Committee. The notes were highly relevant to the Committee's investigation. They provided evidence that confidential information, which the White House had inappropriately gathered from various agencies investigating Whitewater and Madison, was passed to the private lawyers representing President and Mrs. Clinton to assist their personal legal defense. Although the White House claimed that certain confidential RTC information contained in the notes had also been reproduced in the press, the White House had information from Treasury officials with which to judge whether those press accounts were, in fact, accurate. Beyond this, the notes contained details that identified additional investigative avenues for the Committee.

B. White House delays in producing highly relevant documents to the Special Committee

On January 29, 1996 the White House produced the notes of White House Director of Communications Mark Gearan from meetings of the Whitewater defense team in January 1994.[1202] These notes were relevant to inquiries by the Banking Committee during its hearings in 1994 as well as the inquiries of the Inspectors General from the Department of Treasury and the RTC. When asked to explain the sudden appearance of these notes, Mr. Gearan stated that the notes "were inadvertently moved to the Peace Corps with other personal effects in boxes."[1203] The White House Counsel's Office had told Mr. Gearan that they would take responsibility for document production from his White House files.[1204]

In October 1993, Mr. Gearan learned that the notes were removed from the White House and instructed an assistant to return these notes to the White House.[1205] For reasons unknown, the notes were not returned:

> The next point in time where this came to my attention was at the end of January, January 31st, I believe, where there was—in conversations with my counsel, who had been talking to the White House counsel, they had indicated to my counsel that they were having difficulty finding my files at the White House, which of course we found surprising, at which point I went back to the area where they were stored and found that the had not been returned as I had thought. So, I called counsel and we immediately returned them to the White House counsel.[1206]

Mr. Gearan came across the notes while going through his personal effects looking for pictures and other materials to put on his walls at the Peace Corps.[1207] The White House eventually produced the notes to the Special Committee on January 29, 1996 and February 7, 1996.

As a result of reviewing Mr. Gearan's notes, the Special Committee questioned several witnesses. At least two of the witnesses, Mr. Lindsey and Mrs. Schaffer, had appeared before the Special Committee just weeks prior to the production of Mr. Gearan's notes.

On February 13, 1996, the White House produced important documents from the files of Mr. Waldman, Special Assistant to the President. Mr. Waldman claimed that he discovered these documents in his office in a file marked "WWDC"—Whitewater Development Corporation—in the course of an office move.[1208] It is unclear why, if Mr. Waldman or the White House had conducted a proper search for documents, documents from a file marked "WWDC" were overlooked.

Then, on February 20, 1996, the White House produced documents prepared by Mr. Ickes in January 1994. In an explanatory letter for this production, the White House wrote that "two of the documents among this material had been provided by Mr. Ickes to the Counsel's Office in March of 1994. Unfortunately, in the course of our review, we mistakenly overlooked them . . . As to the remainder of the material produced today, all from the early 1994 period, Mr. Ickes was under the mistaken belief that this material had been provided to the Counsel's Office and his private counsel in March of 1994." [1209]

Finally, on March 1, 1996, the day after funding for the Special Committee expired under S. Res. 120, Bruce Lindsey, Deputy Counsel to the President, produced notes concerning the November 5, 1993 Whitewater defense team meeting and other responsive documents. The transmittal for Mr. Lindsey's notes stated cryptically that the documents "inadvertantly were not produced to you or the White House Counsel's office." [1210]

PART IV. THE ROSE LAW FIRM BILLING RECORDS

Late in the afternoon on Friday, January 5, 1996, a messenger delivered a large, yellow manila envelope to the Special Committee. Inside were 114 pages of documents, most measuring 11 by 17 inches, accompanied by a letter from David Kendall, lawyer for the Clintons. Mr. Kendall wrote: "I enclose documents which we have stamped DKSN028928 to DKSN029043. These documents were discovered yesterday by Ms. Carolyn Huber, Special Assistant to the President/Special Director of Correspondence." [1211] The matter-of-fact tone of Mr. Kendall's prose belied the significance of this production. The 114 enclosed pages, computer printouts of the Rose Law Firm's billings to Madison Guaranty, constitute the best, and therefore most important, evidence concerning Mrs. Clinton's representation of James McDougal's S&L in the mid-1980s—a relationship that was under investigation by at least three separate federal agencies.

The records had been subject to several different federal subpoenas, besides that of the Special Committee, for nearly two years. When federal investigators served their subpoenas, the billing records were nowhere to be found. Despite extensive searches conducted by the Rose Law Firm, neither the originals nor copies were discovered.[1212] The billing records were not in the firm's computers, its client files, or its storage facility.[1213] The disappearance was not isolated, but rather occurred in the context of a larger pattern of

removal, concealment and, at times, destruction of records concerning Mrs. Clinton's representation of Madison.

I. The Destruction and Mishandling of Rose Law Firm Files

In 1988, Mrs. Clinton ordered the Rose Law Firm to destroy records relating to her representation of Madison.[1214] This was not a routine destruction of records. At the time, federal regulators were investigating the operations and solvency of Madison, in anticipation of taking over the institution. These Rose Law Firm records, which, after Madison's failure would belong to the RTC,[1215] would have been directly relevant to that investigation.

By ordering their destruction, Mrs. Clinton eliminated pertinent records and also exposed her firm to potential liability with respect to her representation. If such representation was proper, as Mrs. Clinton has claimed, her document destruction deprived the law firm of the records necessary to defend itself in a suit by federal investigators. Moreover, in 1988, Seth Ward, a former associate of Mr. McDougal and Webster Hubbell's father-in-law, was suing Mr. McDougal over the Castle Grande land deal that federal regulators have described as a fraud.[1216] Mrs. Clinton had performed work on the project, including numerous telephones calls and meetings with Mr. Ward, and the law firm's records of her work and the transactions surrounding this land deal certainly would have been highly relevant to the conduct of that suit.

The pattern recurred only a few years later. According to the Rose Law Firm, Mr. Hubbell obtained some billing records reflecting Rose's representation of Madison in 1989 or 1990. The Rose Law Firm represented to the Special Committee that a firm partner, then representing the RTC in litigation concerning Madison Guaranty, provided all billing records for Madison to Mr. Hubbell to ascertain whether the firm had a potential conflict of interest.[1217] According to the Rose Law Firm: "The Rose partner was assured by Mr. Hubbell a few days later that the prior representation had been disclosed to the RTC. Rose does not know what Mr. Hubbell did with the records."[1218]

The mishandling of Madison documents continued during the 1992 presidential campaign. After questions arose about the Clintons' investment with the McDougals in Whitewater and Mrs. Clinton's representation of Madison Guaranty before a state agency, Mrs. Clinton's then-law partner, Vincent Foster, collected all the information he could on the Madison representation from the Rose Law Firm's files. At the conclusion of the campaign, the firm's files on Madison, which were by now the property of the RTC as conservator of Madison, as well as certain files of other Rose clients for whom Mrs. Clinton had performed legal services, were secretly removed from the firm by another then-Rose Law Firm partner, Webster Hubbell. Mr. Hubbell removed these files, some of which were the firm's only copies,[1219] without obtaining the consent of the firm or client.[1220]

II. The "Disappearance" and "Discovery" of the Rose Law Firm Billing Records

During the 1992 presidential campaign, on February 12, 1992, an unknown person printed out a set of the Rose Law Firm's comput-

erized records of billings to Madison Guaranty.[1221] These computerized records were the only source of detailed information about the services that the Rose Law Firm provided and billed to Madison Guaranty. The records provide information well beyond that reflected in bills sent to Madison—such as the date services were performed, the amount of time expended by particular lawyers, and precise services performed, including the identity of persons with whom Rose lawyers spoke or met in the course of representing Madison.[1222]

Mr. Hubbell asserted that either he or former Deputy White House Counsel Vincent Foster, also a Rose partner, directed the Rose accounting department to print the billing records for Madison.[1223] In addition to obtaining the computerized billing records, Mr. Hubbell also retrieved other files and documents relating to Mrs. Clinton's work for Madison:

> I recall in 1992 that the issue regarding our representation of Madison and specifically our work before the Arkansas Securities Department was of interest to Mr. Gerth of The New York Times, and that our firm was being questioned by people within the campaign about her work in that regard. We did some work in trying to organize and pull up the files. And in connection with that, bills were pulled and reviewed by myself and Mr. Foster and Mr. Massey, I believe.[1224]

Because of allegations that Mrs. Clinton had a conflict of interest in appearing before her husband's appointee, Beverly Bassett Schaffer, Arkansas Securities Commissioner, Mr. Hubbell reviewed the records in 1992. During his review, Mr. Hubbell made notations next to entries in the bills related to the firm's work in connection with Madison's novel proposed preferred stock offering before the Arkansas Securities Department. According to Mr. Hubbell, "the issue then, way back when, was did Mrs. Clinton ever have any contact with the Arkansas Securities Department. When we went back to the bills, that was the only, I believe, indication on the bills of a direct contact with the Arkansas Securities Department, so I underlined that—probably gave that to Vince."[1225]

Indeed, in notes taken during the 1992 campaign concerning Whitewater, Susan Thomases recorded a February 24, 1993 conversation with Mr. Hubbell about the Rose Law Firm's representation of Madison. According to her notes, Mr. Hubbell told Ms. Thomases that Mrs. Clinton did all the billing for the Rose Law Firm to Madison, and that she had numerous conferences with Mr. McDougal, Madison President John Latham, and Rick Massey, then a junior associate at the firm.[1226] Ms. Thomases' also indicated that Mrs. Clinton had reviewed some documents and that she had at least one telephone conversation with Ms. Schaffer in April 1985.[1227] Ms. Thomases recorded in the margin of her notes next to this entry: "Acc. to time Rec." She testified that "[t]his is my notation for according to time records,"[1228] and that the notation reflected what Mr. Hubbell had indicated to her.[1229]

Ms. Thomases asserted, however, that she herself did not see the billing records,[1230] nor did she ever ask to see the time records.[1231] Ms. Thomases further claimed that, other than her conversations

with Mr. Hubbell in 1992, she never had any discussions with anyone about the billing records.[1232] She contended that she had no knowledge concerning the handling of billing records and how records were transported from Little Rock to the White House Residence.[1233]

In addition to Ms. Thomases, Mr. Hubbell discussed the contents of the records in 1992 with Loretta Lynch, an attorney working on Whitewater issues for the Clinton campaign.[1234] Ms. Lynch testified that, in response to press inquiries, she talked to Ms. Schaffer and reviewed the files of the Arkansas Securities Department in an attempt to reconstruct Mrs. Clinton's role in representing Madison before state regulators.[1235] During the course of this investigation, she and Ms. Thomases agreed that they should ask members of the Rose Law Firm about billing records.[1236] Ms. Lynch talked to Mr. Hubbell about Mrs. Clinton's work for and billings to Madison Guaranty,[1237] who advised her that he had reviewed the Rose Law Firm's billing records concerning Madison Guaranty.[1238] Ms. Lynch also knew that Mr. Foster had reviewed the billing records,[1239] but she does not recall speaking with anyone else at the Rose Law Firm regarding the billing records.[1240] Ms. Lynch testified that she did not handle any records reflecting billings by the Rose Law Firm to Madison Guaranty, and that she had no knowledge regarding how those records came to be deposited in the White House Residence.[1241]

When Mr. Hubbell and Mr. Foster reviewed the billing records in 1993, they spoke with each other about the Rose Law Firm's representation of Madison. Mr. Hubbell identified the notes written by Mr. Foster in red ink on the billing records found in the White House Residence—e.g., "HRC—this suggests 1st matter"[1242] or "HRC I believe there was a subsequent bill".[1243] These notes suggested to Mr. Hubbell that "[w]e were both working on it, and this is what he did to ultimately give it to somebody to indicate what was going on, what the records showed highlighted."[1244] As of the time Mr. Hubbell handled the records, Mr. Foster had not written or made any notations on the records.[1245]

According to Mr. Hubbell, Mr. Foster was the last person he saw handling the billing records.[1246] Mr. Hubbell did not know who removed the records from the Rose Law Firm,[1247] or how they came to be left in the White House Residence.[1248] He claimed not to have spoken with anyone about the billing records since the 1992 presidential campaign.[1249]

Mr. Hubbell stated that he may have spoken with Carolyn Huber, Special Assistant to the President and Special Director of Correspondence for the White House, about the records when she was the administrator of the Rose Law Firm, but not when she was at the White House.[1250] When Mr. Hubbell learned that Ms. Huber had discovered the billing records in her office, "I kind of smiled."[1251] According to Mr. Hubbell, "I know Ms. Huber, and it just didn't surprise me that all of a sudden she discovered them."[1252] He explained, somewhat cryptically: "First of all, I felt sorry for her, but just that all of a sudden, oh, you're looking for the billing records, here they are. You know, it just wouldn't surprise me that something like that happened. I read about it, but I just smiled about it."[1253]

During the first two weeks of August 1995, while the Special Committee was holding hearings into the handling of documents in Mr. Foster's office at the time of his death, Ms. Huber testified that she saw the Rose Law Firm billing records for the first time.[1254]

The billing records, which were subject to several different federal subpoenas, were in the Book Room, a small room on the third floor of the First Family's private quarters in the White House Residence.[1255] The room is adjacent to Mrs. Clinton's private office and is accessible only to a limited number of private guests and staff.[1256] Gifts, book, and memorabilia are stored in the Book Room until they can be catalogued and put away.[1257] In the center of the room sits a large table where such memorabilia are piled.[1258]

In early August 1995, Ms. Huber was gathering newspaper and magazine clippings in the Book Room when she noticed the records in clear view on the edge of the table.[1259] The records were folded in half, and Ms. Huber recognized the records, from her experience at the Rose Law Firm, to be billing records.[1260] Ms. Huber recalled that, specifically, the records were not on the table a week or two earlier when Ms. Huber was last in the Book Room.[1261] Because Ms. Huber thought that the billing records were left in the Book Room for her to file,[1262] she placed the records in a box to be taken to her office without studying them.[1263] White House ushers carried this box, along with several others, and placed them on the floor of Ms. Huber's office.[1264] Later, a table was placed over these boxes.[1265]

For several months, Ms. Huber forgot about the records. Meanwhile, the Special Committee, continuing its investigation into activities and transactions relating to Whitewater and Madison, held several hearings in December 1995 on the extent of Mrs. Clinton's role in the Madison representation. The billing records figured prominently in these hearings. On December 1, 1995, Mr. Hubbell was unable to provide complete answers about the Mrs. Clinton's role in the Rose Law Firm's representation of Madison because he did not have the billing records to refresh his memory.[1266] Likewise, Ms. Thomases testified on December 18, 1995, about her work during the campaign and her notes about billing records relating to Mrs. Clinton's work for Madison.

On the morning of January 4, 1996, Ms. Huber was having new furniture placed in her office in the East Wing of the White House.[1267] In the process, the table that had concealed the box containing the billing records for five months was removed.[1268] Once the boxes were uncovered, Ms. Huber began to file the contents of the boxes.[1269] As she was filing, Ms. Huber pulled the billing records out of their box and examined them more closely.[1270]

Immediately, Ms. Huber realized the billing records were related to Madison Guaranty.[1271] She was horrified because she understood their significance; she had seen several subpoenas calling for the production of Madison Guaranty records, including these very records.[1272] She had also assisted the President and Mrs. Clintons' personal counsel, David Kendall in searching and reviewing documents in the White House responsive to those subpoenas.[1273] Ms. Huber contacted Mr. Kendall and asked him to meet her in her office as soon as possible because she had found some documents.[1274]

After calling Mr. Kendall, Ms. Huber called her attorney, Henry Shuelke.[1275]

Early in the afternoon on January 4, Ms. Huber met with Mr. Kendall.[1276] She gave him the records and explained her discovery.[1277] Worried, Ms. Huber asked Mr. Kendall whether she had done the right thing in contacting him.[1278] Mr. Kendall assured Ms. Huber that she had made the correct decision.[1279] Mr. Kendall examined the billing records and asked Ms. Huber whether she could identify the handwriting in red ink.[1280] Ms. Huber identified some of the notations as Mr. Foster's handwriting.[1281] Mr. Kendall then told Ms. Huber to maintain custody of the records,[1282] and that he would contact White House counsel and meet with her later in the day.[1283]

Mr. Kendall then contacted Special Counsel to the President Jane Sherburne and Mr. Shuelke, who agreed to meet around 5:00 p.m. in Ms. Huber's office.[1284] Ms. Sherburne informed her supervisor, Deputy Chief of Staff Harold Ickes, and her staff of the discovery of the billing records.[1285] No one contacted the Independent Counsel or any other investigative agency, including the Special Committee. Mr. Kendall and Ms. Sherburne claimed that they did not inform Mrs. Clinton on January 4 about the discovery of the billing records.[1286]

Ms. Huber, Mr. Kendall, Ms. Sherburne and Mr. Shuelke met that evening.[1287] Ms. Huber once again explained her discovery of the records.[1288] Ms. Huber told the assembled attorneys—as she also had testified to before the Special Committee—that she clearly recalled seeing the records in early August 1995. Ms. Huber and the lawyers together examined the billing records page by page.[1289] Ms. Huber identified for them some of the handwriting on the billing records as Mr. Foster's and some as the Rose Law Firm bookkeeper.[1290] In view of Mr. Foster's notes in red ink, the billing records were obviously a copy of the original records.[1291] Other handwritten notes appear to have been made on the original and then copied.[1292]

At one point in the meeting, Ms. Sherburne asked to speak with Mr. Kendall and Mr. Shuelke in the hallway.[1293] Ms. Sherburne raised the issue of how the documents should be reproduced and whether the integrity of the documents should be preserved in case the records would later be examined for fingerprints.[1294] The attorneys never considered contacting the Independent Counsel for advice on how best to proceed.[1295]

Mr. Kendall and Mr. Shuelke returned to Ms. Huber's office and photographed the box in which Ms. Huber found the records earlier in the day.[1296] Ms. Sherburne and Ms. Huber searched for a color copier in the White House offices.[1297] After finding a copier, Ms. Huber made copies, while Ms. Sherburne collated and checked for completeness.[1298] Two color copies of the billing records were made.[1299] Mr. Kendall took the original set of the billing records and one copy with him that evening. Ms. Sherburne took the other copy of the billing records to examine and to keep for White House records.[1300]

The next morning, January 5, 1996, Mr. Kendall and Ms. Sherburne notified the Independent Counsel of the discovery of the billing records.[1301] That same morning, Ms. Sherburne informed

President Clinton of their discovery.[1302] Later that afternoon, Mr. Kendall produced a copy of the billing records to the Special Committee.[1303] Copies of the billing records were also produced to the other investigative agencies.[1304]

III. Mrs. Clinton's Statements in Light of the Rose Law Firm Billing Records

The billing records provide the best evidence of the legal services performed by Mrs. Clinton for Madison Guaranty and, as a result of the failed memories of many Rose Law Firm attorneys, are the only source of detailed information about the legal services rendered to Madison. Whereas the bills and statements sent to clients indicate only the total amount due and the general services performed, these computerized billing records provide detailed information on the specific task performed, the date that it was performed, the person who performed the task, and the amount of time expended on the task.[1305] The computerized billing records are thus an invaluable asset in reconstructing Mrs. Clinton's actual involvement in the matter. This is especially so with respect to Mrs. Clinton's billings to Madison, because her timesheets were apparently destroyed in 1988.[1306]

In total, Mrs. Clinton billed Madison Guaranty for 89 tasks, including 33 conferences with Madison Guaranty officials, on 53 separate days.[1307]

A. Madison's retention of the Rose Law Firm

During the 1992 campaign, the Clinton campaign sought the facts surrounding the Rose Law Firm's retainer with Madison Guaranty in 1985 and 1986. In a March 18, 1992 memorandum to senior campaign officials Bruce Lindsey and David Wilhelm, Loretta Lynch noted that the campaign had conducted an exhaustive review of available documents, but certain questions regarding the retainer remain that "simply must be answered by Hillary and Bill themselves." Among these questions were:

> 1. Did Bill Clinton solicit a retainer agreement for the Rose Law Firm from Jim McDougal? If so, when did that happen and what were its terms? Who, other than Jim and Susan were privy to that discussion?
>
> * * * * * * *
>
> 7. When was the Rose Law Firm put on retainer by McD and for what business (LL has asked Webb Hubbell this question numerous times. The answer continues to change, despite the repeated press inquiries on this exact point).[1308]

This memorandum was prepared after the Clinton campaign had already released a fact sheet stating that Richard Massey, a young associate in the Rose Law Firm in 1985, was responsible for the retainer—not Mrs. Clinton:

> The Rose Law Firm was retained to represent Madison Guaranty. The business was brought to the firm not by Hillary Clinton but by Richard Massey, long time friend of John Latham, Madison's CEO.[1309]

The circumstances surrounding the Rose Law Firm's retainer with Madison were not resolved during the 1992 campaign. Mrs. Clinton, and others on her behalf, have repeatedly made statements that Mr. Massey brought in Madison Guaranty as a client and that, even though she was the billing partner on the matter, she was merely a "backstop" because the firm did not permit associates to bill clients directly.[1310]

During a press conference on April 22, 1994, Mrs. Clinton stated that Mr. Latham, the President of Madison Guaranty, asked Mr. Massey whether he would be interested in representing Madison in connection with a proposed stock offering. Mrs. Clinton claimed that she became involved in the matter only because Mr. Massey "needed a partner to serve as his backstop, and that was one of the rules of our firm."[1311] Mrs. Clinton further explained that Mr. Massey was aware that she knew Mr. McDougal, so "he came to me and asked if I would talk with Jim to see whether or not Jim would let the lawyer and the officer go forward on this project. I did that, and I arranged that the firm would be paid $2,000 retainer."[1312]

In an unsworn statement to the RTC in November 1994, Mrs. Clinton similarly told investigators that "she recalled Massey came to her and asked her to be the billing attorney which was a normal practice when an associate was handling the matter. . . . Mrs. Clinton recalled that a Madison official (individual unknown) approached Rick Massey regarding a preferred stock offering in an effort to raise capital."

In a sworn response to an RTC interrogatory in May 1995, Mrs. Clinton elaborated on her story. Mrs. Clinton stated that Mr. Massey approached her because "certain lawyers" in the Rose Law Firm were "opposed" to representing Mr. McDougal until Mr. McDougal paid an outstanding bill, and he was aware that Mrs. Clinton knew Mr. McDougal. Mrs. Clinton wrote:

> In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum. . . I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him.

Mr. Massey, however, directly contradicted Mrs. Clinton's account in sworn testimony before the Special Committee. According to Mr. Massey, he was not responsible for bringing in Madison as a client.[1313] Mr. Massey testified specifically that Mr. Latham never offered him Madison's business,[1314] and that he did not recall approaching Mrs. Clinton with a proposal to represent Madison.[1315] Mr. Massey also indicated that he did not ask Mrs. Clinton, as she claimed, to be the billing attorney.[1316]

David Knight, a former Rose partner specializing in securities law, testified that he attended the lunch meeting during which, according to Mrs. Clinton, Mr. Latham allegedly retained Mr. Massey and the Rose Law Firm.[1317] Mr. Knight confirmed Mr. Massey's testimony that Mr. Latham did not ask Mr. Massey to represent Madison on the preferred stock offering. Quite to the contrary, ac-

cording to Mr. Knight, the subject of that stock offering never arose.[1318] In fact, Mr. Latham informed Messrs. Knight and Massey at the lunch that Mr. McDougal made all hiring decisions and that Madison already had outside counsel.[1319]

Mr. Latham testified that Mr. McDougal, not he, made the decision to retain the Rose Law Firm.[1320] In an interview with RTC investigators, Mr. Latham similarly stated that "McDougal had friends over there and he suggested we use them. When asked who the friends were Latham said that they were Hillary Rodham Clinton and others."[1321]

Mr. McDougal has also contradicted Mrs. Clinton's account about the retainer. Mr. McDougal has stated that he put Mrs. Clinton on retainer as a favor to then-Governor Clinton. In 1992, Mr. McDougal told Jim Blair and Loretta Lynch that Governor Clinton, wearing jogging pants, visited his office and told him that he and Mrs. Clinton were pressed for money and asked Mr. McDougal to give some work to Mrs. Clinton.[1322] Two hours later, Mrs. Clinton visited Mr. McDougal to set up the retainer.[1323] According to notes taken by Mr. Blair, Mr. McDougal said that he remembered the encounter "explicitly" because Governor Clinton, in his exercise clothes, left a permanent stain on Mr. McDougal's "new leather contour chair."[1324]

In 1993, Mr. McDougal repeated this account of the so-called "jogging" incident to the Los Angeles Times. Governor Clinton reportedly dropped by Mr. McDougal's trailer office, told Mr. McDougal that the Clintons were financially strapped, and asked Mr. McDougal to throw some work to Mrs. Clinton.[1325] Mr. McDougal also repeated to the newspaper what he had told Mr. Blair: "I hired Hillary because Bill came in whimpering they needed help." Mr. McDougal said he had no specific legal work in mind when he hired Mrs. Clinton.[1326] That same day, Mrs. Clinton visited Mr. McDougal's office, and Mr. McDougal put her on retainer for $2,000 a month.

On May 8, 1996, during the Tucker-McDougal trial in Little Rock, Mr. McDougal revised his story somewhat. He testified that President Clinton came by one morning and, "I said to Bill something to the effect of, 'We're needing more legal work. Would it help Hillary if we gave some of the work to the Rose Firm?' And he said yes."[1327] Mr. McDougal did not recall telling Mr. Blair that Bill Clinton specifically said he "needed" money.[1328] Although Mr. McDougal denied stating in an FBI interview that "Clinton came in claiming he had financial problems,"[1329] he did recall that Mrs. Clinton "came by the same day" to set up the retainer.[1330]

At the Tucker-McDougal trial, President Clinton testified that he recalled visiting Mr. McDougal, but did not recall asking Mr. McDougal to place Mrs. Clinton on retainer.[1331]

Mrs. Clinton's account of her role in connection with the Madison retainer turns on the alleged existence of a debt that Mr. McDougal's Madison Bank & Trust owed to the Rose Law Firm in 1985. According to Mrs. Clinton, she insisted on the $2000 per month retainer to assure her partners that Mr. McDougal would pay the firm's fees—an issue that, she claims, arose because of Mr. McDougal's failure to pay fees owed to the Rose Law Firm in connection with its representation of Madison Bank & Trust.

Documentary evidence and testimony provided to the Special Committee, however, indicate that the outstanding balance of Rose's bill to Madison Bank & Trust was paid in late October 1984, many months prior to Mrs. Clinton's retainer in April 1985.

Gary Bunch, President of Madison Bank & Trust since 1970, provided the Special Committee with documents showing that the legal fees owed to the Rose Law Firm were paid in late October 1984. The Minutes of Madison Bank & Trust for October of 1984 indicate that $5,000 in legal fees were owed to the Rose Law Firm for work on the "Huntsville move appeal," [1332] a matter concerning the relocation of the bank, and that "Mr. McDougal seconded that Mr. Bunch will negotiate settlement with the firm." [1333] Mr. Bunch confirmed that Mr. McDougal directed him to pay the outstanding Rose Law Firm bill for the Madison Bank & Trust matter in full in October 1984.[1334]

A receipt from Madison Bank & Trust's debit ledger show $5,000 in legal fees were paid on October 23, 1984.[1335] In addition, the bank's minutes for November 27, 1984 confirm this payment: "The reduction in earnings was attributed to heavy accounting fees for the audit and a payment of legal fees from 1983 lawsuit." [1336]

Among the billing records discovered in the Book Room of the White House Residence was a 1981 bill from the Rose Law Firm to Madison Bank & Trust. This bill, for over $13,000, was marked "Paid." A note in Mr. Foster's hand, however, stated: "HRC I believe there was a subsequent bill." [1337]

Following the discovery of the billing records and the testimony of Mr. Massey before the Special Committee, Mrs. Clinton changed her story in a February 1996 interview with RTC investigators. According to Mrs. Clinton, the late Vincent Foster, not Mr. Massey, first informed her that Mr. Massey wanted to do work for Madison: "I believe it was Vince Foster who came to me, who said that Mr. Massey wanted to do this work, but the partners didn't want him to do it." [1338] When asked who suggested that she approach Mr. McDougal, Mrs. Clinton answered: "I don't have a specific recollection. I believe it was Vince Foster, but I'm not positive." [1339]

B. Mrs. Clinton's contacts with regulator Beverly Bassett Schaffer

In 1985, the Rose Law Firm represented Madison in connection with a proposal for a preferred stock offering before the Arkansas Securities Department. During the 1992 campaign, allegations surfaced that Beverly Bassett Schaffer, who Governor Clinton appointed as Arkansas Securities Commissioner, gave preferential treatment to Madison Guaranty because of her relationship with the Governor and Mrs. Clinton. The Clinton campaign denied that Mrs. Clinton attempted to influence Commissioner Bassett.

The billing records show that Mrs. Clinton called Ms. Schaffer the day before the Rose Law Firm submitted Madison's proposal for its preferred stock offering to the Arkansas Securities Department.[1340] The records reflect that Mrs. Clinton billed as much as one hour to the call.[1341] Ms. Schaffer notified Mrs. Clinton of the approval of the proposal two weeks later in a letter addressed to "Dear Hillary." [1342]

Prior to the discovery of the billing records, Mrs. Clinton claimed in her sworn responses to RTC interrogatories in May 1995 that she called the Arkansas Securities Department to find out "to whom Mr. Massey should direct any inquiries."[1343] She did not recall to whom she spoke.[1344]

In testimony before the Special Committee, former Commissioner Schaffer directly contradicted Mrs. Clinton and stated that the proposal was discussed during the phone call. According to Ms. Schaffer:

> [Mrs. Clinton] called and said they had a proposal, and what it was about; and I said I'm familiar with that; I've already looked at that. You know, I agree with the—basically I have no problem with that position, and you'll be getting a letter soon to that effect. . . . I think in substance I said, basically, I agree with the position—I mean, that preferred stock can be issued pursuant to the Business Corporation Code.[1345]

Mr. Massey similarly disputed Mrs. Clinton's account of the phone call to Ms. Schaffer. Mr. Massey testified that he drafted the proposal and knew exactly to whom the proposal should be sent.[1346] Mr. Massey further testified that Mrs. Clinton never instructed him about whom to address the transmission letter.[1347] Mr. Massey did not recall asking Mrs. Clinton to make such an inquiry and was not aware that she had.[1348]

C. Mrs. Clinton's role in Madison's proposed preferred stock deal

Mrs. Clinton has minimized her role in the Rose Law Firm's representation of Madison before the Arkansas Securities Department in connection with Madison's proposed stock offering. Although she was the billing partner, Mrs. Clinton has denied that she handled much of the workload on the matter. When asked about the subject during a press conference on April 22, 1994, Mrs. Clinton told reporters that "the young attorney, the young bank officer did all the work. . . . It was not an area that I practiced in it was not an area that I really know anything to speak of about."[1349]

In a 1994 sworn statement to the FDIC, Mrs. Clinton similarly stated:

> While I was the billing partner on the matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at the Rose Law Firm and whose specialty was securities law. I was not involved in the day to day work on that project. . . . Mr. Massey primarily handled the matter. . . . I was not involved in any meetings with state regulators. . . .[1350]

Mrs. Clinton likewise told RTC investigators in 1994 that Mr. Massey was the lead attorney on the matter.[1351] And, in sworn interrogatories to the RTC in May 1995, Mrs. Clinton stated, "While I was the billing partner on the matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at the Rose Law Firm and whose specialty was securities law." Mrs. Clinton added that "I was not in charge of the Rose Law Firm's work

for Madison Guaranty in 1985–86, although I was the billing partner."[1352]

The billing records and Mr. Massey's testimony directly contradict Mrs. Clinton's claim that her role on the matter was merely to serve only as a "backstop." Mrs. Clinton billed 6.2 hours on the preferred stock deal for conferences alone that she had with Mr. McDougal, with Mr. Latham and Davis Fitzhugh, two other Madison S&L officers involved in the stock offering.[1353] In addition, Mrs. Clinton had at least six conferences with Mr. Massey, the young Rose Law Firm associate on the matter.[1354] Mrs. Clinton also reviewed the amendments to the application submitted to the Arkansas Securities Department.[1355]

Mr. Massey testified that he did his work under the supervision of Mrs. Clinton.[1356] According to Mr. Massey, "Mrs. Clinton was the billing attorney and had a relationship with me such that she needed to know what I was doing so she could be prepared to update the client at any time."[1357] When asked whether Mrs. Clinton's work on the stock proposal deal was "minimal," Mr. Massey responded, "In my own mind it's a significant amount of time."[1358]

D. Mrs. Clinton's role in the Castle Grande transaction

Before the billing records were discovered, little was known about the nature of the Rose Law Firm's representation of Madison Guaranty in connection with the Castle Grande land transaction. Perhaps because Mrs. Clinton had ordered the destruction of Madison-related records in 1988, the Rose Law Firm no longer possessed any file related to the Castle Grande deal.

Federal investigators described the Castle Grande transactions as a series of land flips and transactions that cost the American taxpayers $4 million.[1359] The land deal was designed to conceal Madison Guaranty's investment in Castle Grande through its subsidiary, Madison Financial Corporation. Mr. Ward was the "straw man" purchaser in the project—one who lends his name to the title, but does not actually have an ownership interest.[1360] Arkansas regulations limited an S&L's direct investment in its subsidiaries or affiliates to 6 percent of total assets.[1361] Mr. Ward was needed as the straw man because "had MGSL purchased Castle Grande directly, they would have exceeded their direct investment limit."[1362] Madison, in effect, paid for Mr. Ward's share in the venture, and was promised $300,000 in commissions for lending his name.

In 1995, when the RTC asked about her knowledge of Castle Grande, Mrs. Clinton stated "I do not believe I knew anything about any of these real estate parcels and projects."[1363] The billing records suggest otherwise.

The billing records identify Mrs. Clinton as the billing partner on the matter—even though Mrs. Clinton claimed that she had no idea how the Rose Law Firm became involved in the matter.[1364] These records indicate that Mrs. Clinton billed more time on the Castle Grande matter—29.5 hours, or 54 percent of total billings on the matter—than any other lawyer at the Rose Law Firm. Indeed, nearly half of Mrs. Clinton's total billings to Madison were for work on Castle Grande. In the months following the initial transaction, Mrs. Clinton had at least 12 conferences with Mr. Ward and numerous meetings with Madison officials in connection with the sub-

sequent sales that she billed to the IDC/Castle Grande matter. One of the conferences with Mr. Ward even related to "the purchase from Brick Lile," the seller of the IDC/Castle Grande property. Mrs. Clinton also had conferences with two attorneys who were involved in the initial transaction—Thomas Thrash, the associate at the Rose Law Firm who attended the closing, and Daryl Dover, the attorney for the seller.

In January 1986, Mrs. Clinton tripled Rose's bill to Madison for her work on the Castle Grande/IDC matter without providing any supporting information. Mrs. Clinton has claimed that this fee, representing 14.5 hours, was for work that she did between January 15 and January 30, 1986, which she forgot to enter on her time sheets as "work in progress." [1365]

After the discovery of the billing records, Mrs. Clinton attempted to explain the apparent contradiction between her statements about her minimal involvement in the Castle Grande transaction and the billing records. In a television interview, Mrs. Clinton explained that she did not know the Castle Grande property by this name, and that the matter she worked on was known by the name of the seller, IDC. She explained that it was a "separate deal" entirely:

> Again, there's not a contradiction. Castle Grande was a trailer park on a piece of property that was about 1,000 acres big. I never did work for Castle Grande. Never at all. And so, when I was asked about it last year, I didn't recognize it, I didn't remember it. The billing records show I did not do work for Castle Grande. I did work for something called IDC, which was not related to Castle Grande. . . . Separate deal completely.[1366]

When asked by the Pillsbury Firm what she meant by "separate deal," Mrs. Clinton gave a similar answer:

> Well, my understanding is that the work for Madison concerned property that was referred to then at the time and continually by the Rose Firm as IDC or Industrial Development Corporation property. I know that work as IDC. That's how it was billed. And I did not know that there was something called Castle Grande, to the best of my recollection, until it came to my attention through these investigations, the entire thousand acres that we referred to as IDC was being called Castle Grande . . . .
>
> I was informed sometime within the last year or two that there was a trailer park on the IDC property called Castle Grande Estates. To the best of my recollection, that was the first I had ever heard of Castle Grande Estates.[1367]

Substantial evidence, however, contradicts Mrs. Clinton's statements concerning the name of this project. Madison Guaranty officials and federal regulators all commonly referred to the entire parcel of land as "Castle Grande." Television advertisements in Little Rock promoting the land development referred to the land as "Castle Grande." Susan McDougal told ABC news that the entire development was considered "Castle Grande." Internal Madison Board

Minutes dated September 12, 1985, referred to "Castle Grande Estates." Harry Don Denton, a Madison officer, testified at the Tucker-McDougal trial that the entire property was named Castle Grande immediately after its purchase from IDC.[1368] Finally, records reflecting a meeting between Alston Jennings, former attorney for Mr. Ward, and Mr. Kendall, the Clintons' attorney, on January 11, 1996—the week after the billing records were discovered—referred to "Castle Grande."[1369] No mention was made of IDC.[1370]

More important than the mere extent of her services related to the Castle Grande, however, is the nature of her work. For his role as the "straw man" and other related services to the project, Mr. Ward was owed a commission. On March 31, 1986, Madison Guaranty loaned $400,000 to Mr. Ward.[1371] One week later, on April 7, 1986, Madison Financial Corporation, a subsidiary of Madison Guaranty, executed two promissory notes, for $300,000 and $70,943, purporting to reflect loans from Mr. Ward to Madison Financial.[1372] Thus, except approximately $30,000 for administrative expenses, the two Madison Financial notes offset Mr. Ward's debt to Madison Guaranty. At the end of the day, Mr. Ward kept the bulk of the $400,000 as his commission for the Castle Grande fraud.

At about this time, bank examiners were auditing Madison Guaranty's books, and James Clark, the chief examiner, asked whether the three notes were related.[1373] Madison official, Mr. Denton, assured him that these notes were not related.[1374] According to Madison official John Latham, however, the three notes were related, and the $400,000 March 31 loan from Madison Guaranty was intended to pay Mr. Ward's commissions.[1375]

The Rose Law Firm billing records revealed for the first time that on April 7, 1986, the day the Madison Financial notes were executed, Mrs. Clinton billed 10 minutes to the IDC/Castle Grande matter for "Telephone conference with Don Denton."[1376] A message slip produced by Mr. Denton reflects that Mrs. Clinton called him from the Rose Law Firm on April 7, 1986.[1377] In a June 11, 1996 interview with FDIC investigators, Mr. Denton stated that Mrs. Clinton called seeking copies of the notes between Mr. Ward, Madison Financial, and Madison Guaranty.[1378] Mr. Denton told investigators that during the conversation he cautioned Mrs. Clinton that a problem might exist with respect to the April 7th notes to Mr. Ward because "they constituted in effect a parent entity fulfilling the obligation of a subsidiary,"[1379] a violation of the so-called direct investment rule. Mrs. Clinton, however, "summarily dismissed" that concern in a way that he took to mean that "he would take care of savings and loan matters, and she would take care of legal matters."[1380]

The billing records showed that on May 1, 1986, Mrs. Clinton billed Madison Guaranty for two hours for the following work: "Conference with Seth Ward; telephone conference with Seth Ward regarding option; telephone conference with Mike Shauffler; prepare option."[1381] Indeed, a May 1 option agreement between Mr. Ward and Madison Financial bore a word processing code ("0190g") that, according to the Rose Law Firm's counsel, indicates the document was created at the Rose Law Firm by or for Mrs. Clinton.[1382] The May 1st agreement gave Madison an option from Mr. Ward to

convey his portion of the Castle Grande property back to Madison. Mr. Clark, the bank examiner, told investigators that, after reviewing the records and in light of Mr. Denton' testimony, he believed that the May 1st option prepared by Mrs. Clinton "was created 'in order to conceal the connection—whatever it was—between'" the March 31st and April 7th notes.[1383]

On June 13, 1996, in light of the significant new evidence offered by Mr. Denton and Mr. Clark relating to the extent and nature of Mrs. Clinton's role in Castle Grande, the Special Committee requested that Mrs. Clinton "refresh her memory about these transactions, and to inform the Special Committee of what she recalls about them" in writing, under oath."[1384] In her response affidavit, Mrs. Clinton did not answer the question, but simply referred to her attorney's transmittal letter "addressing certain allegations recently made by Mr. Don Denton."[1385] In his letter, Mr. Kendall maintained that Mr. Denton's recollection is "wholly unreliable"[34] but gave no indication as to the recollection of the First Lady.[1386] Mrs. Clinton, therefore, has neither denied nor confirmed Mr. Denton's account.

IV. The Federal Investigations into the Rose Law Firm's Representation of Madison

When the FDIC assumed control of Madison in 1989, Madison had a pending lawsuit against its former independent accountants, Frost & Company ("Frost").[1387] The suit was filed in 1988 by the Memphis law firm of Gerrish & McCreary and alleged malpractice on the part of Frost in connection with its audits of Madison performed in 1984 and 1985.[1388] The *Frost* litigation was assigned to FDIC attorney April Breslaw, who removed Gerrish & McCreary from the case and hired the Rose Law Firm to handle the matter.[1389] Rose partner Webster Hubbell was the billing partner and lead trial counsel on the case.[1390] Although the original claim was for $10 million, Rose settled the case in late February 1991 for $1.025 million.[1391] The firm was paid $375,380 for its work.[1392]

In 1994, the FDIC Office of the Inspector General ("FDIC–IG") and the RTC–IG began investigations into possible conflicts of interests related to the Rose's representation of those agencies in the *Frost* litigation.

During a February 24, 1994 hearing before the Senate Banking Committee, Ranking Member Alfonse D'Amato raised questions about a February 17, 1994 report of the FDIC Legal Division regarding the FDIC's hiring of Rose as counsel with respect to Madison.[1393] This report was prompted by stories appearing in the

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[34] Mr. Kendall based this assertion on the fact that Mr. Denton testified at two trials, *Ward* v. *Madison Guaranty,* and *United States* v. *McDougal et al.,* yet did not mention his April 7, 1986 telephone conversation with Mrs. Clinton. Mr. Kendall, however, offered no indication whether Mr. Denton was asked questions about his conversations with Mrs. Clinton or, for that matter, whether such conversations and Mrs. Clinton's work for Madison were within the scope of the trials.

What is clear, however, is that Mr. Denton recalled the conversation only after being shown Mrs. Clinton's billing records refelcting the 12 minute telephone call on April 7. When he was shown this record, on June 3, 1996, he did not recall the conversation. However, after the interview, he reviewed his files and discovered the April 7 message slip from Mrs. Clinton. His memory thus refreshed, he provided additional testimony to the FDIC–IG, all under a legal obligation of truthfulness, 18 U.S.C. § 1001. (Denton, FDIC–IG Report of Interview, June 11, 1996.) Mr. Denton has no reason to mislead investigators, much less to go out of his way to give inaccurate testimony.

media in late 1993 and early 1994 alleging that Rose had failed to disclose conflicts related to its representation of Madison before the Arkansas Securities Department and the litigation against Madison brought by Mr. Hubbell's father-in-law, Seth Ward.[1394] The FDIC Legal Division concluded that neither Rose's representation of Madison before the Arkansas Securities Department nor Mr. Ward's suit against Madison constituted a conflict.[1395] At Senator D'Amato's urging,[1396] then FDIC Acting Chairman Andrew C. Hove agreed to ask the FDIC–IG to conduct an investigation.[1397]

On February 8, 1994, the RTC's Office of Contractor Oversight and Surveillance ("OCOS") issued a report dismissing allegations of conflicts of interest related to Rose's representation of the RTC in the Frost case.[1398] On February 24, 1994, RTC Interim Chief Executive Officer ("CEO") Roger Altman agreed to ask the RTC–IG to review the OCOS Report.[1399] On March 2, 1994, RTC Deputy and Acting CEO John Ryan requested that the RTC–IG investigate the matters raised in the OCOS Report.[1400]

The FDIC–IG issued its report on July 28, 1995, days before Ms. Huber discovered the billing records in the Book Room of the White House Residence. In the course of its investigation, the IG reviewed (1) the alleged conflicts of interest related to the FDIC's retention of Rose; (2) the FDIC Legal Division's conflicts report; (3) and certain legal fee payments made by the FDIC to Rose.[1401]

With respect to the conflicts related to the FDIC's retention of Rose, the IG concluded that the Rose Law Firm and, specifically, that Mr. Hubbell had failed, as required by ethical rules, to disclose the firm's prior representation of Madison. The FDIC–IG reported:

> The results of our investigation evidenced conflicting relationships among the Rose Law Firm, Rose partner Webster L. Hubbell, and Mr. Hubbell's father-in-law since 1971, Seth Ward. During the time that Mr. Hubbell represented the Madison Conservatorship on behalf of the FDIC, Mr. Hubbell's father-in-law was engaged in litigation adverse to the Madison Conservatorship. We found that neither the Firm nor Mr. Hubbell had informed FDIC of these relationships when the Firm was hired in March 1989 to handle the lawsuit against Frost or while the Firm was acting as litigator for the Madison Conservatorship.[1402]

The report further found that Mr. Hubbell's representation of the FDIC was improper in light of Rose's prior representation of Mr. McDougal's S&L:

> The results of our investigation also evidenced conflicting representations on the part of the Rose Law Firm with respect to its representation of FDIC regarding the Madison Conservatorship. Specifically, we found that the Firm had represented Madison and its wholly owned subsidiary, Madison Financial Corporation, in 1985 and 1986 on various legal matters, including representation of Madison in 1985 before the Arkansas Securities Department (ASD). During its 1985 representation of Madison the Firm submitted materials to the ASD which were prepared by Frost, the firm that was later sued by Rose on behalf of

> FDIC for the Madison Conservatorship. We further found that for many years the Rose Law Firm represented Mr. Hubbell's father-in-law, Seth Ward, or Mr. Ward's companies regarding various legal matters. However, there was no evidence to show that Mr. Hubbell or the Rose Law Firm disclosed these representations to FDIC when the Firm was hired or during its representation of the Madison Conservatorship in the Frost lawsuit.[1403]

In its review of the FDIC Legal Division's February 17, 1994 Report, the FDIC-IG determined that the Legal Division failed to consider certain conflicts criteria and additional evidence obtained by the IG.[1404]

The RTC–IG, after a separate investigation, issued its report on August 3, 1995—again days before someone placed the billing records in the Book Room.[35] The RTC–IG found that "Rose Law Firm did not disclose actual or potential conflicts relating to Madison and another six of the 17 institutions for which the firm represented FDIC and RTC."[1405]

Among the "undisclosed" matters identified by the RTC-IG Report related to Rose's involvement in the Castle Grande land deal:

> At the time it assisted MADISON GUARANTY with the CASTLE GRANDE deal, ROSE LAW FIRM was aware of regulatory concerns about the soundness of the institution, particularly its net worth, through its representation of MADISON GUARANTY on applications with the ARKANSAS SECURITIES DEPARTMENT to issue preferred stock and to commence broker/dealer operations. Although FROST & COMPANY's defense called the conduct of MADISON GUARANTY management into question and ROSE LAW FIRM had represented MADISON GUARANTY/MADISON FINANCIAL/SETH WARD in an acquisition of property orchestrated by that management and subsequently heavily criticized by the regulators, ROSE LAW FIRM did not disclose fully its relationship with MADISON GUARANTY in the purchase and development of the IDC property to FDIC or RTC when it was retained in the suit against FROST & COMPANY.[1406]

Mr. Adair, Inspector General of the RTC, provided further explanation of the conflicts problem posed by Rose's involvement in Castle Grande in his testimony before the House Banking Committee in August 1995:

> Arkansas State Regulations had prohibited Madison Guaranty from acquiring a tract of property that became known as Castle Grande, and as an entity the Rose Law Firm was aware of this restriction because it had pre-

[35] The Rose Law Firm resisted the RTC OIG's investigation. After Rose declined a request to provide client identity information, the OIG issued a subpoena calling for the production of documents that would establish the identities of Rose's clients between 1985 and 1994. In April 1994, Rose filed suit against the RTC and the OIG, seeking to enjoin the OIG's conflicts investigation and bar enforcement of the subpoena. The suit was dismissed in August 1994. In November 1994, a federal district court ordered Rose to comply with the subpoena. See *Adair* v. *Rose Law Firm,* 867 F. Supp. 1111 (D.D.C. 1994); (RTC OIG Report p. I–1—I–2; Black, 8/10/95 Hrg. pp. 119–121.)

viously represented Madison Guaranty in other work involving the Arkansas Securities Department.

According to a subsequent Home Loan Bank Board examination that was done, to avoid this restriction, Madison Guaranty assigned the right to purchase part of the property to an employee of the institution who was the father-in-law of a Rose partner.

Madison Guaranty financed 100 percent of that employee's purchase, providing over $1 million in non-recourse financing and obtained an option from the employee to convey the property back to Madison Guaranty.

Essentially, the purchase appears to have been structured to avoid violation of state law by Madison Guaranty. Madison Guaranty paid the Rose Law Firm for legal services in connection with the transaction.

In a report of examination of March 1986, Federal Home Loan Bank Board examiners identified this transaction as one of a series of fictitious transactions causing losses to Madison Guaranty.

When Madison Guaranty's independent public accountant was sued by FDIC for its part in the failure of the institution, the accounting firm's defense called the conduct of Madison Guaranty's management into question for several transactions including Castle Grande.

Although the Rose Law Firm had earlier assisted Madison Guaranty management in the original Castle Grande transaction, the Rose Law Firm did not disclose its role in that transaction when later retained by the FDIC in the malpractice suit against Madison Guaranty's independent public accountant.[1407]

On December 29, 1995, RTC General Counsel William Collishaw informed the Arkansas Supreme Court Committee on Professional Conduct that the RTC–IG Report "provides a sufficient indication of the existence of possible undisclosed conflicts of interest by the Rose Law Firm such that it raises concerns about the Rose Law Firm's compliance with the Arkansas Rules of Professional Conduct."[1408] The matter is still pending before the Committee on Professional Conduct.[1409]

Relying primarily on the report of the RTC–IG, the Pillsbury Firm reviewed Rose's representation of the FDIC and the RTC.[1410] Pillsbury determined that "[b]etween the time the Rose Law Firm was substituted in and the time the Frost case settled, the Rose Law Firm developed an impermissible conflict of interest, which it neither fully disclosed to its client, the RTC, nor had waived."[1411] Pillsbury concluded that "[a] claim could be asserted against the Rose Law Firm with respect to the conflict of interest."[1412] Specifically, Pillsbury identified Seth Ward and the Castle Grande transaction as among the factors leading to its conclusion that Rose had a conflict of interest.[1413]

Ms. Black, counsel to the RTC-IG, stressed the significance of the billing records found in the Book Room of the White House to her investigation. She explained that the records related to the key transactions at issue in the allegations of conflicts of interest:

> The investigation which we were performing in 1994 and completed in the summer of 1995 was an investigation of actual or potential conflicts that the Rose Law Firm might have had with regard to its work for initially the FDIC and then the RTC. As a part of that investigation, we looked at the firm's work for Madison Guaranty. We also looked at the firm's work, if any, for Seth Ward.
>
> We looked at various transactions, including Castle Grande, IDC, the Frost litigation, the representation before the Arkansas Security Department and general work that they did for Madison Guaranty. These records—the records that were available to us at the time we were doing our investigation were very sparse. It was very difficult for us to understand what the Rose Law Firm had in fact done. We had no more than a handful of invoices, five or six.[1414]

Ms. Black stated that the billing records were the best available evidence of the work Rose performed for Madison and that those records were "considerably more detailed than what was available to us before."[1415]

Ms. Black testified that if the RTC–IG had the billing records during its investigation, "certainly there would have been questions that we asked witnesses that we did not ask. There would have been lines of inquiry that we would have pursued that we did not pursue. There might have been witnesses that we would have asked to interview that we did not ask to interview."[1416]

In particular, the Rose billing records increased the RTC-IG's knowledge of Mrs. Clinton's role in Rose's representation of Madison. When Ms. Black testified before the House Banking Committee in August 1995 about her report, all that she could say was that Mrs. Clinton worked for Madison. "We don't know what it was. The bills that were submitted by Rose had the names of attorneys who did the work at the top, and then they had a block discussion of the activities that occurred, and we don't know who did what."[1417] Ms. Black further testified in 1995 that "[w]e have no evidence that she [Hillary Clinton] worked on Castle Grande."[1418]

After the billing records were discovered, Ms. Black testified that the RTC–IG learned, for the first time, of the following relevant matters:

> Mrs. Clinton's role in drafting the May 1, 1986 option agreement between Madison and Seth Ward;
>
> Mrs. Clinton's telephone conference with Beverly Bassett Schaffer the day before the Rose Law Firm sent a letter to Ms. Schaffer requesting approval of Madison's plan to issue a series of preferred stock;
>
> Mrs. Clinton's review of a letter discussing the Arkansas banking regulation which limited direct investments by an S&L in an affiliate or subsidiary; and
>
> Mrs. Clinton's 15 conferences, either in person or on the telephone, with Seth Ward, the key player in the Castle Grande deal.[1419]

Ms. Black stated that the RTC–IG would have interviewed Mrs. Clinton if it had the billing records during its investigation.[1420]

V. The Special Committee's Investigation into the Circumstances Surrounding the Discovery of the Billing Records

The FDIC–IG issued its report on the Rose Law Firm's conflicts of interest stemming from its representation of Madison on July 28, 1995. The RTC-IG issued its report on the same matter on August 3, 1995. During the two week period following the publication of these reports, Ms. Huber first saw the billing records in the Book Room of the White House Residence, next to Mrs. Clinton's office.

The Special Committee conducted hearings in December 1995 into matters relating to the Rose Law Firm and Mrs. Clinton's representation of Madison. Specific questions were raised regarding the existence of the billing records. Mr. Hubbell claimed that he could not provide complete answers about the Mrs. Clinton's representation of Madison because he did not have the billing records to refresh his memory.[1421] Ms. Thomases similarly testified about her campaign notes relating to billing records reflecting Mrs. Clinton's work for Madison.[1422] About two weeks later, on January 4, 1996, Ms. Huber examined the records she recovered from the Book Room and realized that they were the missing billing records.[1423]

Because of the importance of the records and the mysterious circumstances of their disappearance and discovery, the Special Committee conducted an exhaustive investigation to identify the person or persons who removed them from the Rose Law Firm in 1992 and who placed them in the Book Room of the White House Residence in August 1995.

The White House produced to the Special Committee records reflecting all persons who entered the White House Residence from July 20 through August 14, 1995.[1424] The White House provided lists of construction workers who were on the payroll of contractors performing renovations in the White House Residence during this period.[1425] Finally, the White House produced lists of overnight guests of President and Mrs. Clinton during this period.[1426]

The White House informed the Special Committee that approximately 206 persons had access to the Book Room during the relevant period from July 20 to August 14, 1995, when Ms. Huber testified she found the billing records.[1427]

Of the 206 persons with access to the Bookroom during the relevant period, 28 were White House Residence Staff.[1428] The Chief Usher, Gary Walters, testified that the Residence staff may not place documents in, or move documents around, the White House Residence without authorization.[1429] According to Mr. Walters, it is highly unlikely that a member of the Residence staff placed the records in the Book Room.[1430] Because the White House Residence employees would have had little opportunity to gain access to the billing records and no reason to place them in the Book Room, the Special Committee concluded that no residence employee placed the billing records in the Book Room.

After eliminating the 28 members of the Residence Staff, 178 persons remained. Of those, approximately 30 construction workers, who were involved in ongoing work in the Book Room or in the adjacent Exercise Room, were given access to the Book Room. Dennis Freemyer, the Deputy Head Usher in charge of construction projects, testified that the construction workers and outside contractors were all instructed not to touch or move anything in the

White House Residence.[1431] According to Mr. Freemyer: "They are asked not to touch anything. If they need something moved, they're to ask either the National Park Service or a member of our staff, if they are present."[1432] All construction workers and outside contractors were escorted by either Secret Service or White House Ushers at all times while they were in the Residence.[1433] For security reasons, the escorts specifically check at the completion of each day's work to ascertain whether the workers had left anything behind.[1434] According to Mr. Freemyer, it is highly unlikely that a construction worker or outside contractor placed the records in the Book Room.[1435] Because the outside contractors had no opportunity to gain access to the billing records or reason for placing them in the Book Room, the Special Committee concluded that no outside contractor placed the records in the Book Room.

After eliminating the construction workers, 148 persons remained, including 55 public officials.[1436] These public officials included 24 U.S. mayors, President and Mrs. Kim of South Korea, and various Cabinet officials and National Security Staff.[1437] Given their official positions and their lack of access to the billing records or motive to place them in the Book Room, the Special Committee concluded that none of these individuals placed the Rose Law Firm billing records in the Book Room.

Of the remaining 93 persons who had access to the White House residence during the period from July 20 through August 14, 1995, records of the Secret Service and the White House Usher's Office identified 60 Residence guests.[1438] The Special Committee sent interrogatories to these guests. Each guest responded that he or she did not handle the records, have any discussions about the records, or have any knowledge of how they came to appear in the Book Room of the White House Residence.

Apart from the Residence guests, construction workers, and staff, the remaining 33 individuals who had access to the Book Room during the relevant period had a past or present working relationship with the President and the First Lady. Of these 33 persons, the Special Committee received evidence from all except the President and the First Lady. Ten were sent interrogatories, and the others gave testimony directly to the Special Committee. All denied having handled the records, having any discussions about the records,[36] or having any knowledge about how the records appeared in the Book Room of the White House Residence.

The President and Mrs. Clinton are the only persons on the list of 206 persons having access to the White House Residence from whom the Special Committee has not received evidence. On June 13, 1996, the Special Committee requested that Mrs. Clinton respond in writing, under oath, about "any knowledge she may have concerning the Rose Law Firm billing records bearing Bates Stamp numbers DKSN028928 through DKSN029043, including whether she has reviewed, handled, or discussed (other than with counsel) these records, and her knowledge relating to the disappearance or discovery of these records."[1439]

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[36] Susan Thomases testified that she talked with Mr. Hubbell in 1992 about Mrs. Clinton's work for Madison, and he indicated to her that he had reviewed time records. With respect to reviewing the records herself, however, Ms. Thomases testified, "I never saw them. . . . I never heard what happened to them." (Thomases, 12/18/95 Hrg. pp. 54-55.)

On June 17, 1996, Mrs. Clinton responded: "I do not know how the billing records (DKSN028928 through DKSN029043) came to be identified by Mrs. Huber at the White House on January 4, 1996, although I have read various media accounts." In light of the Special Committee's request for detailed and specific information relating to any knowledge she had concerning the disappearance or discovery of these records, Mrs. Clinton's answer is incomplete. For example, she does not state whether she has any knowledge as to how the billing records were removed from the Rose Law Firm; who possessed the billing records between February 1992 and August 1995; where they were stored between February 1992 and August 1995; and, most importantly, who placed them in the Book Room of the White House in August 1995. There is no mystery as to how Ms. Huber came to identify the records on January 4, 1996. These other, more important questions, however, remain to be answered.

On June 4, 1996, the FBI informed the Special Committee that the fingerprints of six persons were found on the Rose billing records discovered in the Book Room.[1440] In addition to fingerprints of Ms. Huber and Marc Rolfe, a Williams & Connolly legal assistant who stamped numbers on the records to prepare them for production,[1441] the FBI also identified the fingerprint of Sandra Hatch, a Rose Law Firm file clerk assigned to Mr. Foster in 1992,[1442] and a palm print of Mildred Alston, Mrs. Clinton's Rose Law Firm secretary and currently Special Assistant for White House Personal Correspondence.[1443]

Ms. Hatch testified that, as Mr. Foster's file clerk, she was often asked by Mr. Foster or his secretary to photocopy documents and files—which, on occasions, included timesheets and billing records of the size and description similar to those found in the White House Book Room.[1444] She did not, however, recall a specific instance when Mr. Foster asked her to photocopy or handle such records.[1445] She did not recall handling, discussing, or overhearing any discussions about records specifically relating to the Rose Law Firm's work for Madison.[1446] Ms. Hatch testified that although she packed some of Mr. Foster's personal files from the Rose Law Firm for shipment to the White House in January 1993, she did not see any records resembling the billing records discovered in the Book Room.[1447] She had no knowledge of how the billing records got to the White House Residence.[1448] When asked to speculate how her fingerprint got onto the billing records, Ms. Hatch replied, "It's very possible I could have been asked to pick them up. I don't know. It would just be a guess."[1449]

Mildred Alston testified that, although she had been to Mrs. Clinton's office on the third floor of the White House Residence, she had never been to the adjacent Book Room.[1450] Prior to her appearance before the Grand Jury in 1996, Ms. Alston had never seen the billing records discovered in the Book Room since she came to Washington.[1451] She did see and handle records resembling those found in the Book Room while she worked at the Rose Law Firm,[1452] and speculated that "I'm sure if the tests indicate that my palm print is wherever on this piece of paper, or on the original of this piece of paper, then I handled them, or touched them or leaned on them" while she was at the Rose Law Firm.[1453] Ms. Al-

ston testified that, in January 1992, she helped pack Mrs. Clinton's documents and left some of them in the custody of Amy Stewart, a Rose lawyer, to be shipped to the White House.[1454] Ms. Alston did not know whether the billing records found in the Book Room were among the files shipped to the White House from Mrs. Clinton's office at the Rose Law Firm.[1455]

The FBI also identified the fingerprints of Mrs. Clinton and Vincent Foster on the billing records.[1456] Mr. Foster received the billing records during the 1992 Presidential campaign, and was the last known person to have handled the records.[1457] Lawyers for the Clintons, both from the White House and from Williams & Connolly, have stated that Mrs. Clinton "may have handled the billing records in 1992."[1458] What is left unanswered by this statement, however, are the critical questions concerning the mystery of the billing records: when did Mrs. Clinton handle them? Why did she handle them? And specifically, what information was she attempting to glean from them?

A close analysis of the billing records, Mr. Foster's notations, and the location of Mrs. Clinton's and Mr. Foster's fingerprints reveal at least some answers to these questions. The records disclose Mrs. Clinton's role in advising Mr. McDougal's Castle Grande transaction and they indicate Mrs. Clinton's and Mr. Foster's concern over Mrs. Clintons' involvement in the transactions.

Mrs. Clinton left her fingerprints at two places on the billing records. The FBI identified "[o]ne fingerprint located on the front bottom near the left edge of the page DEK 014950."[1459] At approximately this location on the page,[37] is an entry reflecting that Mrs. Clinton participated in a "teleconference with B. Bassett, Securities Commissioner."[1460] The entry is underlined in an unidentified hand, but the presence of Mrs. Clinton's fingerprint at this approximate location, and the absence of any other identifiable finger print on the page,[1461] strongly suggest that Mrs. Clinton made the markings.

This entry on the billing records, for upwards of one hour on the day before Rose submitted Madison's novel preferred stock proposal to Ms. Schaffer,[1462] contradicts Mrs. Clinton's response to RTC interrogatories that in May 1995, when she called the Arkansas Securities Department to find out "to whom Mr. Massey should direct any inquiries," she did not recall to whom she spoke.[1463] Mrs. Clinton's sworn statement is contrary to the testimony of the other two participants in the telephone conference, Ms. Schaffer and Mr. Massey.[1464] Ms. Schaffer, in particular, testified that she substantively discussed the legality of the preferred stock proposal.[1465]

Mrs. Clinton's fingerprints and the markings on the billing records at this entry indicate that Mrs. Clinton was aware of the nature of her contact with Ms. Schaffer as recently as February 1992, three years before her sworn answer to the RTC interrogatories. Ms. Schaffer recalled the substance of the conversation from over ten years ago, and it is unclear why Mrs. Clinton provided inaccurate information to the RTC on the conversations about which she had substantive knowledge as recently as 1992.

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[37] DEK 014950 was produced to the Special Committee as DKSN028943. (Facsimile from Nicole Seligman to Robert Giuffra, June 5, 1996.)

Mr. Foster's fingerprints on the billing records indicate his attention to Mrs. Clinton's role with respect to the Castle Grande transaction, a "land flip" deal that federal regulators have described as a fraud costing the taxpayers $4 million.[1466] The transaction was fraudulently structured to evade Arkansas' "direct investment" rule, which limits an S&L's investment in its subsidiaries and service corporations.[1467]

The FBI identified "[o]ne fingerprint on the front lower right corner of page DEK 014969" belonging to Mr. Foster.[1468] At approximately this location on the page,[38] is an entry reflecting that Mr. Massey participated in a conference with Sarah Hawkins, a Madison official, and the Federal Home Loan Bank "regarding brokerage activities and direct investment rule."[1469] The entire entry is circled, most probably by Mr. Foster, given the presence of his fingerprint proximate to the entry. The markings suggest that Mr. Foster recognized the significance of the direct investment rule as it related to the activities of Madison.

The importance of Mr. Foster's recognition as it related to Mrs. Clinton's representation of Madison becomes clear with the FBI's identification of "[o]ne fingerprint on the front upper right corner of page DEK 015030" belonging to Mr. Foster.[1470] At approximately this location on the page[39] is an entry reflecting that Mrs. Clinton had a telephone conference with Donald Denton, a Madison official, for approximately 12 minutes on April 7, 1986.[1471] Someone, apparently Mr. Foster, circled the name of the attorney on the entry: "HRC."[1472]

This telephone call is among the critical events in illuminating the nature of Mrs. Clinton's work in connection with the fraudulent Castle Grande transaction. The land deal, as noted above, was a sham transaction designed to conceal Madison Guaranty's investment in Castle Grande through its subsidiary, Madison Financial. Mr. Ward was the "straw man" purchaser in the project—one who lends his name to the title, but does not actually have an ownership interest.[1473] In order to conceal the commissions owed to Mr. Ward for his services, Madison Guaranty, Madison Financial, and Mr. Ward executed three promissory notes purporting to evidence loans but, in fact, were a means to pay Mr. Ward for his commissions. Two of these notes were executed on April 7, 1986.

That same day, Mr. Denton, Madison's loan officer, received a message from Mrs. Clinton.[1474] According to Mr. Denton, Mrs. Clinton called seeking copies of the April 7th notes between Mr. Ward and Madison Financial.[1475] When Mr. Denton cautioned Mrs. Clinton that the April 7th notes from Madison to Mr. Ward may pose a problem because "they constituted in effect a parent entity fulfilling the obligation of a subsidiary,"[1476] Mrs. Clinton "summarily dismissed" Mr. Denton's warning.[1477] She replied in a manner he took to mean that "he would take care of savings and loan matters, and she would take care of legal matters."[1478]

She indeed took care of matters. The Rose Law Firm billing records indicate that, three weeks later, on May 1, 1986, Mrs. Clin-

[38] This document was produced to the Special Committee as DKSN028962. (Facsimile from Nicole Seligman to Robert Giuffra, June 5, 1996.)

[39] This document was produced to the Special Committee as DKSN029024. (Facsimile from Nicole Seligman to Robert Giuffra, June 5, 1996.)

ton prepared an option agreement between Mr. Ward and Madison Financial.[1479] The word "HRC" in the entry was, as in the April 7th entry, circled apparently by the same hand.[1480] Based on the new evidence derived from Mr. Denton and the billing records, the federal regulator who examined Madison in 1986 believed that Mrs. Clinton's May 1 option "was created 'in order to conceal the connection—whatever it was—between'" the March 31 and April 7 notes.[1481]

On June 13, 1996, the Special Committee requested that the First Lady attempt to refresh her recollection regarding the matters discussed by Mr. Denton and to inform the Committee of what she recalls about them.[1482] On June 17, 1996 the Special Committee received an affidavit from Mrs. Clinton accompanied by a letter from Mr. Kendall. In the affidavit, Mrs. Clinton gave no answer to the question posed by the Special Committee; instead, she simply referred to Mr. Kendall's letter "addressing certain allegations recently made by Mr. Don Denton."[1483] In his letter, Mr. Kendall maintained that Mr. Denton's recollection is "wholly unreliable"[40] but gave no indication as to the recollection of the First Lady.[1484] The First Lady thus has neither confirmed nor denied Mr. Denton's testimony.

The significance of the billing records as they relate to Castle Grande is perhaps best illustrated by the activities of Mrs. Clinton's legal defense team immediately after the discovery of the records. A message slip from John Tisdale, the Clintons' Arkansas lawyer to Alston Jennings, Seth Ward's former attorney on Castle Grande, indicate that, on June 5, 1996, the day after Ms. Huber discovered the records in her White House office, Mr. Kendall called Mr. Tisdale and Mr. Jennings to arrange a meeting.[1485] One week after the records were discovered, on January 11, 1996, Mr. Kendall flew to Little Rock and met first with Mr. Jennings and then with Mr. Ward.[1486] The meeting with Mr. Ward lasted 30–40 minutes.[1487] Curiously, Mr. Kendall had also contacted Mr. Jennings in August 1995. Subsequent to that contact, Mrs. Clinton summoned Mr. Jennings to the White House for a personal meeting on August 10, 1995, around the time that the billing records were placed in the Book Room of the White House residence.

Mrs. Clinton, as the billing partner and lead attorney for Rose on the matter, most likely would have appreciated the importance of the billing records and the information they impart on Castle Grande. What remains unanswered is how Mr. Foster gained knowledge of the significance of these transaction—sufficient knowledge apparently to highlight the entry on the billing records

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[40] Mr. Kendall based this assertion on the fact that Mr. Denton testified at two trials, *Ward* v. *Madison Guaranty,* and *United States* v. *McDougal et al.,* yet did not mention his April 7, 1986 telephone conversation with Mrs. Clinton. Mr. Kendall, however, offered no indication whether Mr. Denton was asked questions about his conversations with Mrs. Clinton or, for that matter, whether such conversations and Mrs. Clinton's work for Madison were within the scope of the trials.

What is clear, however, is that Mr. Denton recalled the conversation only after being shown Mrs. Clinton's billing records reflecting the 12 minute telephone call on April 7. When he was shown this record, on June 3, 1996, he did not recall the conversation. However, after the interview, he reviewed his files and discovered the April 7 message slip from Mrs. Clinton. His memory thus refreshed, he provided additional testimony to the FDIC–IG, all under a legal obligation of truthfulness, 18 U.S.C. §1001. (Denton, FDIC–IG Report of Interview, June 11, 1996.) Mr. Denton has no reason to mislead investigators, much less to go out of his way to give inaccurate testimony.

for Mrs. Clinton's April 7th telephone call with Mr. Denton and for her preparation of the May 1 option. Given that Mr. Foster directed his handwritten notes on the billing records to Mrs. Clinton, the most reasonable inference is that Mrs. Clinton shared her recollection of the transactions with Mr. Foster, and the two collaborated in reviewing the billing records some time after February 1992. If that is so, then the question arises as to why Mrs. Clinton stated to investigators in 1995 that "I do not believe I knew anything about any of these real estate parcels and projects." [1488]

The billing records, and the evidence from Mr. Denton which the entries on the billing records elicited, indicate that Mrs. Clinton either had knowledge of or consciously avoided the fact that the Castle Grande transactions potentially violated bank regulations. That knowledge provides a powerful motive to protect the billing records from careful scrutiny by investigators. Because Mrs. Clinton had ordered the destruction of other documents relating to Mrs. Clinton's representation of Madison—including her timesheets and other work files directly relating to Castle Grande—the billing records were the only documentary evidence available which reflected the true extent and nature of Mrs. Clinton's role with respect to the fraudulent scheme.

The evidence strongly suggests that Mr. Foster and Mrs. Clinton, at some time after February 1992, worked together to reconstruct Mrs. Clinton's role in Castle Grande. The evidence also indicates that Mr. Foster and Mrs. Clinton appreciated the significance of Mrs. Clinton's April 7 telephone call to Mr. Denton and her preparation of the May 1 option, in the words of a federal regulator, "to conceal" the true nature of the transaction.[1489] Both had a powerful motive to protect the billing records from scrutiny. Mr. Foster is now deceased.

ENDNOTES

[1] White House Production S 12517.
[2] O'Melveny & Myers Document CCBW–884
[3] Williams & Connolly Document DKSN001168–001169.
[4] Williams & Connolly Document DKSN013309.
[5] RTC Document FDICHRC 162–163.
[6] Denton, 6/11/96 FDIC OIG Interview pp. 2–3.
[7] Wright, 1/26/96 Dep. p. 157–159.
[8] Clark, 1/18/96 Hrg. pp.162–164..
[9] Treasury Contacts Report, p. 3 & n. 7.
[10] IX Hearing Before the Committee on Banking, Housing, and Urban Affairs, Document pp. 1450–1455.
[11] Foren, 11/13/95 Dep. p. 107.
[12] Foren 11/14/95 Dep. p. 107
[13] Foren, 11/28/95 Hrg. p. 23.
[14] Coleman, 11/9/95 Dep. pp. 63–68; Coleman, 12/1/95 Hrg. pp. 11–12.
[15] Coleman, 12/1/95 Hrg. p. 16; see also Coleman, 11/9/95 Dep. p. 70; Kennedy, 11/1/95 Dep. p. 12; Kennedy, 12/5/95 Hrg. p. 69
[16] Kennedy, 11/1/95 Dep. pp. 22–23; Kennedy, 12/5/95 Hrg. pp.16–20.
[17] Kennedy, 11/1/95 Dep. pp. 12–14; Kennedy, 12/5/95 Hrg. pp. 13–15.
[18] Hogan & Hartson Document BL011722.
[19] S. Rep. 103–433, "Madison Guaranty S&L and the Whitewater Development Corporation, Washington, D.C. Phase, Report of the Committee on Banking, Housing, and Urban Affairs, United States Senate, on the Communications Between Officials of the White House and the U.S. Department of the Treasury or the Resolution Trust Corporation," 103rd Cong., 2d Sess., January 3, 1995 pp. 9–13 (hereinafter, "S. Rep. 103–433").
[20] S. Rep. 103–433 p. 11.
[21] S. Rep. 103–433 p. 11.
[22] S. Rep, 103–433 p. 12.
[23] RTC Document TH705.
[24] Sloan, 7/21/94 Dep. p. 44–47, S. Hrg. 103–889, Vol. V, pp. 680–682.
[25] White House Document X983, S. Hrg. 103–889, Vol. IX, p. 1086.

[26] White House Document X984 S. Hrg. 103–889, Vol. IX, p. 1087.
[27] White House Document X984, S. Hrg. 103–889, Vol. IX, p. 1087; S. Rep. 103–433, Vol. 11, p. 16.
[28] S. Rep. 103–433 pp. 12–13. Check cite.
[29] S. Rep. 103–433 p. 18.
[30] Lindsey, 7/21/94 Dep. p. 219, S. Hrg. 103–889, Vol. V, p. 451.
[31] S. Rep. 103–433 p. 18.
[32] S. Rep. 103–433 pp. 26–34.
[33] White House Document X534, S Hrg. 103–889, Vol. VIII, p. 641.
[34] White House Document X534, S Hrg. 103–889, Vol. VIII, p. 641.
[35] Kennedy, 12/5/95 Hrg. p. 46.
[36] 12/12/95 Submission of Williams & Connolly to the Special Committee p. 13, reprinted in Kennedy Notes Report, S. Rep. 104–191 p. 70.
[37] Lindsey, 11/28/95 Hrg. p. 205.
[38] Lindsey, 11/28/95 Hrg. p. 204.
[39] Kennedy, 1/15/96 Dep., pp. 145–146.
[40] Black, 11/7/95 Hrg. pp. 168, 190.
[41] New York Post, 11/29/95, p. 16.
[42] Eggleston, 11/4/95 Dep. pp. 61–58; Spotila, 11/6/95 Dep. pp. 52–65.
[43] Justice Department Document TTK–157.
[44] Gearan, 2/15/96 Hrg. pp. 9–12.
[45] White House Production S020567.
[46] White House Production S 020566; Gearan, 02/15/96 Hrg., p. 15.
[47] Gearan, 2/15/96 Hrg. p. 15.
[48] Gearan, 02/15/96 Hrg., pp. 15–16; Ickes, 02/22/96 Hrg., pp. 68–69.
[49] White House Production S020578.
[50] Wright, 1/26/96 Dep. p. 13.
[51] White House Production S 02084. (CHECK)
[52] White House Production S 02084. (CHECK)
[53] White House Production S 020579.
[54] White House Production S 020579.
[55] White House Document S020760–020761.
[56] White House Document S020760–020761.
[57] White House Production, ?, S020576.
[58] White House Production, ?, (Not Numbered).
[59] Gearan, 02/15/96 Hrg., p. 182.
[60] Schaffer, 04/29/96 Dep., pp. 38–39.
[61] Rutherford, 2/29/96, Dep. p. 43.
[62] Schaffer, 04/29/96 Dep., p. 26.
[63] S. Rerp. 103–433, p. 81.
[64] Altman Diary, Treasury Doc. No. 2987; S. Rep. 102–433, p. 65–67.
[65] Pillsbury Madison & Sutro, A Report on Certain Real Estate Loans and Investments Made By Madison Guaranty Savings & Loan and Related Matters, 12/19/95, p. 39.
[66] Denton, 6/11/96 FDIC OIC Interview p. 3.
[67] Stephanopoulos, 07/19/94 Dep. p. 40.
[68] Steiner, 07/18/94 Dep., pp. 199–200.
[69] Hanson, 07/17/94 Dep., p. 652.
[70] Hanson, 07/17/94 Dep., p. 651.
[71] S. Rep. 103–433, p. 145.
[72] S. Rep. 103–433, Vol. II, p. 145; Steiner, 7/18/94, Dep. pp. 205–206.
[73] S. Rep. 103–433, Vol. II, p. 145; Steiner, 7/18/94, Dep. pp. 205–206.
[74] Stephens, 05/15/96 Dep. p. 13.
[75] Stephens, 05/15/96 Dep. p. 21.
[76] Stephens, 05/17/96 Hrg., p. 19.
[77] Stephens, 05/17/96 Hrg., pp. 7–8.
[78] Lewis, 11/29/95 Hrg. p. 6.
[79] Iorio, 10/20/95 Dep. p. 123; Lewis, 11/29/95 Hrg. p. 26.
[80] 11/27/95 Transcript of Conversation Between L. Jean Lewis and April Bristle, p. 59.
[81] DOJ Doc. A7049–50. Banks dep. 91.
[82] Iorio and Lewis, 11/29/95 Hrg., p. 28.
[83] Gangloff, date, pp. 72–74.
[84] Department of Justice Production FBI–00001545.
[85] DOJ Production 014277.
[86] Keeney, 12/06/95 Hrg., p. 28.
[87] Casey, house dep. p. 112; Johnson, date, pp. 55–56.
[88] DOJ Doc. 16848.
[89] Hubbell Dep. 10/26/95, Dep. pp. 96–99, 149–151.
[90] Hrg. 11/8/95, p. 8.
[91] Adair, 11/7/95 hrg., p. 123.
[92] Hrg. 11/7/95, p. 124.
[93] Cottos, 11.8.95 Hrg. p. 35–36.
[94] Blight, 11/7/95 Hrg. pp. 108–109.
[95] Hrg. 11/7/95, pp. 119–20.
[96] S. Hrg. 103–889, Vol. IV, pp. 90, 432, 461, 735 & 743.
[97] Potts, 11/8/95 Hrg., pp. 226–27.
[98] Cutler, 11/9/95 Hrg. p. 34.
[99] White House Production, Cover Letter, 1/29/96.
[100] Gearan, 2/12/96, Dep. p.12.

[101] Waldman, 2/21/96, pp. 15–17.
[102] White House Production, 2/20/96, Cover Letter.
[103] Letter from Allen Snyder to Robert Giuffra, Mar. 1, 1996, p. 1.
[104] S. Rep. 103–433, Vol. II, pp. 125–135.
[105] Ickes, 7/24/94 Dep. pp. 118–126.
[106] Ickes, 7/24/94 Dep. p. 119.
[107] Ickes, 7/24/94 Dep. p. 123.
[108] White House Document S9908–S9911.
[109] White House Document S9909.
[110] 5 C.F.R. § 2635.701(a).
[111] 5 C.F.R. § 2635.702. See also Office of Government Ethics, Report to the Secretary of the Treasury pp. 2–4 (July 31, 1994).
[112] The White House, Remarks by the President in Appointment of Lloyd Cutler for Special Counsel to the President, March 8, 1994.
[113] See 5 C.F.R. § 2635.703 ("An employee shall not . . . allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.").
[114] 3 CFR § 100.735–18.
[115] Clark, 1/18/96 Hrg. p. 90
[116] Clark, 1/18/96 Hrg. p. 90.
[117] Williams & Connolly Document DKSN028928–DKSN029043.
[118] Associated Press, 4/22/94, "Text of First Lady Hillary Rodham Clinton's News Conference in the State Dining Room of the White House."
[119] Williams & Connolly Document DKSN028943.
[120] Williams & Connolly Document DKSN028943.
[121] Williams & Connolly Document DKSN0128940.
[122] Massey, 1/11/96 Hrg. pp. 184–185.
[123] Williams & Connolly Document DKSN028928–DKSN029043.
[124] Williams & Connolly Document DKSN028928–DKSN029043.
[125] Williams & Connolly Document DKSN028943.
[126] Massey, 1/11/96 Hrg. p. 93.
[127] Massey, 1/11/96 Hrg. p. 93.
[128] Massey, 1/11/96 Hrg. pp. 96–97.
[129] Pillsbury Madison & Sutro, A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings & Loan and Related Matters, 12/19/95, p. 39.
[130] Hillary Rodham Clinton Answer to RTC Interrogatory Number 29, p. 73, 5/24/95, RTC Document 74.
[131] RTC Supplemental Interrogatories, 1/20/96, RTC Document SINNTR00100.
[132] Clark, 6/10/96 FDIC–IG Interview p. 9.
[133] Clark, 6/10/96 FDIC–IG Interview p. 9.
[134] Clark, 6/10/96 FDIC–IG Interview p. 9.
[135] Clark, 6/10/96 FDIC–IG Interview p. 9.
[136] RTC Document, SEN 32912–32913.
[137] Williams & Connolly Document DKSN029024.
[138] Denton Document, DD000000241.
[139] Denton, 6/11/96 FDIC OIG Interview pp. 2–3.
[140] Id. at 3.
[141] Id.
[142] Williams & Connolly Document, DKSN029026.
[143] 12/28/95 Pillsbury Report p. 74.
[144] Clark, 6/10/96 FDIC–IG Interview p. 9.
[145] 6/13/96 letter from Senators Alfonse D'Amato, Richard Shelby, Christopher Bond, Connie Mack, Lauch Faircloth, Robert Bennett, Rod Grams, Pete Domenici, Orrin Hatch, and Frank Murkowski to David Kendall.
[146] Affidavit of Hillary Rodham Clinton, June 17, 1996, p. 2.
[147] 6/17/95 Letter from David Kendall to Alfonse D'Amato, p. 2.
[148] Letter from Alston Jennings to Viet Dinh, February 7, 1996, attachment.
[149] February 7, 1996 letter from Alston Jennings to Viet Dinh.
[150] Ward, 2/12/96 Dep. p. 102.
[151] Vinson & Elkins Document RS237A.
[152] Hubbell, 2/7/96 Hrg. p. 169.
[153] Clark, 1/18/96 Hrg. pp. 162–164.
[154] Williams & Connolly Document DKSN28929.
[155] Hubbell, 2/7/96 Hrg. p. 48.
[156] Hubbell, 2/7/96 Hrg. p. 56.
[157] Hubbell, 2/7/96 Hrg. p. 52.
[158] Hubbell, 2/7/96 Hrg. p. 53.
[159] Hubbell, 2/7/96 Hrg. p. 54.
[160] Huber, 1/18/96 Hrg. p. 5.
[161] Huber, 1/18/96 Hrg., pp. 5, 8.
[162] Huber, 1/18/96 Hrg. p. 9.
[163] Huber, 1/18/96 Hrg. pp. 16–17, 28.
[164] Huber, 1/18/96 Hrg. pp. 17–18.
[165] Huber, 1/17/96 Dep. p. 85.
[166] Huber, 1/18/96 Hrg. p. 19; Huber, 1/17/96 Dep. pp. 85.
[167] Hubbell, 6/4/95 Dep. p. 95.
[168] Affidavit of Hillary Rodham Clinton to the Special Committee, June 17, 1996, p. 1.

[169] Pillsbury Madison & Sutro, "Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation," April 24, 1995, pp. 15–16, and p. 25 (hereinafter, "4/24/95 Pillsbury Report").
[170] 4/24/95 Pillsbury Report p. 11.
[171] 4/24/95 Pillsbury Report p. 19.
[172] 4/24/95 Pillsbury Report p. 32.
[173] 4/24/95 Pillsbury Report p. 32.
[174] 4/24/95 Pillsbury Report p. 43.
[175] Pillsbury Madison & Sutro, "General Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities," December 28, 1995, p. 7 (hereinafter, "Pillsbury General Report").
[176] 4/24/95 Pillsbury Report p. 44.
[177] Pillsbury General Report pp. 7–8.
[178] Pillsbury General Report p. 8.
[179] Pillsbury General Report p. 8.
[180] Pillsbury General Report p. 8.
[181] Pillsbury General Report p. 9.
[182] Pillsbury General Report p. 9.
[183] Pillsbury General Report p. 9.
[184] 4/25/95 Pillsbury Report, p. 4.
[185] RTC Document PLS0020S.
[186] RTC Document PLS0033S.
[187] Wright, 1/26/96 Dep. pp. 157–159.
[188] Wright, 1/26/96 Dep. pp. 157–159.
[189] Wright, 1/26/96 Dep. p. 164.
[190] Madison Guaranty S&L and the White Water Development Corporation: Washington, DC, Phase, Report of the Committee on Banking, Housing, and Urban Affairs on the Communications between Officials of the White House and the U.S. Department of the Treasury or the Resolution Trust Corporation, S. Rep. 103–433, Jan. 3, 1995, p. 3 & n. 7.
[191] Treasury Contacts Report, p. 3 & n. 7.
[192] IX Hearing before the Committee on Banking, Housing, and Urban Affairs, White House Document, pp. 1447–1449.
[193] IX Hearing before the Committee on Banking, Housing, and Urban Affairs, White House Document, pp. 1450–1455.
[194] Office of Special Investigations, GAO/OSI–94–23, "Inadequate Oversight of Capital Management Services, Inc.,—an SSBIC, p. 2 (hereinafter GAO/OSI–94–23).
[195] GAO/OSI–94–23, p. 2.
[196] GAO/OSI–94–23, p. 2.
[197] GAO/OSI–94–23, p. 2.
[198] "SBA Policy and Procedure Release #2017" (reprinted in GAO/OSI–94–23, p. 22).
[199] "SBA Policy and Procedure Release #2017" (reprinted in GAO/OSI–94–23, p. 23).
[200] "SBA Policy and Procedure Release #2017" (reprinted in GAO/OSI–94–23, p. 4).
[201] "SBA Policy and Procedure Release #2017," reprinted in GAO/OSI–94–23, p. 5; see also McDougal Transcript, 4/11/96 p. 4501.
[202] "SBA Policy and Procedure Release #2017" (reprinted in GAO/OSI–94–23, p. 5).
[203] GAO/OSI–94–23, p. 11.
[204] Foren, 10/26/95 Dep. pp. 161–162.
[205] Foren, 10/26/95 Dep. pp. 162–163.
[206] Foren, 10/26/95 Dep. pp. 162–163.
[207] DOJ Document 007763–007765.
[208] Foren, 10/26/95 Dep. pp. 162–164; DOJ Document 007763–007765.
[209] Clinton's trial testimony p. 21 April 28, 1996.
[210] Foren, 10/26/95 Dep. pp. 30–33.
[211] Foren, 10/26/95 Dep. pp. 31–32.
[212] Foren, 10/26/95 Dep. pp. 33–34, 49–50.
[213] Foren, 10/26/95 Dep. pp. 80–81.
[214] Foren, 11/28/95 Hrg. p. 20.
[215] Foren, 11/28/95 Hrg. p. 23.
[216] 1/31/96 OIC Document (2/17/94 Hale Indictment).
[217] 1/31/96 OIC Document (2/17/94 Hale Indictment).
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[222] Lewis, 11/29/95 Hrg. p. 6; Iorio, 10/20/95 Dep. pp. 10, 16, 176–181.
[223] Iorio, 10/20/95 Dep. p. 38.
[224] Lewis, 10/30/95 Dep. p. 22; Lewis, 10/31/95 Dep. p. 336; Lewis, 11/29/95 Hrg. p. 7.
[225] Lewis, 10/30/95 Dep. p. 31.
[226] Lewis, 11/29/95 Hrg. pp. 7–9.
[227] Lewis, 11/29/95 Hrg. p. 8.
[228] Lewis, 11/29/95 Hrg. p. 9.
[229] Lewis, 11/29/95 Hrg. pp. 8–9.
[230] Lewis, 11/29/95 Hrg. p. 8.
[231] Lewis, 11/29/95 Hrg. p. 8.
[232] Lewis, 11/29/95 Hrg. p. 9.
[233] Lewis, 11/29/95 Hrg. pp. 9–10.

[234] Lewis, 10/30/95 Dep. p. 25.
[235] Lewis, 11/29/95 Hrg. p. 10; see RTC Document PLS0016S–PLS0035S.
[236] RTC Document PLS0035S; Iorio, 11/28/95 Hrg. p. 70.
[237] DOJ Document JDA 000200.
[238] DOJ Document JDA 000200.
[239] DOJ Document JDA 000200.
[240] Thompson, 10/24/95 Dep. p. 13; R. Knight, 10/19/95 Dep. p. 8.
[241] Dudine, 10/19/95 Dep. p. 17.
[242] Thompson, 10/24/95 Dep. p. 14; Dudine, 10/19/95 Dep. pp. 13, 18, 32.
[243] Iorio, 11/29/95 Hrg. p. 74.
[244] RTC Document PLS0020S.
[245] RTC Document PLS0020S.
[246] RTC Document PLS0016S.
[247] RTC Document PLS0033S.
[248] RTC Document PLS0032S.
[249] Lewis, 11/29/95 Hrg. pp. 79–80; 10/30/95 Dep. pp. 35, 447.
[250] Iorio, 11/29/95 Hrg. p. 82.
[251] RTC Document PLS0022S.
[252] RTC Document PLS0022S.
[253] Wright, 4/25/96 Hrg. p. 117.
[254] Wright, 1/26/96 Dep. p. 162.
[255] Wright, 4/25/96 Hrg. pp. 119–120.
[256] Wright, 1/26/96 Dep. p. 164.
[257] Wright, 4/25/96 Hrg. p. 124.
[258] S. Rep. 103–433 p. XIV.
[259] DOJ Document 10/27/93 (Not Numbered) letter from Paula J. Casey to L. Jean Lewis declining to take action on referral.
[260] RTC Document 09/01/92 (Not Numbered) letter from L. Richard Iorio to Charles A. Banks.
[261] DOJ Document 10/27/93 (Not Numbered) letter from Paula J. Casey to L. Jean Lewis declining to take action on referral.
[262] DOJ Document JDA 000200.
[263] McWhorter, 10/17/95 Dep. p. 13.
[264] McWhorter, 10/17/95 Dep. p. 31; Banks 10/24/95 Dep. p. 56.
[265] Banks, 10/24/95 Dep. p. 56.
[266] Barr, 11/13/95 Dep. pp. 10–13.
[267] Raphaelson, 10/26/95 Dep. p. 5.
[268] Barr, 11/13/95 Dep. pp. 11–13.
[269] Raphaelson, 10/26/95 Dep. pp. 12–17, 34–35.
[270] Barr, 11/13/95 Dep. p. 14.
[271] Barr, 11/13/95 Dep. pp. 14–15.
[272] Barr, 11/13/95 Dep. p. 22.
[273] Barr, 11/13/95 Dep. p. 43.
[274] DOJ Document 7214.
[275] DOJ Document 017458.
[276] FBI Document 00000986–996.
[277] FBI Document 00000988.
[278] FBI Document 0000991–00000992.
[279] FBI Document 00000986–996.
[280] FBI Document 1031; Kendrick, 10/30/95 Dep. p. 16.
[281] Mueller, 10/11/95 Dep. p. 8.
[282] Verinder, 10/31/95 Dep. p. 6.
[283] Kendrick, 10/30/95 Dep. p. 18.
[284] FBI Document 1031, 523–525; Kendrick, 10/30/95 Dep. pp. 18–19.
[285] Banks, 12/05/95 Hrg. p. 165.
[286] DOJ Document 7051–7052.
[287] DOJ Document 7051–7052.
[288] FBI Document 00000527.
[289] Kendrick, 10/30/95 Dep. p. 22.
[290] Banks, 10/24/95 Dep. pp. 82–84.
[291] DOJ Document 7049–7050.
[292] DOJ Document 7049.
[293] DOJ Document 6671–6672.
[294] Frazier, 10/12/95 Dep. p. 15; DOJ Document 001484.
[295] McDowell, 09/15/95 House Dep. pp. 18–19.
[296] DOJ Document 7041–7045.
[297] DOJ Document 7039.
[298] DOJ Document 7039.
[299] Carver, 10/17/95 Dep. pp. 69–72.
[300] Carver, 12/06/95 Hrg. pp. 41–42.
[301] Frazier, 12/05/95 Hrg. pp. 171–173.
[302] Frazier, 12/05/95 Hrg. pp. 171–173.
[303] DOJ Document 000030.
[304] DOJ Document 00031.
[305] Henneman (O'Dowd), 10/13/95 Dep. pp. 16–19.
[306] Pence, 10/18/95 Dep. pp. 19–20.
[307] Pence, 10/18/95 Dep. pp. 22–23.
[308] Pence, 10/18/95 Dep. p. 22.
[309] Iorio and Lewis, 11/29/95 Hrg. p. 28.

[310] Iorio, 11/29/95 Hrg. p. 68.
[311] Lewis, 11/29/95 Hrg. 68.
[312] Banks, 12/05/95 Hrg. p. 165; Dodson, 10/18/95 Dep. p. 59.
[313] Lewis, 10/30/95 Dep. p. 82.
[314] R. Knight, 10/19/95 Dep. p. 8.
[315] Lewis, 11/29/95 Hrg. p. 14.
[316] Lewis, 11/29/95 Hrg. p. 14.
[317] Lewis, 10/30/95 Dep. p. 87.
[318] Lewis, 11/29/95 Hrg. p. 14.
[319] Lewis, 11/29/95 Hrg. pp. 14–15.
[320] RTC Document PLS0050S (RTC Referral #730CR0192); RTC Document PLS0081S (RTC Referral #730CR0196).
[321] RTC Document PLS0081S (RTC Referral #730CR0196).
[322] Lewis, 10/30/95 Dep. p. 95.
[323] RTC Document PLS0048S.
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[328] RTC Document PLS0050S.
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[330] RTC Document PLS0075S.
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[332] RTC Document PLS0073S–PLS0075S.
[333] RTC Document PLS0073S–PLS0075S.
[334] RTC Document PLS0073S.
[335] RTC Document PLS0077S.
[336] RTC Document PLS0077S.
[337] RTC Document PLS0073S.
[338] RTC Document PLS0073S.
[339] RTC Document PLS0077S.
[340] RTC Document PLS0075S.
[341] RTC Document PLS0075S.
[342] RTC Document PLS0075S.
[343] RTC Document PLS0081S.
[344] Lewis, 10/30/95 Dep. p. 104.
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[353] Iorio, 10/20/95 Dep. pp. 95–96.
[354] Iorio, 11/29/95 Hrg. pp. 38–39.
[355] Iorio, 11/29/95 Hrg. p. 39.
[356] Lewis, 11/29/95 Hrg. p. 15.
[357] Lewis, 11/29/95 Hrg. pp. 15–16; Iorio, 10/20/95 Dep. p. 53.
[358] Lewis, 10/30/95 Dep. p. 132.
[359] Lewis, 11/29/95 Hrg. p. 18; Lewis, 10/30/95 Dep. p. 131.
[360] RTC Document PLS0001S–PLS0013S.
[361] RTC Document PLS0001S–PLS0013S; Iorio, 10/20/95 Dep. p. 54.
[362] RTC Document PLS0001S–PLS0013S.
[363] Lewis, 10/30/95 Dep. p. 137.
[364] Lewis, 11/29/95 Hrg. p. 15; Lewis, 10/30/95 Dep. p. 142.
[365] Iorio, 10/20/95 Dep. pp. 257–259; Lewis, 10/30/95 Dep. p. 142.
[366] Lewis, 11/29/95 Hrg. p. 17; Lewis, 10/30/95 Dep. pp. 131–132; Iorio, 10/20/95 Dep. p. 56.
[367] Lewis, 10/30/95 Dep. p. 127.
[368] Iorio, 10/20/95 Dep. p. 51.
[369] Iorio, 10/20/95 Dep. p. 57.
[370] Yanda, 11/30/95 Hrg. p. 13.
[371] RTC Document TH0704.
[372] Iorio, 10/20/95 Dep. p. 52.
[373] Iorio, 10/20/95 Dep. pp. 52, 72, 235–236.
[374] Yanda, 11/02/95 Dep. pp. 67–68; see also RTC Document JY0009.
[375] Lewis, 11/29/95 Hrg. p. 24.
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[378] Iorio, 10/20/95 Dep. p. 63.
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[384] Breslaw, 06/06/95 House Dep. p. 32.
[385] Breslaw, 06/06/95 House Dep. p. 56.
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[388] RTC Document AB0257.
[389] Breslaw, 06/06/95 House Dep. p. 41; FDIC OIG Report p. 54.
[390] RTC Document TH1009.
[391] RTC OIG Report Volume II.
[392] RTC Document TH1009.
[393] RTC Document TH1009.
[394] RTC Document TH1009.
[395] RTC Document RI0109.
[396] RTC Document RI0109.
[397] Iorio, 11/29/95 Hrg. p. 60; Iorio, 10/20/95 Dep. p. 111.
[398] Iorio, 11/29/95 Hrg. pp. 61–62.
[399] Iorio, 10/20/95 Dep. p. 113.
[400] Breslaw, 11/30/95 Hrg. pp. 44–46.
[401] Breslaw, 11/30/95 Hrg. p. 45.
[402] RTC Document AB0502, AB0505.
[403] Breslaw, 11/30/95 Hrg. p. 65; Breslaw, 10/23/95 Dep. pp. 187–188.
[404] Lewis, 10/30/95 Dep. pp. 156–157.
[405] 11/27/95 Transcript of Conversation Between L. Jean Lewis and April Breslaw, p. 59.
[406] Transcript of Conversation prepared for Committee on Banking and Financial Services, U.S. House of Representatives, pp. 10–11. The transcript of the tape prepared for the Senate similarly states (pp. 66–67):

"Well, like I said, I feel self conscious asking that because in some ways it's kind of a silly question. But, you know, it's the kind of thing that they're looking for what they can say. And I do believe they want to say something honest. I don't believe at all and I don't want to suggest at all that they want us to reach a certain conclusion. I really don't get that feeling. But—(Inaudible)—happier than others, you know, because it would get them off the hook." —(Inaudible.)

[407] Lewis, 11/29/95 Hrg. p. 22.
[408] 140 Cong. Rec. H1999, H2003 (1994) (statement of Rep. James A. Leach).
[409] RTC Document AT0128.
[410] RTC Document EK5867–EK5870.
[411] RTC Document EK5868.
[412] Breslaw, 11/30/95 Hrg. pp. 108–109.
[413] Breslaw, 11/30/95 Hrg. pp. 56–57, 106–108, 121.
[414] Breslaw, 11/30/95 Hrg. pp. 54–56, 87–88, 109.
[415] Breslaw, 11/30/95 Hrg. p. 56.
[416] Breslaw, 11/30/95 Hrg. p. 87.
[417] Breslaw, 11/30/95 Hrg. p. 146.
[418] RTC Document MG0472.
[419] Iorio, 10/20/95 Dep. p. 123; Lewis, 11/29/95 Hrg. p. 26.
[420] Iorio, 11/29/95 Hrg. p. 26.
[421] Iorio, 11/29/95 Hrg. p. 26.
[422] Iorio, 11/29/95 Hrg. p. 26.
[423] Lewis, 11/29/95 Hrg. p. 26; Lewis, 10/30/95 Dep. pp. 164–165.
[424] Lewis, 11/29/95 Hrg. p. 26; Lewis, 10/30/95 Dep. pp. 164–165.
[425] Lewis, 11/29/95 Hrg. p. 26; Lewis, 10/30/95 Dep. pp. 164–165.
[426] Lewis, 11/29/95 Hrg. pp. 26–27; Iorio, 10/20/95 Dep. pp. 126–128; see RTC Document RI0003, RI0012, RI0017.
[427] RTC Document RI0003, RI0012, RI0017.
[428] Iorio, 10/20/95 Dep. pp. 134–135.
[429] Iorio, 10/20/95 Dep. pp. 134–135.
[430] Lewis, 11/29/95 Hrg. p. 27.
[431] Lewis, 11/29/95 Hrg. p. 27.
[432] Iorio, 10/20/95 Dep. p. 138; Lewis, 11/29/95 Hrg. p. 27.
[433] Lewis, 11/29/95 Hrg. p. 27; Iorio, 11/20/95 Hrg. p. 70; Iorio, 10/20/95 Dep. pp. 131–132.
[434] Lewis, 11/29/95 Hrg. p. 27.
[435] Adair, 10/26/95 Dep. pp. 89–90.
[436] Adair, 11/26/95 Dep. p. 92.
[437] Adair, 10/26/95 Dep. pp. 92–93.
[438] Adair, 10/26/95 Dep. pp. 92–93.
[439] Adair, 10/26/95 Dep. pp. 90–91.
[440] Jackson, 10/19/95 Dep. pp. 27–29.
[441] DOJ Document 007724.
[442] GAO/OSI–94–23, p. 2.
[443] GAO/OSI–94–23, p. 4.
[444] GAO/OSI–94–23, p. 4.
[445] GAO/OSI–94–23, p. 4.

[446] Foren, 10/26/95 Dep. at 13; Foren Document, 10/26/95 (Not Numbered).
[447] Foren, 10/26/95 Dep. p. 13.
[448] Foren, 10/26/95 Dep. p. 13.
[449] Foren, 10/26/95 Dep. p. 20–21.
[450] Foren, 10/26/95 Dep. p. 21.
[451] Foren, 10/26/95 Dep. p. 22.
[452] Foren, 10/26/95 Dep. p. 26.
[453] Foren, 10/26/95 Dep. p. 27.
[454] Foren, 10/26/95 Dep. pp. 30–31.
[455] Foren, 10/26/95 Dep. p. 31; 11/28/95 Hrg. p. 17.
[456] Foren, 10/26/95 Dep. p. 31.
[457] Foren, 11/28/95 Hrg. p. 16.
[458] Foren, 10/26/95 Dep. pp. 32–33; 11/28/95 Hrg. p. 16.
[459] Foren, 10/26/95 Dep. p. 33.
[460] Foren, 10/26/95 Dep. p. 33.
[461] Foren, 10/26/95 Dep. pp. 153–54; 11/28/95 Hrg. pp. 17–18.
[462] Foren, 11/28/95 Hrg. p. 18.
[463] Foren, 10/26/95 Dep. p. 107.
[464] Foren, 10/26/95 Dep. p. 25.
[465] Foren, 10/26/95 Dep. p. 25.
[466] Foren, 10/26/95 Dep. p. 25.
[467] Foren, 10/26/95 Dep. p. 41.
[468] Foren, 10/26/95 Dep. p. 37.
[469] Foren, 10/26/95 Dep. p. 37.
[470] Foren, 10/26/95 Dep. p. 42; DOJ Document GAC2706.
[471] Hawkins, 11/27/95 Dep. p. 14.
[472] Hawkins, 11/27/95 Dep. p. 15.
[473] Hawkins, 11/27/95 Dep. p. 15.
[474] Foren Document, 10/26/95 (not numbered).
[475] Foren Document, 10/26/95 (not numbered).
[476] Foren Document, 10/26/95 (not numbered).
[477] Jackson, 10/19/95 Dep. pp. 27–29.
[478] David Hale Plea Agreement, 3/19/94.
[479] Casey, 11/1/95 Dep. pp. 14–19.
[480] Casey, 11/1/95 Dep. pp. 33–41.
[481] Casey, 09/28/95 House Dep. pp. 5–6.
[482] Casey, 09/28/95 House Dep. p. 45.
[483] Casey, 11/01/95 Dep. p. 39–41.
[484] Casey, 11/01/95 Dep. p. 41.
[485] Casey, 11/1/95 Dep. p. 19.
[486] Coleman, 12/01/95 Hrg. pp. 5–7.
[487] Coleman, 12/01/95 Hrg. p. 6.
[488] Coleman, 12/01/95 Hrg. p. 7.
[489] Coleman, 12/01/95 Hrg. pp. 7–8.
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[493] Jackson, 10/19/95 Dep. pp. 44–46.
[494] Jackson, 12/01/96 Hrg. pp. 224–25.
[495] Coleman, 12/01/96 Hrg. p. 10.
[496] Casey, 11/1/95 Dep. p. 28.
[497] Casey, 11/01/95 Dep. p. 32; 12/1/95 Hrg. 221.
[498] Casey, 12/01/95 Hrg. pp. 198–99.
[499] Casey, Hrg. 12/01/95 p. 221.
[500] Casey, 11/01/95 Dep. pp. 58–59, 258.
[501] Coleman, 11/9/95 Dep. p. 21.
[502] Coleman, 11/9/95 Dep. pp. 37–38.
[503] Coleman, 12/1/95 Hrg. 20; Casey, 12/10/95 Hrg. 196.
[504] Coleman, 12/1/95 Hrg. p. 19.
[505] Coleman, 11/9/95 Dep. pp. 22–23.
[506] Coleman, 11/9/95 Dep. pp. 22–23.
[507] Coleman, 11/09/95 Dep. p. 34.
[508] Coleman, 12/01/95 Hrg. p. 70.
[509] Coleman, 11/9/95 Dep. pp. 38–39.
[510] Coleman, 11/9/95 Dep. pp. 24–25, 39.
[511] Casey, 12/01/95 Hrg. p. 196.
[512] Casey, 11/01/95 Dep. pp. 66–68.
[513] Casey, 11/1/95 Dep. pp. 71–74.
[514] Coleman, 11/9/95 Dep. p. 27; Coleman, 12/01/95 Hrg. p. 23.
[515] DOJ Document 007640–41.
[516] Casey, 12/01/95 Hrg. pp. 275–76.
[517] DOJ Document 17493.
[518] Casey, 11/1/95 Dep. pp. 141–145.
[519] Johnson, 12/01/95 Hrg. p. 212; Johnson, 10/24/95 Dep. pp. 30–31.
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[521] DOJ Document 7640.
[522] Coleman, 12/01/95 Hrg. p. 24.
[523] Casey, 12/01/95 Hrg. p. 197.

[524] Johnson, Hrg. 12/01/95 pp. 226–228.
[525] Casey, 11/1/95 Dep. p. 73.
[526] Casey, 12/01/95 Hrg. p. 200.
[527] Casey, 11/1/95 Dep. pp. 64–65.
[528] Casey, 12/01/95 Hrg. pp. 230–32.
[529] Nathan, 10/27/95 Dep. p. 7.
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[531] DOJ Document 004661.
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[533] DOJ Document 004660–62.
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[535] Keeney, 12/06/95 Hrg. p. 15–16; Gangloff, 12/06/95 Hrg. p. 17; McDowell 12/06/95 Hrg., p. 17.
[536] Gangloff, 12/6/95 Hrg. pp. 16–20.
[537] Gangloff, 12/6//95 Hrg. 62–71.
[538] Gangloff, 12/6/95 Hrg. pp. 72–74.
[539] Keeney, 12/06/95 Hrg. pp. 15–16.
[540] Keeney, 12/06/95 Hrg. pp. 21–22.
[541] Carver, 12/06/95 Hrg. p. 23; McDowell, 12/06/95 Hrg. p. 23.
[542] Keeney, 12/6/95 Hrg. p. 18.
[543] Keeney, 12/06/95 Hrg. p. 19.
[544] Johnson, 12/1/95 Hrg. pp. 226–228.
[545] Keeney, 12/06/95 Hrg. pp. 17, 19.
[546] Keeney, 12/6/95 Hrg. p. 17.
[547] Casey, 11/01/95 Dep. pp. 122–27.
[548] Keeney, 12/6/95 Dep. pp. 17–18.
[549] Keeney, 12/06/95 Hrg. p. 19.
[550] Casey, 11/1/95 Dep. p. 127.
[551] Johnson, 12/01/95 Hrg. p. 212–13.
[552] Casey, 11/1/95 Dep. p. 177–78.
[553] Keeney, 12/06/95 Hrg. p. 23.
[554] Keeney, 12/06/95 Hrg. 23; Keeney, 10/20/95 p. 51–52.
[555] Gangloff, 12/06/95 Hrg. p. 23–24.
[556] Casey, 12/01/95 Hrg. p. 245.
[557] DOJ Document 007637.
[558] Casey, 12/01/95 Hrg. p. 247; Johnson, 12/01/95 Hrg. p. 247.
[559] Coleman, 11/1/95 p. 54.
[560] DOJ Document 007763–65.
[561] DOJ Document 007811.
[562] DOJ Document 007724.
[563] Jackson, 10/19/95 Dep. pp. 83–86.
[564] DOJ Document FBI–00001545, 00001287.
[565] FBI Document 00001287; Irons, 12/05/95 Hrg. p. 140.
[566] Casey, 11/1/95 Dep. pp. 154–155.
[567] FBI Document 00001545–1546; Casey, 12/01/95 Hrg. pp. 238–240.
[568] Casey, 12/01/95 Hrg. p. 238; Casey, 11/1/95 Dep. p. 154.
[569] Casey, 11/1/95 p. 154.
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[571] Johnson, 10/24/95 Dep. p. 141–42.
[572] Keeney, McDowell, Gangloff and Carver, 12/06/95 Hrg. p. 20–21.
[573] FBI Document 00001322.
[574] Casey, 11/1/95 Dep. p. 173.
[575] Casey, 11/1/95 pp. 170–193.
[576] Keeney, 12/06/95 Hrg. p. 22.
[577] Casey, 11/01/95 Dep. pp. 174–175.
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[579] Casey, 11/01/95 Dep. p. 251.
[580] Casey, 11/01/95 Dep. p. 176.
[581] Johnson, 10/24/95 Dep. pp. 143–44.
[582] Casey, 11/01/95 Dep. pp. 176–77.
[583] Casey, 11/01/95 Dep. pp 177.
[584] Casey, 11/1/95 Dep. pp. 78–79.
[585] RTC Document, 10/27/93 Letter to Ms. Lewis declining the referral.
[586] Keeney, 12/06/95 Hrg. p. 27.
[587] Casey, 11/01/95 Dep. pp. 184–85.
[588] DOJ Document 006767. (emphasis added).
[589] Casey, 11/01/95 Dep. p. 182.
[590] Carver, 12/06/95 Hrg. p. 28.
[591] *See e.g.,* Keeney, 12/06/95 Hrg. p. 26; Carver, 11/17/95 Dep. p. 68; McDowell, 12/06/95 Hrg. p. 29; Gangloff, 12/06/95 Hrg. p. 29.
[592] Carver, 12/06/95 Hrg. p. 27; Keeney, 12/06/95 Hrg. p. 27; McDowell, 12/06/95 Hrg. p. 27.
[593] Casey, House Dep. p. 112; Johnson, 10/24/95 Dep. pp. 55–56.
[594] DOJ Document 2204–2205.
[595] McDowell, 12/06/95 Hrg. p. 32.
[596] McDowell, 12/06/95 Hrg. pp. 31–32.
[597] Casey, 11/1/95 Dep. p. 195.
[598] McDowell, 12/06/95 Hrg. p. 33.
[599] DOJ Document 005136.

[600] DOJ Document 000327.
[601] DOJ Document 188879–80.
[602] Coleman, 12/01/95 Hrg. pp. 60–61.
[603] OIC Document, 3/19/94 Plea Agreement
[604] Foren, 11/28/95 Hrg. p. 20.
[605] Foren, 11/28/95 Hrg. pp. 20–21.
[606] Foren, 10/26/95 Dep. pp. 80–81.
[607] Foren, 11/28/95 Hrg. p. 20.
[608] Foren, 11/28/95 Hrg. p. 20.
[609] Foren, 11/28/95 Hrg. p. 21.
[610] Foren, 11/28/95 Hrg. p. 21; DOJ Document GAC 2796.
[611] Foren, 11/28/95 Hrg. p. 21; Foren Document (Not Numbered); SBA Document (Not Numbered).
[612] Foren, 11/28/95 Hrg. p. 21; Foren Document (Not Numbered); SBA Document (Not Numbered).
[613] Foren Document (Not Numbered); SBA Document (Not Numbered).
[614] Foren, 11/28/95 Hrg. p. 22.
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CONCLUSIONS OF THE SPECIAL COMMITTEE

"White Water stock (McDougal's company)

"Do you still have? (pursuant to Jim's current problems)

"If so, I'm worried about it."[1]

"No—Do not have any more—B."[2] —July 14, 1986 from Betsey Wright and Governor Clinton's response.

"Jim McDougal is my partner and I have to trust him . . . Back off, leave it alone"[3] —Governor Clinton to Gaines Norton, his personal accountant.

"His caution was 'summarily dismissed' by Clinton. . . he was to take care of savings & loan matters and she would take care of the legal matters."[4] —Don Denton, Chief Lending Officer at Madison on discussion with Mrs. Clinton about Castle Grande.

"Cut in Lasater for 15 percent"[5] —Charles Stout, Chairman of ADHA Board, describing a statement by Bob Nash, Governor Clinton's Chief Economic Advisor.

"Loan went to Clinton Campaign, Signed lease to state, Alot of people going to prison!!"[6] —Notes taken by attorney Lance Miller.

The Special Committee's Arkansas Phase focused on the core allegations of improprieties and criminal misconduct concerning the

activities of Madison Guaranty Savings and Loan Association ("Madison Guaranty"), Whitewater Development Corporation ("Whitewater"), Capital Management Services, Inc. ("CMS") and Lasater & Co. The Arkansas Phase was the last phase of the Committee's inquiry, and, in deference to the Independent Counsel's ongoing investigation, the Committee did not investigate thoroughly certain matters specified in Resolution 120, particularly the lending activities of the Perry County Bank in connection with 1990 Arkansas gubernatorial election.

The convictions of three of the President and Mrs. Clinton's close Arkansas business and political associates in the recently concluded Tucker-McDougal trial in Little Rock marked a key turning point in the ongoing Whitewater affair. The jury's guilty findings against Governor Jim Guy Tucker and James and Susan McDougal, the Clintons' Whitewater business partners, demonstrate the seriousness of the matters under investigation in the Committee's Arkansas Phase. Simply put, Whitewater can no longer be responsibly dismissed as "a cover-up without a crime."

The Arkansas jury unanimously concluded that James McDougal operated Madison Guaranty as, in effect, a criminal enterprise. The failure of Madison Guaranty cost American taxpayers more than $60 million. It is now clear that Madison and CMS, a small business investment company run by David Hale, were piggy banks for the Arkansas political elite.

Eight of the 24 counts of conviction relate directly to the Clintons' investment in Whitewater. The jury convicted on all of the counts concerning a loan from CMS to Susan McDougal's firm, Master Marketing. According to the testimony of an FBI agent at the Tucker-McDougal trial, approximately $50,000 of the loan was used to pay the expenses of Whitewater. Moreover, Mr. Hale testified at the trial that he discussed this fraudulent loan with then-Governor Clinton. Unfortunately, the Committee never heard the important testimony of Mr. Hale, who asserted his constitutional right not to testify. The Committee was unable to secure sufficient votes to grant Mr. Hale limited use immunity.

The recently-discovered Rose Law Firm billing records provide important new evidence relating to the Arkansas Phase. The records reveal Mrs. Clinton's previously undisclosed personal representation of Mr. McDougal's S&L before state regulators, seeking permission to raise additional money through the sale of stock. The records also show that Mrs. Clinton was repeatedly called on to do work related to the Madison land deal, known as Castle Grande, which federal S&L regulators found involved a series of fraudulent transactions. The Special Committee concludes that Mrs. Clinton's work on Castle Grande related to an effort to conceal the true nature of activities at Madison Guaranty.

The Special Committee also uncovered evidence that Mr. Clinton himself took an active role in obtaining one of the original Whitewater loans—one apparently approved as a favor after the bank's political lobbyist intervened. And Mr. Clinton's accountant testified that when he raised objections to early parts of Mr. McDougal's Whitewater proposal, Mr. Clinton pulled him aside and told him to "back off."

During the 1980s, Mr. McDougal and his allies obtained favorable results from their dealings with the Arkansas state government under Governor Clinton. At a time when Mr. McDougal was carrying the Clintons on their Whitewater loans, Mr. McDougal had a say in the making of state appointments, enjoyed personal access to the Governor and won valuable state leases for Madison. The Special Committee concludes that Governor Clinton's official and personal dealings with Mr. McDougal raised an apparent, if not an actual, improper conflict of interest.

Finally, the Clinton were not "passive" investors in the Whitewater real estate venture, as they have claimed. Indeed, the Clintons participated in important meetings concerning the Whitewater investment. The Special Committee concludes that the Clintons took an active role in obtaining and extending Whitewater-related loans.

* * * * * * *

1. Mrs. Clinton's legal work on Castle Grande related to an effort to conceal the true nature of the activities at Madison Guaranty

The Castle Grande land development consisted of more than 1,000 acres of property near Little Rock purchased by Seth Ward, Webster Hubbell's father-in-law, and Madison Financial Corp. ("MFC")—Madison Guaranty's wholly-owned subsidiary.[7] The land was sold in a series of transactions that caused nearly $4 million in losses to Madison Guaranty—losses ultimately borne by U.S. taxpayers.[8]

Federal regulators have determined that Seth Ward acted as a "straw" man in the fraudulent Castle Grande transaction who simply held property in his name until MFC could find a buyer.[9] In this way, Madison Guaranty was able to circumvent an Arkansas regulation that limited investment in real estate by a savings and loan.[10] For his part in this sham deal, Mr. Ward earned over $300,000 in commissions on the sale of property.[11]

Prior to the discovery of the Rose Law Firm billing records in the White House Residence, the nature and extent of Mrs. Clinton's work on Castle Grande was virtually unknown. The evidence obtained in the course of the Special Committee's investigation now establishes that Mrs. Clinton had direct and substantial involvement in Castle Grande.

The Rose billing records reflect that on April 7, 1986, Mrs. Clinton had a telephone conference with Madison Guaranty's chief loan officer, Don Denton.[12] The records also reflect that on May 1, 1986, Mrs. Clinton prepared an option agreement under which MFC obtained the right to buy from Mr. Ward a small piece of property called Holman Acres for $400,000.[13]

The background to the questionable transaction is as follows. In spring 1986, Mr. Ward approached John Latham, the President of Madison Guaranty, about collecting his commissions from the sham sales of real estate at Castle Grande. At the time, however, Madison Guaranty had come under scrutiny from federal banking regulators, who were examining the thrift and would have questioned the payment of such commissions.[14]

Therefore, Seth Ward, Madison Guaranty, and Madison Financial executed a series of crossing loan transactions and promissory notes designed to pay Mr. Ward his commissions and fool the S&L's regulators. On March 31, 1986, Madison Guaranty loaned $400,000 to Mr. Ward.[15] On April 7, 1986, MFC gave two promissory notes to Mr. Ward—one for $300,000 and the other for $70,943.[16] Thus, Mr. Ward received his commissions from the $400,000 loan from Madison Guaranty, and MFC's notes effectively canceled his obligation to repay the loan and was the means by which he was able to keep his commissions.

The chief federal S&L examiner, James Clark, discovered the March 31 loan and April 7 notes during a 1986 examination and became concerned that there might be a connection between the crossing notes.[17] Specifically, he suspected that the notes might represent a payment to Mr. Ward and thus a possibly improper investment by Madison Guaranty in MFC.[18] Such investments by Madison Guaranty in its service corporation, MFC, were subject to a regulation limiting Madison's ability to invest in real estate.

When Mr. Clark inquired about the March 31 and April 7 notes, however, he was told that these notes were completely unrelated.[19] He was told that the April 7 notes were related to MFC's plan to purchase Holman Acres from Mr. Ward. This transaction was to be accomplished through an as yet undrafted option agreement that would replace the notes, which existed simply to guarantee MFC's performance.[20] In effect, the option agreement was a fictitious transaction designed to conceal the relationship between the March 31 loan and the April 7 notes.

According to Mr. Clark, the May 1, 1986 option prepared by Mrs. Clinton was used to disguise the fact that the crossing notes between Seth Ward, MFC, and Madison Guaranty were devised to pay commissions to Mr. Ward. In Mr. Clark's view, "the option was created 'in order to conceal the connection'" between the notes.[21]

On April 7, 1986, Don Denton received a message that Mrs. Clinton had called.[22] He returned the call and they discussed about the notes between Mr. Ward, MFC, and Madison Guaranty.[23] Mr. Denton believed that Mrs. Clinton was preparing a $400,000 note between MFC and Mr. Ward, and he told her that such a note had already been prepared and executed.[24] Mrs. Clinton asked him to send her whatever notes the S&L had executed with Mr. Ward.[25] Mr. Denton did so, sending copies to Mrs. Clinton of the notes by courier.[26]

Mr. Denton recalled that during this April 7 conversation he expressed concern to Mrs. Clinton with respect to the March 31 and April 1 notes because the note appeared to represent the payment by Madison Guaranty of an MFC obligation.[27] Mrs. Clinton, however, "summarily dismissed" that Mr. Denton's concern in a manner that Mr. Denton took to mean that he ought to "take care of savings and loan matters, and she would take care of legal matters." [28]

In sum, the Special Committee concludes that Mrs. Clinton's own work product—the May 1 option—was used to conceal the very transactions about which Mr. Denton expressed concern. This fact raises serious questions with respect to Mrs. Clinton's state of knowledge of the deceptive aspects of the transaction.

First, the billing records indicate that Mrs. Clinton was aware of the Arkansas regulation limiting the extent of Madison's investment in MFC. Indeed, the records reflect that on June 17, 1985, she reviewed a memorandum prepared by a Rose associate, Richard Massey, touching upon this regulation. More important, her conversation with Don Denton put her on notice—prior to the drafting of the critical May 1 option—that the notes exchanged by Mr. Ward, MFC, and Madison Guaranty were questionable. Thus, it appears that Mrs. Clinton was apprised of both the relevant law and facts that made the Castle Grande transaction irregular. Accordingly, an inference can be drawn that Mrs. Clinton might well have known that these documents were designed to conceal the true nature of the Madison-Ward transactions or that she consciously avoided the knowledge. At the very least, she was on notice to inquire further.

On June 13, 1996, the same day that the Special Committee received Mr. Denton's testimony, the Committee in a letter addressed to Mr. Kendall, Mrs. Clinton's counsel, requested that the First Lady attempt to refresh her recollection regarding the matters discussed by Mr. Denton and inform the Committee of what she recalls about them. (29) The Special Committee's request was made in response to an earlier offer by Mrs. Clinton through a White House spokesman to answer in writing questions regarding the subject of the Special Committee's work.

On June 17, 1996 the Special Committee received an affidavit from Mrs. Clinton accompanied by a letter from Mr. Kendall. In the affidavit, Mrs. Clinton gave no indication as to her recollection regarding the subject matter of Mr. Denton's testimony. Instead, she simply requested that Special Committee refer to Mr. Kendall's letter "addressing certain allegations recently made by Mr. Don Denton." (30) In his letter, Mr. Kendall maintained that Mr. Denton's recollection is "wholly unreliable" but gave no indication as to the recollection of the First Lady. (31) In sum, the First Lady has neither confirmed nor denied Mr. Denton testimony.

Examination of Mrs. Clinton's involvement in Castle Grande cannot be viewed in isolation. The Special Committee also takes into account Mrs. Clinton's apparent failure to be more forthcoming about her role in Mr. McDougal's Castle Grande deal. When asked in 1995 about her knowledge of Castle Grande and some other land deals, Mrs. Clinton swore, under oath, "I do not believe I knew anything about any of these real estate parcels and projects." (32) In light of the billing records, that statement appears incorrect on its face.

The Rose billing records reflect that Mrs. Clinton billed almost 30 hours to Castle Grande matters during the course of her representation of Madison Guaranty—more time than any other Rose attorney. (33) And, in addition to the May 1 option and the phone call with Mr. Denton, Mrs. Clinton had 15 face-to-face or telephone conferences with Seth Ward, including one "regarding purchase from Brick Lile," the chairman of the company that sold the property to Mr. Ward and MFC.[34]

In a sworn statement in 1996, Mrs. Clinton sought to explain her prior categorical denial of knowledge about Castle Grande by saying that she knew of the 1,000+ acre tract as "IDC"—the name of

the company that sold the property and the matter to which she charged her billings. She further stated that she knew a small portion of the Castle Grande property, a trailer part, as Castle Grande Estates.[35] The Committee finds it implausible that Mrs. Clinton would fail to recognize the name "Castle Grande" a referring to the larger development, given the testimony of Madison Guaranty insiders and federal regulators that the entire development was commonly known as Castle Grande.[36]

The secreting of the Rose Law Firm billing records could have been motivated by a desire to conceal Mrs. Clinton's involvement in Castle Grande and, in particular, her involvement in work on the questionable April 7 notes and May 1 option, could have motivated the secreting of the Rose Law Firm billing records. The jury in the recently concluded Tucker-McDougal trial convicted the defendants for crimes relating to the Castle Grande project. Prior to the discovery of the Rose billing records, Mrs. Clinton's role in Castle Grande was unknown. The desire to keep her role secret might have been the cause of the long absence of the billing records.

2. Webster Hubbell was significantly more involved in Castle Grande than he admitted in his Senate testimony

Former Associate Attorney General and former Rose Law Firm partner Webster Hubbell has testified before the Special Committee and in other fora on several occasions. With respect to his testimony regarding his involvement in Castle Grande, Mr. Hubbell altered his story when he learned that Seth Ward was a nominee purchaser for MFC. In a December 1995 with the RTC, Mr. Hubbell stated that he understood as of September 1985, from Mr. Ward, that "Madison had limits on what it could own in its own name, and so Mr. Ward was going to own part of it until it could be sold."[37]

And, in an interview with the RTC Office of Inspector General, Mr. Hubbell "said that Ward told him that he was negotiating on behalf of Madison to buy the IDC property, which would then be split up between Madison and Ward."[38] In testimony before the Special Committee, however, Mr. Hubbell repeatedly testified that he was not aware of the deal between Madison and Ward until after the closing in early October 1985.[39]

Mr. Hubbell was reluctant to answer questions regarding his own view of the legality of his father-in-law's role in the purchase of the IDC property. When asked if Mr. McDougal used Mr. Ward to evade a regulatory restriction, Mr. Hubbell answered, "I have never represented an S&L. I don't know whether it's illegal or not."[40] When he was asked if he considered this transaction as a classic parking or warehousing transaction, Mr. Hubbell answered, "I think of parking and warehousing a little bit differently."[41] When asked if he thought Mr. Ward could be considered a "straw man," Mr. Hubbell testified, "I didn't give it any consideration, you know. 'Straw man' means, to me, somebody who you clear title through."[42]

Mr. Hubbell has denied advising Mr. Ward on the Castle Grande transaction.[43] Specifically, he denied preparing a backdated September 24, 1985 letter or advising Mr. Ward on its preparation.[44] There is evidence, however, that Mr. Hubbell may have prepared

the backdated September 24, 1985 letter, which was found in *his* files at the Rose Law Firm.[45] Martha Patton, Mr. Hubbell's secretary at Rose, has stated that although she does not recall typing the letter she believes that she did because the type is similar to that of the IBM typewriter that she used then, and the second page of the document is formatted in the style she used while a Rose secretary.[46] She added that the letter appears to be "her style of typing."[47]

There is also some indication that Mr. Hubbell was supposed to prepare the May 1, 1986 option agreement. Handwritten notes taken by James Clark, the chief FHLBB examiner during the 1986 examination of Madison Guaranty, reflect the following:

> MFC Commitment to buy land at corner of Route 145 . . . Option will be prepared, atty out of town (Hubbell) to replace note.[48]

This note strongly suggests a previously unknown involvement in Castle Grande by Mr. Hubbell.

Former Madison chief loan officer Don Denton has indicated that Mr. Hubbell advised Mr. Ward on the Castle Grande matter.[49] For example, Mr. Denton believed that the wording on the note, dated October 15, 1985, stating that Mr. Ward was not personally responsible for the note was prepared by Mr. Hubbell.[50] Also, Mr. Denton believed that he had some conversations with Mr. Hubbell about the February 28, 1996 transaction.[51]

Furthermore, Mr. Denton indicated in a recent interview that Mr. Hubbell was involved in the March 31 and April 7, 1986 notes between Mr. Ward, Madison Guaranty, and Madison Financial. He stated that he was "reasonably confident" that when Mrs. Clinton called him regarding these notes she was acting on Mr. Hubbell's behalf.[52] Mr. Denton refused to say whether he ever dealt with Mr. Hubbell on the matter of the notes.[53] He also declined to answer whether he had visited Mr. Hubbell's office at Rose regarding Mr. Ward or Madison Guaranty.[54]

Mr. Hubbell may have provided inaccurate statements about his legal work on other occasions. In 1989 when the Rose Law Firm was retained to represent the FDIC in an action against Madison Guaranty's former accountants,[55] Mr. Hubbell failed to disclose to regulators Rose's prior work for Madison. And in 1993 when he failed to disclose information he had learned the previous year from reading the Rose Law Firm billing records to FDIC investigators looking into the 1989 retention of Rose.[56] The Special Committee questions Mr. Hubbell's implausible claim that he did not advise Mr. Ward with respect to Castle Grande.

3. In 1985, Mr. McDougal retained Hillary Clinton to represent Madison Guaranty; the work was not brought in by a young associate

The Special Committee concludes, based upon the substantial weight of the evidence, that Mr. McDougal hired Mrs. Clinton to represent Madison Guaranty Savings & Loan. Mrs. Clinton's statements that Richard Massey, then a young Rose Law Firm associate at the time, brought the client into the firm are not supported by

the documentary or testimonial evidence received by the Committee.

Mr. McDougal made statements during the 1992 Clinton presidential campaign, as well as to the Los Angeles Times in 1993, that he put Mrs. Clinton on retainer as a favor to Bill Clinton. These McDougal statements are supported by others and by documentary evidence. Former Madison CEO John Latham confirmed that Mr. McDougal made the decision to retain the Rose Law Firm.[57] Moreover, although President Clinton does not recall asking Mr. McDougal to place Mrs. Clinton on retainer,[58] Mr. McDougal performed other favors for President Clinton when he was Governor by, among other things, substantial contributions, on behalf of the Clintons, on Whitewater loans.

Mrs. Clinton's markedly different account of how the business came to the Rose Law Firm, is not confirmed by any attorney at the Rose Law Firm, including Mr. Massey. For example, Mrs. Clinton, has repeatedly stated that Mr. Massey, then a first year associate at the Rose Law Firm, brought in Madison Guaranty as a client.[59] She claims that Mr. Latham asked Mr. Massey whether he would be interested in representing Madison in connection with a proposed stock offering. Mrs. Clinton further explained that Mr. Massey was aware that she knew Mr. McDougal, so "he came to me and asked if I would talk with Jim to see whether or not Jim would let the lawyer and the officer go forward on this project. I did that, and I arranged that the firm would be paid $2,000 retainer."[60]

Both Mr. Massey and Mr. Latham contradict Mrs. Clinton's version of events. Moreover, David Knight,[61] a former partner of the Rose Law Firm, testified that he was involved in this meeting between Mr. Latham and Mr. Massey, and Mr. Latham did not hire Mr. Massey.[62]

In a statement to the FDIC OIG in November 1994, Mrs. Clinton similarly told investigators that "she recalled Massey came to her and asked her to be the billing attorney which was a normal practice when an associate was handling the matter . . . Mrs. Clinton recalled that a Madison official (individual unknown) approached Rick Massey regarding a preferred stock offering in an effort to raise capital."[63] In a sworn response to an RTC interrogatory in May 1995, Mrs. Clinton elaborated on her story. Mrs. Clinton stated that Mr. Massey approached her because "certain lawyers" in the Rose Law Firm were "opposed" to representing Mr. McDougal until Mr. McDougal paid an outstanding bill, and he was aware that Mrs. Clinton knew Mr. McDougal.

Mr. Massey, however, directly contradicted Mrs. Clinton's account stating that he was not responsible for bringing in Madison as a client.[64] Specifically, Mr. Massey testified that Mr. Latham never offered him Madison's business[65] and that he did not recall approaching Mrs. Clinton with a proposal to represent Madison.[66] Contrary to Mrs. Clinton's unsworn statement of November 1994 to the RTC, Mr. Massey also testified that he did not ask Mrs. Clinton to be the billing attorney.[67] Mr. Knight agrees that Mr. Massey did not secure an offer of business, and he—Mr. Knight—further testified that he would have expected to know about such an offer if it had happened.

Mrs. Clinton claimed that she became involved in discussions about the Madison retainer because of an outstanding debt Mr. McDougal, through his Madison Bank & Trust, owed to the Rose Law Firm in 1985.

Documentary evidence and testimony provided to the Special Committee, however, indicated that the outstanding balance of Rose's bill to Madison Bank & Trust was paid in November 1984, months prior to Rose's retainer in April 1985. Furthermore, Gary Bunch, President of Madison Bank & Trust provided the Special Committee with documents showing that the legal fees owed to the Rose Law Firm were paid in late October 1984.[68] Mr. Bunch further testified that Mr. McDougal directed him in October 1984 to pay the outstanding Rose Law Firm bill for the Madison Bank & Trust matter in full.[69]

Following the discovery of the Rose billing records and the testimony of Mr. Massey before the Special Committee, Mrs. Clinton's story changed in a February 1996 interview with RTC investigators. She claimed, for the first time, that the late Vincent Foster initially informed her that Mr. Massey wanted to do legal work for Madison.[70]

Mrs. Clinton's statements conflict internally and with the testimony of others involved in the events surrounding Rose's Madison retainer. Over the next several months, it was Mrs. Clinton—not Mr. Massey—that officials at Madison Guaranty, including Seth Ward and Jim McDougal, sought out for representation. Finally, Mr. Massey, Mr. Knight, Mr. Latham and Mr. Bunch, all unrelated and with no apparent reason to mislead the Special Committee, contradict Mrs. Clinton's assertion that she did not bring Madison Guaranty to the Rose Law Firm as a client.

4. Mrs. Clinton had a substantive contact with Beverly Bassett Schaffer about Madison Guaranty's proposal to issue preferred stock

The Rose billing records and Beverly Bassett Schaffer contradict Mrs. Clinton's statements that she did not speak directly to Beverly Bassett Schaffer, the Arkansas Securities Commissioner in charge of state regulation of Madison Guaranty, about Madison Guaranty's proposed preferred stock transaction.

Prior to the discovery of the billing records, Mrs. Clinton claimed in her sworn responses to RTC interrogatories in May 1995 that she called the Arkansas Securities Department to find out "to whom Mr. Massey should direct any inquiries" on the proposed stock deal, but she did not recall to whom she spoke.[71]

The Rose billing records reflect that Mrs. Clinton called Ms. Schaffer the day before the Rose Law Firm submitted Madison's proposal to do preferred stock offering to the Arkansas Securities Department.[72] In testimony before the Special Committee, Ms. Schaffer directly contradicted Mrs. Clinton and stated that the substance of the proposal was discussed during the phone call, and that Ms. Schaffer told Mrs. Clinton that her agency would approve the proposal.[73]

Mr. Massey likewise contradicted Mrs. Clinton's account of this important telephone call. Mr. Massey testified that he drafted the proposal and knew exactly to whom the proposal should be sent.[74]

Mr. Massey also testified that Mrs. Clinton never gave any instructions to him about whom he should address the transmission letter.[75]

This conversation has at least the appearance of an attempt by the then-Governor's wife to lobby to influence the activities of state regulators on behalf of private clients. Thus, both Ms. Schaffer and Mrs. Clinton may have motive to hide this event from public scrutiny. The fact that Ms. Schaffer recalls that the phone call included a discussion of the substance of Madison Guaranty's stock proposal, which she approved two weeks later, supports the Special Committee's conclusion that a substantive call occurred.

5. Governor Clinton's official and personal dealings with James McDougal raised an apparent, if not an actual, improper conflict of interest

Governor Clinton's official and personal dealings with Jim McDougal, beyond appearances, raised an apparent, if not actual, conflict of interest. Although Mr. McDougal was carrying the Clintons on the Whitewater loans, then Governor Clinton—using the power of his high political office—consistently acted favorably on Mr. McDougal's other business ventures and accepted many of the recommendations Mr. McDougal made regarding proposed state action. These favors took the form of influence in appointments[76], the awarding of lucrative state leases[77], and beneficial decisions relating to state regulators.[78] This favoritism was critical to Mr. McDougal, whose savings & loan was experiencing serious financial trouble.

Of course, from the standpoint of Governor Clinton, if Madison Guaranty failed or Mr. McDougal experienced financial troubles, the Clintons could be liable for the full Whitewater debt. Thus, Governor Clinton had reason to act in a way to ensure the viability of Mr. McDougal's savings & loan, even if such action was adverse to the interests of the state. For example, documents indicate that Governor Clinton played a role in the award of contracts for state leases to Madison.[79]

Perhaps the most blatant example of the problems created by this conflict of interest related to certain legislation. In 1987, Governor Clinton vetoed a water bill that favored a utility, Castle Sewer & Water, owned by R.D. Randolph and Jim Guy Tucker, two business associates of Mr. McDougal.[80] Mr. Randolph and Mr. Tucker threatened Governor Clinton by reminding him of a questionable 1985 Madison fundraiser,[81] and the possibility of litigation related to Rose's representation of Madison on the utility issue.[82] Shortly thereafter, Governor Clinton called the legislature into a special session and the signed the bill, as Mr. McDougal's associates desired.

6. The Clintons took an active role in obtaining and extending Whitewater-related loans; they were not "passive" investors in Whitewater

The Clintons were not "passive investors" in the Whitewater real estate venture. Indeed, they actively sought and obtained Whitewater loans and extensions. Based largely on Mr. Clinton's official position, state bankers routinely gave the Clintons bene-

ficial treatment on Whitewater-related loans, often disregarding banking regulations and sound lending practices.

Whitewater was a "no cash" deal. Mr. Clinton actively participated in obtaining the initial down payment loan the Whitewater investment. He enlisted bank lobbyist Paul Berry to grant him and James McDougal an unsecured loan for the down payment.[83] This loan was just one of the Whitewater loans that would not have been made under what the lending officer characterized as "ordinary circumstances."[84]

Moreover, the Clintons actively participated in key meetings concerning the Whitewater real estate investment. At the outset of the investment, Mr. Clinton met with Mr. McDougal about the structure of the financing.[85] When Mr. Clinton's personal accountant, Gaines Norton, raised serious questions about the lawfulness of Mr. McDougal's plans, Mr. Clinton told him to "back off."[86] This indicates a conscious avoidance of learning the facts about the Whitewater transactions.

Also early in the investment, Mrs. Clinton had at least two meetings with bank officials to renew Whitewater loans.[87] Although few payments of principal were being made, and the Clintons often refused to provide the required loan documents and financial statements, Mrs. Clinton's continued meetings and conversations with reluctant bank officials helped to secure the extension of Whitewater loans.[88] Again and again, bankers looked the other way when the Clintons failed to make principal payments on the Whitewater loan or failed to submit the required financial statements, many times due to Governor Clinton's public office.[89] Finally, after 1986, Mrs. Clinton essentially took control of the Whitewater investment.[90] Mrs. Clinton sought power of attorney over the investment, paid back taxes and attempted to collect all the Whitewater documents.

In fact, it appears that in many instances where the Clintons got involved with the Whitewater loans, the banking regulations were either "bent" or broken. For example, federal and state regulators cited Mrs. Clinton's irregular out of territory and often past due loan in connection with Whitewater Lot 13 and prohibited the bank from renewing the loan.[91] Governor Clinton's Bank Commissioner Marlin Jackson may have assisted the Clintons in obtaining a new loan at a bank he then regulated.[92] Later, Mr. Jackson improperly used government stationary in connection with securing loan renewals for the Clintons.[93] Mr. Jackson used his government position to act as a go-between for the Clintons in their dealings with a state-regulated bank was clearly inappropriate.[94] This action raises serious questions of whether Mr. Jackson misused his official position to influence improperly bank action to benefit the wholly private interests of the Clintons.

7. Governor Clinton's office steered state bond work to Dan Lasater

The Special Committee was very concerned about Governor Clinton's troubling relationship with Arkansas businessman, Dan Lasater. In 1980, Mr. Lasater entered the securities business with the firm of Collins, Locke & Lasater. In January 1985, a Little Rock paper reported that a federal bankruptcy judge found, in open court, that Mr. Lasater lied under oath during the bankruptcy trial

of his former business partner, George Locke, and also found that Mr. Lasater was involved in a conspiracy to defraud Mr. Locke's creditors. In February 1985, widely-reported accounts of sworn testimony of federal court put Governor Clinton on notice that Mr. Lasater was a cocaine user and the subject of a drug investigation. On October 23, 1986, Mr. Lasater was indicted on drug charges for possession and distribution of cocaine.

Mr. Lasater contributed substantial sums of money to Governor Clinton,[95] "loaned" $8,000 to the Governor's brother, Roger, to pay a drug debt,[96] and, at the Governor's request, gave Roger a job.[97]

The Special Committee identified three instances in which Governor Clinton or his aides inappropriately sought to take actions intended to benefit Mr. Lasater. First, in February 1983, Senior Economic Adviser to the Governor, Bob Nash, while acting in his official capacity, improperly directed Charles Stout, the Chairman of the Arkansas Housing Development Board ("AHDA"), to grant lucrative state bond underwriting contracts to Mr. Lasater's firm, Collins, Locke & Lasater.[98] Mr. Nash directed AHDA Chairman Stout to award 15% of AHDA's bond-business to Mr. Lasater's firm. This order represented an unprecedented interference by the Governor's office into the otherwise independent and competitive underwriting selection process of the agency[99]. Mr. Nash did not suggest that the AHDA should include other Arkansas firms. Rather, Mr. Nash's order specifically directed that Mr. Lasater's firm be included. Mr. Nash's directive had the weight and influence of the Governor's office behind it,[100] and, as a result, the AHDA Board bowed to the Governor's order awarded a substantial amount of state bond business to Mr. Lasater's firm.[101] Prior to Mr. Stout's order, Mr. Lasater's firm had not received AHDA bond business. In addition, the Stephens firm, the largest bond firm in Little Rock, questioned whether Mr. Lasater's firm was qualified to participate in these offerings.

Second, in late 1983, Governor Clinton sought to use the power of his office to benefit Mr. Lasater when the Governor personally called and asked Linda Garner, the State Insurance Commissioner, to include Collins, Locke and Lasater as a manager for the multi-billion dollar securities portfolio for which she was acting as receiver in connection with her responsibilities as Insurance Commissioner.[102] Governor Clinton did not attempt to intervene on behalf of any other financial firms.[103] The Committee has concluded that this contact represents another instance where Governor Clinton inappropriately tried to influence an appointed state official to direct business opportunities to Mr. Lasater.

Third, the Governor's office extended itself to monitor and to facilitate Mr. Lasater's company's efforts to secure the underwriting contract for a $29 million dollar bond financing for a police radio system in 1985.[104]

In each of these three instances, the Special Committee concludes that Mr. Lasater received inappropriate assistance from the Governor and his office. Given Mr. Lasater's past problems, it is far from clear why Mr. Lasater would be entitled to preferential treatment.

8. The Clintons took a series of erroneous tax deductions related to Whitewater

The Special Committee concludes that the Clintons took a series of erroneous Whitewater deductions, often in error, on their personal federal income tax returns. From 1978 to the early 1990s, the Clintons invested a total of $42,192 in Whitewater.[105] During this same period, the Clintons deducted $42,656 of their Whitewater related expenses on their federal income tax returns—almost $500 more than their total investment in the corporation. From 1992 to this date, the Clintons have admitted taking improper deductions of $7,928 and omitting income of $8,171 on their federal income tax returns during the period of their Whitewater investment. Based on its analysis of the available evidence, the Special Committee concludes that the Clintons could have understated their income on Whitewater-related items by as much as an additional $33,771, for a total increase in taxable income of $49,870.

SUMMARY OF THE EVIDENCE

PART I: WHITEWATER DEVELOPMENT CORPORATION

While running Senator Fulbright's election campaign in 1968, Jim McDougal was introduced to William Jefferson Clinton who, at the time, was a young student at Georgetown University and was working for Senator Fulbright on the staff of the Foreign Relations Committee.[106] Several years later, in 1973, after Clinton had graduated from Yale Law School, he returned to Arkansas and took a university teaching position.[107] In 1974, Mr. Clinton ran unsuccessfully for a congressional seat in Arkansas and, in 1976 he ran for, and won, the office of Attorney General for Arkansas.[108] During the campaign for Attorney General, Mr. Clinton re-established his relationship with Mr. McDougal, who was then a professor at Ouachita Baptist University.

During 1977, Mr. Clinton entered into his first real estate investment with Mr. McDougal. This was a profitable investment. Specifically, on January 25, 1977, Mr. Clinton purchased 20 acres of land from Rolling Manor, Inc., a company owned and controlled by Mr. McDougal for a price of $11,400. In 1978, Mr. Clinton sold that land for $19,985, netting a profit of $8,585 in just over one year—a 75% return on his initial investment.[109] This transaction convinced Mr. Clinton that investing with Mr. McDougal could bring quick profits. At the time, Mr. Clinton, in the midst of his campaign for Attorney General, was still paying off educational loans and debt he had acquired in his congressional election loss. Shortly afterward, Mr. Clinton was elected Attorney General.[110]

Near the end of Mr. Clinton's term as Attorney General, in 1978, the Clintons, impressed by their profit from Mr. Clinton's first investment with Mr. McDougal, joined Mr. McDougal in the Whitewater investment. Mr. Clinton and Mr. McDougal borrowed $20,000 and used the money as a down payment on the purchase of 230 acres of land along the White River.[111] The rest of the $203,000 purchase price was financed by another loan taken out by the Clintons and the McDougals.[112] At the time of the origination of the loans, the McDougals' financial statements showed a net

worth of $551,000, with total assets of $975,000.[113] The Clintons, on the other hand, did not submit a financial statement, but their tax return for 1978 indicates earned income of $54,593.[114]

The following year, on June 18, 1979, the McDougals and Clintons incorporated Whitewater Development Corporation and transferred the land that they had purchased along the White River to this company, subject to the mortgages.[115] Stock in Whitewater was to be evenly distributed between the Clintons and the McDougals, but because of conflicting documentation it is difficult to determine the exact distribution of ownership.[116] One thing that is certain, however, is that the Clintons and the McDougals believed they would share equally in any profits.[117]

Sales at the Whitewater real estate project did not meet the Clintons' and the McDougals' expectations. Not only was there no profit, but from the early days onward, the investment did not take in enough money to service the debt. As a result, the Clintons were forced to attend several meetings with bank officials in order to extend the loans.

Between June 1979 and October 1985, the Clintons signed at least 10 renewals on various Whitewater loans at Union National Bank, Citizens Bank of Flippin, and Security Bank. On December 16, 1980, Mrs. Clinton took out a $30,000 loan from Mr. McDougal's Madison Bank and Trust to finance the purchase of a model home for Whitewater lot 13. It was hoped that the model home would spur lot sales.

The Clintons did not put any funds into Whitewater Corporation during the period that Mr. McDougal was running Madison Guaranty. Instead, the Clintons allowed Mr. McDougal to make the payments. Mr. McDougal made substantial payments. He often used funds from Madison Guaranty to service the Whitewater debt. Whitewater did not generate sufficient cash flow because of lagging lot sales. Thus, if Mr. McDougal was unable to cover the debt personally, the Clintons would have been liable for the total amount of the mortgage if the bank refused to renew the notes. Thus, the Clintons had an interest in the economic well-being of the McDougals.

Since questions surrounding the Clintons' investment in Whitewater first arose, the Clintons have stated they were "passive investors" in this investment.[118] In May 1995, in a sworn response to interrogatories propounded by the RTC, Mrs. Clinton testified that "the McDougals exercised control over the management and operation of WDC for the period of its existence. . . . As wascontemplated from the inception of the venture, *we were passive investors* and relied upon the McDougals to manage and operate it."[119] (emphasis added).

Since the 1992 campaign, the Clintons have continued to attempt to distance themselves from Mr. McDougal. The Clintons have repeatedly maintained that they were passive investors in Whitewater. Similarly, Mrs. Clinton sought to minimize the extent of her involvement in the representation of Madison Guaranty while a partner of the Rose Law Firm.

I. Whitewater: The Early Years

A. The Clintons' Previously Undisclosed Land Deal with James McDougal

In 1977, President Clinton made his first real estate investment with Mr. McDougal. The Clintons' 1978 federal income tax return reported two real estate sales: a cash sale of a five-acre parcel of land purchased by the Clintons on January 25, 1977, and an installment sale of 15 acres of land also purchased that same day.[120]

President Clinton testified, however, that while he had no recollection of the particular investment, he recalled that he was involved in a five-acre land deal with Mr. McDougal that was sold for $5000 and resulted in a capital gain of $2150. In his May 24, 1995 sworn interrogatory responses to the RTC, President Clinton stated:

> I believe I made a real estate investment or investments in 1977, which are reported in our 1978 income tax return. I can recall nothing specific about this investment or investments, except that at least one involved the purchase of land near Jacksonville. . . . As reported in our 1978 tax return, a five acre parcel of land was sold on May 17, 1978, for $5000, resulting in a capital gain of $2150. To the best of my recollection, this was a real estate investment I had with Jim McDougal, and, while small, it was a profitable one. This confirmed my impression that he was capable of putting together successful real estate transactions.[121]

This 1977 transaction was President Clinton's first real estate investment venture, and his success was a factor in his decision to purchase the real estate in Marion County, Arkansas that came to be known as Whitewater.

Documentary evidence, including the Clintons' 1978 federal income tax return, indicates that the 1977 transaction between then-Attorney General Clinton and Mr. McDougal was significantly larger, longer and more profitable than previously described by the Clintons. According to President Clinton, a five-acre parcel purchased on January 25, 1977 was sold for $5,000 on May 17, 1978, netting the Clintons a gain of $2,150 in just under 16 months.[122] The schedules to the Clintons' 1978 tax returns also report, however, an installment sale of 15 acres of unimproved land. This 15-acre parcel was purchased on the same date as the five-acre parcel, January 25, 1977, and was sold for $14,985 on July 23, 1978, netting the Clintons a gain of $6,435 in just under 18 months.[123] Thus, according to their 1978 federal income tax return, the Clintons purchased 20 acres of land on January 25, 1977, with a reported cost of $11,400 and sold all 20 acres of the land by July 23, 1978 for $19,985, netting them a profit of $8,585—a 75 percent return on their total investment—in just under a year and a half.

The land was purchased from Rolling Manor Inc., a company owned by Mr. McDougal and Senator Fulbright.[124] A January 25, 1977 Purchaser's Agreement between Rolling Manor Inc., the seller, and Mr. Clinton, the buyer, states that Rolling Manor Inc. agreed to sell Tract Number 74 to Mr. Clinton for $11,400.[125] This

$11,400 equals the adjusted cost for the 5-acre parcel ($2,850) and the 15-acre parcel ($8,550) reported on the Clintons' 1978 personal income tax return.[126] The terms of the purchase agreement called for Mr. Clinton to pay $400 in cash and execute an $11,000 note to finance the balance of the purchase price. A January 25, 1977 installment note between Rolling Manor, Inc. and Mr. Clinton in the face amount of $11,000 was prepared by Rolling Manor, Inc.[127] Mr. Clinton was obligated to pay 96 monthly installments of $155.51 beginning on April 1, 1977 at an annual percentage rate of eight percent and continuing until May 1985.[1]

Mr. McDougal wrote to then-Attorney General Clinton on February 4, 1977 requesting the down payment of $400 "if you have it to spare"[2] and giving notice that the first monthly payment on the note was coming due on April 1, 1977.[128]

A First Jacksonville Bank deposit slip that was marked "paid by" Bill Clinton indicates that the $11,000 note was fully paid off by November 9, 1977—less than ten months after Mr. Clinton purchased the 20-acre parcel from Rolling Manor Inc. and more than eight months prior to the sale of the 15-acre parcel on July 23, 1978.[129] Because the property was not sold until 1978, the source of the $9000 payment to Rolling Manor Inc. in 1977 to completely pay off the $11,000[3] Rolling Manor note is not known.[4] In sworn testimony, Gaines Norton, the Clintons' personal accountant who prepared their 1978 tax return, admitted that "the tax return which the President makes mention of in his interrogatories . . . makes it quite clear that there was a second investment or a second part of this investment with Mr. McDougal that involved a larger piece of property and a larger profit."[130] Mr. Norton also admitted that the President's answer in the interrogatory is "incomplete."[131]

B. Whitewater: A "No Cash" Deal

In 1978, the Clintons and the McDougals purchased the Whitewater land development in an entirely leveraged transaction. The Clintons and McDougals invested no money in the original mortgage. As a result of Mr. Clinton's political position, it appears that bank officers routinely gave preferential treatment to Whitewater loans, often violating sound banking practices concerning timely payments and proper loan documentation.

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[1] Although the documents are signed by Mr. and Mrs. McDougal, but are not signed by President Clinton, the information reported by the Clintons on their 1978 federal income tax return corresponds exactly with the cost and date information on the purchase agreement and installment note, indicating that the transaction was consummated on January 25, 1977. (*See* Williams & Connolly Prod. DKSN022069; Haddon Morgan & Foreman Document LP01547.)

[2] There is no independent documentary evidence that the $400 down payment was made, but a deposit ticket from 1st Jacksonville Bank of Jacksonville, Arkansas indicates that Rolling Manor Inc. deposited a $155.51 payment by then-Attorney General Clinton into its bank account on April 22, 1977. (Williams & Connolly Document DKSN022068; Haddon Morgan & Foreman Document LP01546).

[3] The deposit ticket, which was stamped by the bank, indicates that the outstanding balance on the note was $10,917.82, consistent with what the balance of the note would be after the first monthly payment of $155.51 is applied to interest and principal. Williams & Connolly Prod. DKSN022068; Haddon Morgan & Foreman Document LP01546.

[4] Based on information reported in their 1977 federal income tax return, the Clintons' adjusted gross income in 1977 was just $41,731. After accounting for adjusted itemized deductions ($9,688) and other adjustments, e.g., federal taxes withheld, ($8,835), the Clintons' disposable income in 1977 was $23,208, before any expenditures for such items as principal payments on their mortgage, food, and clothing. Thus, a $9,500 payment would have equaled more than 40 percent of their total disposable income in 1977.

Early on, then-Attorney General Clinton was made aware of the problems with Mr. McDougal's Whitewater tax scheme by his personal accountant, Gaines Norton.[132] Mr. Clinton asked Mr. Norton to sit in on a meeting with Mr. McDougal[133] to "look at an investment he was making."[134] During the meeting, Mr. McDougal explained how the transaction would be arranged so that even though no money was invested in the deal—they would use "a hundred percent borrowed money"[135]—the McDougals and the Clintons "would immediately be able to take personal tax deductions."[136]

Mr. Norton, a certified public accountant, immediately advised both men that the proposed tax deduction would be illegal.[137] Mr. McDougal would not listen,[138] however. Curiously, after the meeting, Mr. Clinton told Mr. Norton that he "had to rely on his partner to structure [the deal] tax-wise properly" and "to back off and leave the issue alone."[139]

Thus, against the advice of his personal accountant, the Clintons joined with the McDougals in investing in the Whitewater land venture. The deal was financed by two banks: Citizen's Bank of Flippin ("Citizen's Bank"), a small bank located near by the Whitewater property, and Union National Bank, a larger bank in Little Rock.[140] Because the Whitewater mortgage exceeded the legal lending limit of Citizen's Bank, the transaction was structured as a loan participation with the larger Little Rock Union National Bank. Thus, Citizen's Bank and Union National Bank each financed half of the $182,611 loan that was closed on August 2, 1978.[141]

Frank Burge, a Vice President and loan officer at Citizen's Bank, who handled the Whitewater loan, testified that the Whitewater loan was not a typical loan for the small bank, whose portfolio was composed of residential and consumer loans.[142]

In addition, the Clintons and McDougals never notified Citizen's Bank that Union National Bank also extended a $20,000 unsecured loan for the down payment on the Whitewater mortgage. Citizen's Bank was not aware that the Clintons and McDougals invested no money into the original mortgage.[143] This loan violated Citizen's Bank's practice of not making real estate loans without an equity contribution by the borrower.[144] Mr. Burge explained that "(s)ound banking tenets said you should have equity on all real estate lending."[145] Similarly, Don Denton, the loan officer at Union National Bank responsible for the Whitewater loans, thought that this transaction was a potential regulatory problem.[146]

In fact, the Union National loan was made only as an "accommodation" to Mr. Clinton, who had actively sought to obtain it.[147] According to Mr. Denton, he was instructed by a Union Bank lobbyist to make this loan—against Mr. Denton's judgment—to Mr. Clinton, because Mr. Clinton was an "up and coming political . . . rising star in the State of Arkansas."[148] Paul Berry, a Union Bank lobbyist and Mr. Clinton's former college roommate admitted that Mr. Clinton had approached him about obtaining the money for the down payment on the Whitewater deal, but claimed that he made the loan because it was "good business."[149] Mr. Denton testified, however, that he would not have made the loan, given the Clintons' and the McDougals' financial condition, "had it been an arms' length loan by a client walking off the street."[150] According to Mr.

Burge, Mr. Clinton's political position also influenced his decision to make the loan at Citizen's Bank.[151]

Despite the fact that Mr. McDougal and Governor Clinton ignored repeated requests for payments of principal, Union National Bank renewed the Clintons' Whitewater loan a number of times.[152] Rather quickly, Citizen's Bank became concerned over the Whitewater loan. Robert Ritter, who became the President of Citizen's Bank in September 1979, was concerned early on that the Whitewater loan would become "an item either on an examination or it became a reportable item to the Board at a particular time."[153] His apprehension was compounded by problems that Citizen's Bank faced obtaining personal financial statements for the Clintons and the McDougals.[154]

During the early 1980s, Mr. Ritter recalled meeting twice with Mrs. Clinton and twice with Mr. Clinton.[155] Mr. Ritter met once with Mrs. Clinton and Mrs. McDougal to obtain signatures on loan renewal documents.[156] Mr. Ritter testified that he believes they discussed loan repayment plans.[157] Mr. Ritter also recalled a second meeting[5] at the bank with Mrs. Clinton and Mrs. McDougal—probably occasioned by a loan renewal.[158] He testified that Mrs. Clinton appeared knowledgeable about the Whitewater real estate development and the Whitewater loan, and, in fact, she remarked on the sharp rise in the interest rate on the loan.[159] Mr. Ritter also recalled contacting Mr. Clinton twice concerning loan documentation.[160]

The Clintons have stated that they have no recollection of meeting with officers of Citizen's Bank to discuss their troubled Whitewater loan.[161]

In June 1980, the Clintons were released from their personal obligation on the Union National Bank loan when Mr. McDougal retired the loan with proceeds borrowed from the Bank of Cherry Valley.[162]

C. Lot 13: Irregularities in Madison Bank's loan to Mrs. Clinton

In December 1980, the Clintons and the McDougals sought to boost lagging Whitewater lot sales by building a model home on lot 13. Mrs. Clinton borrowed $30,000 from Madison Bank and Trust in Kingston, Arkansas ("Madison Bank"), which was controlled by Mr. McDougal, to finance the construction of the model home.[163] As with the earlier loans, this loan also was obtained under unusual circumstances.

Madison Bank approved the loan even though Mrs. Clinton was not a pre-existing customer, and she lived outside the bank's lending area.[164] According to Mr. Bunch, the loan was underwritten in a manner that was contrary to sound banking practices: "we probably didn't have anything in the file but a signed note. I'm sure there wasn't a financial statement. No documentation at all."[165]

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[5] Mr. Ritter's recollection of these meeting is vague, and if these meeting were held to execute loan renewals, the dates of these meetings do not comport with the available documentary evidence. If both of these meetings were convened to execute loan renewal documents it is possible that they occurred one or two years later than Mr. Ritter recollects (for instance the interest rate first increased in 1980, but did not increase significantly until 1981). Mr. Ritter left Citizen's Bank at the end of 1983.

Although Mrs. Clinton's Madison Bank loan was scheduled to mature on December 16, 1981, the loan apparently was extended for six-months to June 1, 1982. From the origination of the loan to its maturity, Madison Bank received only $285 in monthly interest payments. This amount was far less than the $373 in interest owed per month.[166]

On August 5, 1982, two months after the June extension had expired, Theresa Pockrus, executive vice-president of Madison Bank, who was responsible for monitoring delinquent loans, wrote to Mrs. Clinton notifying her of the loan's past due status, and that a "satisfactory agreement needs to be worked out."[167] Ms. Pockrus was concerned about the upcoming Federal Deposit Insurance Corporation ("FDIC") audit.[168] On August 11, Mrs. Clinton told Ms. Pockrus to speak with Mr. McDougal because he would personally take care of the situation. According to Mrs. Clinton, Mr. McDougal had been handling the payments the entire time.[169] Coincidentally, after Ms. Pockrus spoke to Mr. McDougal, Madison Bank shortly thereafter received a $699 payment from an unknown payor.[170]

No principal payments were made, however, on the loan.[171] Ms. Pockrus believed that "the loan should have been taken out of the bank all together" because it was too risky, and would have recommended that the Board "not extend it . . . because a $5 million bank has no business loaning money to people in Little Rock."[172]

On April 7, 1983, Madison Bank consented to a cease and desist order with the FDIC that, among other things, restricted Madison Bank's out-of-territory lending.[173] The order effectively prohibited Madison Bank from extending Mrs. Clinton's Lot 13 loan.[174] In January 1983, Mr. Clinton was sworn in as the Governor of Arkansas, and, in February, he appointed Marlin Jackson, former president of Security Bank of Paragould, to be the Commissioner of the Arkansas State Bank Department ("ASBD").[175]

On June 27, 1983, the ASBD released the results of its examination of Madison Bank, identifying Mrs. Clinton's loan as a problem.[176] The ASBD later joined the FDIC in ordering Madison Bank to close out its out-of-territory loans.[177] Thus, Madison Bank was forced to remove Mrs. Clinton's out-of-territory loan from its portfolio.[178] Afterward, Mr. Jackson saw Governor Clinton in the State Capitol and told him about Madison Bank's deteriorating condition.[179] Mr. Jackson did not normally advise the Governor of the results of bank examinations.[180]

Meanwhile, the Whitewater debt remained outstanding and sales were slow. Mr. Jackson admitted that he directed Governor Clinton to seek a loan with Security Bank of Paragould ("Security Bank").[181] Indeed, on September 30, 1983, Governor Clinton obtained an unsecured $20,800 loan from Security Bank and used the proceeds to pay off Mrs. Clinton's Madison Bank loan.[6]

When Mrs. Clinton asked for a loan extension, Security Bank offered a one-year extension to September 30, 1985.[182] On October 11, 1985, after Mrs. Clinton failed to meet her payments, Security Bank extended the note again to September 30, 1986.[183] On November 1, 1985, Mr. Jackson wrote to Charles Campbell, vice-presi-

[6] The remaining $6,052 balance of Mrs. Clinton's loan was paid off in two payments—one in the amount of $285 from the man who had purchased the property from Mrs. Clinton, and the other, $5,797, from an unknown payor.

dent of Security Bank, on the official letterhead of the State Banking Commissioner, enclosing the extension agreement.[184] When asked about the propriety of Mr. Jackson's communicating to a bank on official stationary about the Governor's loan, William Lyon, a friend of Mr. Jackson's, a bank owner, and former member of the ASBD testified: "[i]t was not right for him to do that. He should never have done this."[185]

On November 20, 1986, Security Bank again sent Mrs. Clinton a notice that payment was past due on the loan, now in the amount of $15,435.51.[186] On March 2, 1987, Mr. Jackson telephoned Mrs. Clinton to give her William Fisher's telephone number.[187] Three days later, Mr. Fisher, the president of Security Bank, sent a new note to Mrs. Clinton for $14,117.59, due on March 5, 1988, and requested financial statements.[188] On March 31, Mr. Jackson sent another letter to Mrs. Clinton, enclosing the extension agreement and telling her not to hesitate to contact Mr. Fisher.[189]

The Special Committee finds that it was clearly inappropriate for someone in Mr. Jackson's position to act as a go-between for the Clintons in their dealings with Security Bank, and, Mr. Jackson's involvement, at the very least, raises questions of whether improper influence was used to benefit the Clintons. The letters sent and received by Mr. Jackson reveal a continuing pattern of activity by him on behalf of the Clintons while he was a Clinton-appointed state employee (who happened to own controlling interest in a bank that he was charged with regulating which, coincidentally, took over a loan that had been a problem for the Clintons).

Governor Clinton's loan at Security Bank of Paragould was frequently delinquent, and the bank constantly sought to either collect or extend the loan. The loan officers experienced some difficulty in obtaining documents needed from the Clintons to complete the extension agreements.

II. The Clintons' Continued Involvement in Whitewater: 1987–1992

A. The Clintons' Active Involvement in the Management of Whitewater After 1986

By early 1982, both the Governor and Mrs. Clinton had attended meetings with bankers on the Whitewater loan renewals. Therefore, the Clintons should have been aware that the cash flow from Whitewater was not covering the debt, and that lot sales were not going well (hence, the need for the December 1980 lot 13 prefab home in Mrs. Clinton's name to try to attract purchasers).[190]

Indeed, by May 1985, only 20 of the Whitewater 44 lots were under contract for deed.[191] Whitewater realtor Christopher Wade and Dr. E. Russell Webb, through Ozark Air Services, Inc. ("Ozark Air"), acquired the remaining twenty-four lots in Whitewater.[192] In exchange for the twenty-four lots, Ozark Air agreed to repay $35,000 of the remaining Whitewater loan to 1st Ozark (the Clintons and McDougals remained personally obligated on the note),[193] and transferred title to a 1979 Piper Seminole airplane to James McDougal.[194] Mrs. Clinton admitted in RTC interrogatories that McDougal informed her in 1986 that the remaining Whitewater lots had been sold to Chris Wade in 1985.[195]

Between 1982 and 1986, while Mr. McDougal was running Madison Guaranty, the Clintons made no cash payments toward the Whitewater loans.[196] After Mr. McDougal was removed from Madison Guaranty in July 1986, Mrs. Clinton took a more active role in Whitewater.

Wesley Strange, who became President of 1st Ozark National Bank in 1986, testified that Mrs. Clinton, rather than Susan or James McDougal, was his primary contact person on the Whitewater loan,[197] beginning sometime in the fall of 1986.[198] Thereafter, Mr. Strange and Mrs. Clinton had numerous contacts relating to taxable income from Whitewater, loan documentation and the corporate records of Whitewater.[199]

Yet, the Clintons continued their pattern of failing to provide requested financial statements. Obtaining relevant information for the credit file, particularly financial statements, regarding the Clintons and McDougals was a recurring problem for Citizen's Bank and its successor, 1st Ozark National Bank.[200] 1st Ozark loan officers hesitated, however, to press the Clintons for missing or delinquent information and "walked softly" with regard to this loan so as not to irritate Governor Clinton or the board of directors at the bank.[201]

By 1987, 1st Ozark loan officers Ronald Proctor and Vernon Dewey both realized that the bank should not renew the Clintons' original Whitewater mortgage without first receiving current financial statements for the Clintons and establishing an escrow account to reduce the principal balance of the loan.[202] Nevertheless, the bank continued to exercise forbearance, granting waivers on the provision of financial information to both the Clintons and the McDougals. The bank also failed to undertake minimal efforts to ensure that the Clintons and the McDougals had sufficient collateral for the loan; for instance, there was no evidence of an appraisal or inspection of the Whitewater property (the primary source of collateral for the bank) between the summer of 1978 and December 1986.[203]

On November 28, 1988, Mrs. Clinton wrote to Mr. McDougal seeking power of attorney for matters concerning the Whitewater investment. The letter said: "I am enclosing a Power of Attorney for you to sign, authorizing me to act on your behalf with respect to matters concerning Whitewater Development Corp." Mrs. Clinton's letter also indicated that the Clintons at the time were actively involved in attempts to dispose of the remaining Whitewater property: "We are trying to sell off the property that is left and get out from under the obligations at both Flippin and Paragould."[204]

On June 21, 1990, Mrs. Clinton signed the legal forms indicating that, as of December 31, 1987, and December 31, 1988, she was the President of Whitewater Development Corp.[205]

B. Governor Clinton's Approval of Special Legislation Benefitting his Whitewater Banker

On February 15, 1984, Citizen's Bank, which continued to hold the original Whitewater mortgage, was sold to TC Bancshares.[206] This acquisition was significant for several reasons. First, on January 1, 1986, Citizen's Bank's charter was converted into a national bank chartered and subject to examination by the Office of the

Comptroller of the Currency (the "OCC") and became known as 1st Ozark National Bank.[207] This conversion significantly changed the regulatory environment for the bank holding the Whitewater mortgage. OCC examinations were precise and demanding; loan management and credit file maintenance were subject to greater scrutiny.[208]

Second, TC Bancshares' flagship bank was Twin City Bank ("TCB") of North Little Rock, one of the largest state-chartered banks in Arkansas.[209] TCB's President, Edward Penick, and its Chairman, Terry Renaud, became members of 1st Ozark's board of directors,[210] and Susan Sisk, a senior lending officer at TCB, was assigned to review the decisions of the 1st Ozark officer's loan committee and, because of the loan committee's requirement for unanimous action, could exercise virtual veto power.[211]

In the mid-1980's, TCB sought to amend Arkansas' restrictive bank branching laws.[212] TCB's growth was limited because of the restrictions that Arkansas law placed on branching; TCB, which was headquartered in North Little Rock, could not branch into Little Rock. As early as May 26, 1986, Mr. Penick began to look for solutions to this problem. After meeting with State Banking Commissioner Marlin Jackson, it became apparent to Mr. Penick that TCB's desire for expanded branching powers could not be realized without legislation.[213] During the 1987 Arkansas Legislative session, legislation was introduced that would permit TCB to enter the lucrative Little Rock market.

On April 1, 1987, this legislation, Act 539, was approved.[214] Act 539 amended Arkansas bank branching law to allow banks located in counties with populations of greater than 200,000 people to branch anywhere in that county. Because Pulaski County (which includes Little Rock and North Little Rock) was the only county in Arkansas with a population over 200,000, this law implicated the Arkansas Constitution's prohibition against local legislation.[215]

Act 539 was passed without widespread support from the Arkansas banking industry. Mr. Penick recalled that a majority of the state's banks opposed this bill, and that both Arkansas Bankers Association and Independent Bankers Association opposed this legislation.[216] Nevertheless, Act 539 did enjoy support from two major banks with connections to the financing of Whitewater—TCB and Union National Bank (the bank that loaned the Clintons and McDougals the down payment for Whitewater, and financed half of the mortgage loan for the Whitewater property). Mr. Penick testified that he was "proactive" in his lobbying on behalf of Act 539.[217] Mr. Penick worked closely with Paul Berry—Governor Clinton's former roommate who had helped secure the Whitewater down payment loan—on passage of this bill. Mr. Berry admitted that he contacted Governor Clinton to encourage him not to veto this legislation.[218]

This same time period—from the middle of 1986 through the spring of 1987—was an important time for Whitewater Development Corp. The Dallas Federal Home Loan Bank had forced James McDougal out of Madison in July 1986,[219] and Whitewater Development Corp. had accrued $90,000 in unrecoverable losses. In a November 14, 1986 letter, Mr. McDougal apprised the Clintons of these losses and cash flow problems. In this letter, Mr. McDougal

suggested that the Clintons transfer their Whitewater shares to him, and that he would assume the losses.[220] The Clintons refused the offer, and the Whitewater loan at 1st Ozark matured on December 3, 1986.[221]

Thus, in December 1986, in light of past criticism from federal regulators about the quality of loan documentation, Ronald Proctor, the 1st Ozark lending officer primarily responsible for the Whitewater loan, drove to the Whitewater property to conduct an inspection. Mr. Proctor testified that collateral inspections were "very common" when a real estate development loan came up for renewal.[222] Mr. Proctor's supervisor, Mr. Strange, agreed, testifying that such inspections would have been "prudent."[223] Nevertheless, this was the first time that Mr. Proctor inspected the property.[224] In fact, there is no evidence in the Whitewater credit file of any other independent appraisal of the property between 1978 and December 1986, and Mr. Proctor's 1984 work sheet employs the $1,100 per acre value from the 1978 appraisal.[225]

Mr. Proctor's inspection showed that the value of Whitewater had declined precipitously, from $1,100 per acre to no more than $750 per acre.[226] Thus, since the Whitewater loan had two primary sources of security—the property that collateralized the loan, and the guarantees of the Clintons and McDougals—the value of the guarantees of the Clintons and McDougals was now of greater importance to 1st Ozark in considering whether to renew the loan. In order to make a decision on loan renewal, financial statements are necessary; indeed, sound banking policy dictates annual submission of updated financial statements to ensure a borrower's financial condition is not deteriorating.[227] Nevertheless, 1st Ozark did not possess current financial statements for the Clintons. Because there was real concern about renewing the Whitewater loan without receiving current financial statements, 1st Ozark conditioned the loan extension on, among other things, the provision of financial statements by the Clintons and McDougals.[228] Vernon Dewey believed that 1st Ozark should have required repayment of the loan and shared his concern with Ron Proctor. Nevertheless, Mr. Dewey voted to approve the renewal because it was for the Governor.[229]

Despite the fact that the Whitewater loan's renewal was conditioned on the provision of financial statements, 1st Ozark once again experienced difficulty obtaining them. Mr. Strange, 1st Ozark's president, mentioned this problem to Governor Clinton but still no financial statements were forthcoming.[230] At some point in early 1987, the absence of financial statements for the Clintons was brought to the attention of 1st Ozark's chairman, and TCB's president, Mr. Penick. Mr. Penick agreed to help in securing the necessary financial information from the Clintons.[231] Mr. Penick decided to take steps to obtain the financial information from the Clintons. He testified that he mailed the to Mrs. Clinton Twin City Bank financial statement form, although no such correspondence was produced to the Special Committee.[232]

Ronald Proctor and Vernon Dewey, who were both members of the loan committee that required the financial statement as a condition for renewal, recalled that Mr. Penick offered to have Margaret Davenport, who was a friend of Mrs. Clinton's, contact Ms.

Clinton to obtain the financial statement.[233] Mr. Penick claimed he did not recall soliciting Ms. Davenport's assistance to obtain the financial statement.[234]

Mrs. Clinton' handwritten notes indicate, however, that she discussed the Whitewater loan with Ms. Davenport in 1987. The information regarding the status of the loan makes it clear that the notes relate to the 1987 extension. [235] Ms. (Davenport) Eldridge claimed that she did not recall this conversation, even after reviewing these notes.[236] 1st Ozark finally obtained the Clinton's financial statement, [237] on a TCB form, and the Clinton's guaranty agreement, both dated March 26, 1987.[238] Curiously, four days after the loan was renewed, Governor Clinton signed Act 539 into law.

The next year, banking legislation affecting TCB came before the Arkansas legislature. Although the Legislature was not scheduled to meet in 1988, the Banking industry was pressing for a special session to consider an "omnibus banking bill." The catalyst for this push was the United States Court of Appeals for the 5th Circuit's decision in *Department of Banking* v. *Clarke*. In effect, the *Clarke* decision authorized Mississippi national banks to branch based on the more liberal branching laws that applied to Mississippi savings associations (rather than the branching laws that applied to Mississippi-chartered commercial banks).[239] The Arkansas banking industry was concerned that the OCC would employ the *Clarke* decision to grant national banks expansive branching powers, and thereby give national banks in Arkansas a competitive advantage over state banks.[240]

Governor Clinton was not eager to call a special session; both his Chief of Staff, Betsey Wright and a close associate, Bruce Lindsey advised against it.[241] Governor Clinton and his staff were apprised that TCB was among a small group of banks that opposed the special session and the omnibus banking bill.[242] TCB's concern was that the 1988 bill might be used to close the loophole that Act 539 had created in the so-called "300 feet rule." Act 539 had removed restrictions on branching in Pulaski County, including a restriction on opening a branch within 300 feet of another bank. This provision allowed TCB to open a branch in downtown Little Rock, within 300 feet of the offices of First Commercial Bank.[243] First Commercial had sought an Attorney General's opinion regarding Act 539's constitutionality and had initiated a lawsuit, claiming that Act 539 was unconstitutional local legislation.[244] The Governor's office was apprised of both these actions.[245]

In early 1988, draft legislation was circulated and Hartsfield and the Arkansas Bankers Association began working on building support for the special session.[246] TCB's concern that the 1988 bill might be used to reimpose the 300 foot rule on TCB was well-founded. While the initial draft of this legislation probably did not contain language closing this loophole, Bill Bowen of First Commercial continued his efforts to close the loophole.[247] At some point in the process, he was able to obtain language in draft legislation to close the loophole. TCB maintained its opposition to the special session throughout spring 1988. Mr. Bowen told the Governor's assistant, Samuel Bratton, that TCB was "attempting 'to be a spoiler'." [248] Clearly, there was a conflict between TCB and First Com-

mercial with respect to the 300 feet rule, or, more aptly, the presence of TCB's downtown Little Rock branch.

While the disputes regarding the Special Session ensued, the Whitewater loan was coming up for renewal. Under the March 1987 extension, the loan matured on April 3, 1988.[249] In February 1988, Mr. Proctor began to seek financial statements needed for the renewal from the Clintons and McDougals. During telephone conversation with Mrs. McDougal, Mr. Proctor "implied" that the loan would not be renewed without updated financials.[250] A loan extension agreement was prepared for signature on April 3, 1988, but was not signed. Apparently, the McDougals, who were the officers of Whitewater Development Corp. and the only persons authorized to sign the renewal documents, could not be located to sign them. 1st Ozark enlisted Mrs. Clinton in an attempt to locate the McDougals and to obtain the necessary signatures for renewing the loan.[251]

On July 3, 1988 Governor Clinton called a special session of the Arkansas Legislature to consider the banking bill.[252] The TCB/First Commercial conflict over the 300 feet issue remained unresolved; however, documentary evidence in the Committee's possession indicates that this issue was shortly resolved when Governor Clinton intervened on TCB's behalf. There are notes of a July 5, 1988 meeting (that appear to be in Mr. Bratton's handwriting) regarding revisions to the Banking Bill. These notes include the following notation: "p 16—'300 feet' provision—BC will call Bowen."[253] That same day, Betsey Wright sent a memorandum to Governor Clinton and Mr. Bratton regarding the "300 foot" issue. Suggesting that the Governor had intervened, Wright wrote that:

> "(n)either Sam nor I understands what your next step/followup with Bill Bowen is on the 300′ issue. The bill which is being delivered to this office in the morning by the Bankers Association/Bill Ford does *not* contain the 300′ provision based on their conversation with you this morning."[254]

A July 5th draft delivered to the Governor's office contains the same "grandfather clause" that Ed Penick had suggested to Marlin Jackson in a May 23, 1988 letter.[255] Also on July 5, 1988, Mr. Penick sent a note to "Bill" thanking him for his assistance on the 300 feet provision.[256] When questioned regarding this note, Mr. Penick suggested that it was not a note to Governor Clinton, but rather Banking Commissioner Bill Ford. The available documentary evidence undermines Mr. Penick's recollection. First, this handwritten note was discovered among the Governor's papers. The Banking Department's records were subpoenaed and this note was not produced (despite the fact that Bill Ford is still Commissioner). Second, this note contains the notation "GOV," as well as the check mark that Governor Clinton frequently used to indicate that he had reviewed an item. Mr. Penick testified that he was more likely to address Governor Clinton as "Governor" than "Bill."[257] Mr. Penick's recollection on this count also is called into question by the documentary evidence; notably, the Committee obtained a June 6, 1988 note from Mr. Penick to Governor Clinton in which the salutation is also to "Bill."[258]

On July 7, 1988, Bill Bowen responded to Governor Clinton's proposal to remove "300 feet language" from the proposed bill. While Mr. Bowen committed himself to support the total package, he indicated in his letter that the package as proposed (including the 300 feet provision) enjoyed the support of 80% of bank CEO's in attendance at a March 1988 industry meeting, and that the "300-feet" specific provision enjoyed overwhelming support among the leadership of the Arkansas Bankers Association.[259]

Nevertheless, TCB carried the day. On July 15, 1988, the banking bill became law. As enacted, the bill did not contain Mr. Penick's suggested grandfather provision, but it did contain language that protected TCB's presence in Little Rock's downtown business area.[260]

Again curiously, that same day, the Clintons received a loan extension from 1st Ozark for their Whitewater loan for three years, through November 3, 1991. This renewal occurred three months after the loan term had matured.[261] Mrs. Clinton, who had been unable to contact either of the McDougals, signed for Whitewater Development Corp. 1st Ozark waived the financial statement requirement for *both* the McDougals and the Clintons. The waiver for the Clintons would appear to be unusual—with the McDougals out of the picture, the Clintons were the sole guarantors of the loan's repayment.

Granting this waiver to the McDougals and Clintons represented a change in policy for 1st Ozark. Mr. Proctor, who wrote to Mrs. McDougal for financial statements in February 1988 (nearly two months before the loan came due), was unable to explain why this same information was not necessary in July 1988.[262]

III. The Clintons' Handling of Whitewater During the 1992 Presidential Campaign

A. The Focus on Whitewater During the 1992 Campaign

During the 1992 presidential campaign, questions arose about Whitewater, Madison, and the Clintons' relationship with the McDougals. On March 8, 1992, the front page of the *New York Times* carried the headline: "Clintons Joined S&L Operator In An Ozark Real-Estate Venture." The article, written by Jeff Gerth, reported the ties between the Clintons and the McDougals, focusing attention on their investment in Whitewater and the questionable tax deductions taken by the Clintons in 1984 and 1985. The *Times* report suggested that Whitewater may have been used as a conduit to funnel money to the Clintons or to Bill Clinton's political campaigns.[263]

In anticipation of the Gerth article and in response to the subsequent media interest in the story, the Clinton campaign organized a team of senior advisors to gather facts about from other candidates. Susan Thomases, the New York lawyer and confidant of Mrs. Clinton, involved in matters surrounding the handling of documents in Vincent Foster's office following his death, and Loretta Lynch, a campaign official, reconstructed Whitewater-related records and coordinated the response effort.[264] Webster Hubbell and Vincent Foster, both then partners at the Rose Law Firm, were

responsible for collecting materials from Rose relating to Mrs. Clinton's work for Mr. McDougal and his S&L.[265]

The campaign's effort to contact the McDougal and other principals associated with Whitewater-related transaction was headed by James Blair, General Counsel of Tyson Foods, and a close friend of the Clintons. Mr. Blair had also known Mr. McDougal for over 30 years.[266] After Whitewater surfaced in the campaign, Mr. Blair contacted Mr. McDougal's lawyer, Sam Heuer, and arranged a meeting for Mr. Blair, Ms. Lynch, Mr. McDougal, and Mr. Heuer.[267]

Several days after the first *New York Times* article was published, on March 11, Mr. Blair and Ms. Lynch went to Mr. Heuer's office.[268] When they arrived, Mr. Heuer met the pair outside and escorted them upstairs into his office.[269] After some pleasantries, Mr. Blair asked Mr. McDougal why he talked to Mr. Gerth from the *New York Times*."[270] Mr. McDougal replied that, based on his experience an assistant to former Senator Fulbright, "when the press had something it was better to talk and simply give it all to them."[271]

When Mr. Blair asked whether Mr. McDougal would stop talking to the press, Mr. McDougal stated that he would "but indicated he didn't want to be bashed in the press."[272]

Mr. Blair then travelled to Flippin to interview Christopher Wade, the Whitewater real estate agent, and to obtain some records. It is not clear exactly what documents Mr. Blair collected from the Wades or whether Mr. Blair took notes of his conversations with Mr. Wade. The campaign file containing the notation—"WWDC Jim Blair Flippin Trip"[273]—was empty.[274] When asked about his interview of Mr. Wade, Blair testified that he discussed the fact that Mr. Wade had not discharged his obligation on the $35,000.[275]

Mr. Blair also accused Mr. Wade of taking advantage of Mr. McDougal's situation in the 1985 transfer of the 24 Whitewater lots,[276] and Mr. Blair questioned Mr. Wade about why he had not paid off the Whitewater mortgage. On May 11, 1992, shortly after the visit from Mr. Blair, Ozark Air obtained a loan from River Valley Bank & Trust ("River Valley"), formerly Citizens Bank of Lavaca, for $10,500.[277] As collateral for this loan, Ozark Air relied on the escrow contracts on lots 2, 9, 23, 30, 37, 43, and 44 of Whitewater Estates.[278] On May 12, 1992, Ozark Air wrote a check to 1st Ozark for $9,628.67 to close out the remaining Whitewater mortgage.[279]

By paying off the Whitewater loan with another bank loan, Mr. Wade merely exchanged one liability (his contractual obligation to assume $35,000 of the outstanding debt on the mortgage) for another (his obligation to River Valley Bank to repay a loan that was secured by the same collateral securing the Whitewater mortgage loan). However, this transaction accomplished one significant goal—it released the Clintons, who were guarantors of the Whitewater loan, from personal liability.[280] Mr. Wade asserted his Fifth Amendment right against self-incrimination, so the Committee was unable to examine him regarding this loan.[281]

Mr. Wade obtained the loan that he used to pay-off the Whitewater loan through former Citizen's Bank President James

Patterson who was then the President of River Valley.[282] After Mr. Wade called Mr. Patterson, he was granted this loan over the phone.[283] Mr. Patterson, who admitted he did not even like Mr. Wade,[284] claimed that he did not recall the purpose of the loan or whether the bank received collateral.[285] Mr. Patterson admitted that the loan to Mr. Wade was outside of River Valley's lending territory.[286]

It is unclear why Mr. Patterson would make this loan to Mr. Wade when Mr. Wade was in bankruptcy.[7] Mr. Patterson initially testified that Wade had emerged from bankruptcy by the time this loan was made.[287] When asked whether he understood that a person in bankruptcy is not supposed to engage in financial transactions without court supervision, Patterson claimed that he "didn't understand that if somebody had filed bankruptcy that they couldn't go make a new deal."[288] In fact, Mr. Patterson continued to assert that he made this loan to Mr. Wade, a man who was in involuntary bankruptcy, because "(h)e was worth the loan."[289]

B. The Lyons Report

In February or early March 1992, James Lyons, a senior partner at the Denver, Colorado law firm of Rothgerber, Appel, Powers & Johnson, was asked by the Clinton campaign to investigate the Clintons' investment in Whitewater.[290] Mr. Lyons specialized in complex civil litigation.[291] He was also a friend and political supporter of the Clintons since the late 1970s[292] and was the ad hoc chair of a group of lawyers from around the country who provided support and volunteer legal advice and services to the Clinton campaign.[293]

Mr. Lyons reviewed the available Whitewater "documents and information . . . that had been assembled by campaign staff after the issue had been raised by Mr. Jeff Gerth of the New York Times."[294] Based on his preliminary analysis of the documents, Mr. Lyons determined that the campaign "needed accounting help to assist in a financial reconstruction." He "made a recommendation to campaign staff and to Governor and Mrs. Clinton . . . to engage Patten, McCarthy & Associates,"[295] a Denver financial consulting firm.

In early March 1992, Mr. Lyons contacted Leslie Patten, a certified public accountant and president of Patten, McCarthy & Associates,[296] and engaged his firm, on behalf of the Clintons, to conduct "a financial reconstruction of Whitewater Development Corporation from the then available books and records."[297] Mr. Lyons and Mr. Patten were "friends" and "had a professional relationship for a number of years."[298] Mr. Patten's firm provided "consultation on banking, financial, accounting and tax matters arising from business litigation and expert witness testimony on such issues."[299] On March 10, 1992 the Patten firm began working on its analysis of Whitewater.[300] Mr. Patten and Norris Weese, another certified public accountant and the firm's vice president, were the only professionals who performed work on the document that became the

[7] On November 1, 1989, Mr. Wade filed for Chapter 11 bankruptcy protection. On August 27, 1990, Mr. Wade's bankruptcy was converted to an involuntary bankruptcy under Chapter 7. Wade's involuntary bankruptcy remained open as late as 1995. (4/24/95 Pillsbury Report p. 124).

final report.[301] Mr. Weese went to Arkansas to gather documents and began the financial analyses, and Mr. Patten reviewed the financial analyses and drafted the document that became the final report.[302]

Work on the so-called Lyons report proceeded rapidly, with the involvement of Mrs. Clinton. On March 18, 1992, just eight days after Mr. Patten and Mr. Weese began work on the project, a draft of the final report was completed,[303] and was faxed the next day to Mr. Lyons, Mrs. Clinton, Loretta Lynch and James Hamilton, a lawyer working with Mr. Lyons on the Clinton campaign.[304] The fax to Mrs. Clinton and Ms. Lynch was 55 pages long and contained over 30 pages of work papers prepared by the Patten firm. On March 20, a revised draft was faxed to Mrs. Clinton, Mr. Hamilton, and John Klusaritz, another Clinton campaign lawyer.[305] Later that day, Mr. Patten faxed to Mrs Clinton a revised report, dated March 20, 1992 and addressed to Governor Bill Clinton and Hillary Rodham Clinton, that contained six type-written pages. The report was signed by Mr. Patten and Mr. Weese.[306] According to Mr. Patten, "the substance of the report was pretty much final at that point," but "I think we were premature in signing it because we had not obtained everybody's comments."[307] During this period, Mr. Patten testified that he "was in fairly regular communication with Mr. Lyons," who "was anxious to get this project completed and was seeking periodic updates as to where we were in the process."[308]

Then, on March 20 or March 21, 1992, Mr. Lyons contacted Mr. Patten and told him that he wanted two versions of the report prepared, a summary version that only addressed specific questions raised by the press and a full report addressed to him. According to Mr. Patten's testimony:

> It's at this approximate point [in] time when Mr. Lyons advised me that he wanted a summary report prepared. . . . The essence of it was that Mr. Lyons indicated that he [would] like to have a summary report in addition to the full report which would be addressed to him. . . . My understanding was that the purpose of the summary report was to address two or three specific questions that had been raised by the press.[309]

Mr. Lyons testified that the Patten firm "prepared a single report and a summary of it"[310] and that "[o]ne is simply shorter and in my opinion was more responsive to the issues that were then being put forward by the press."[311] On March 21, 1992, Mr. Patten faxed a shorter version of the report to Mrs. Clinton.[312] As with the version of the report faxed to Mrs. Clinton the day before, this version of the report, dated March 21, 1992, was addressed to the Clintons and was signed by Mr. Patten and Mr. Weese, but it was almost three pages shorter than the previous day's version.[313] On March 22, 1992, Mr. Patten faxed even shorter versions of the report, dated March 23, 1992 and signed by Mr. Weese and Mr. Patten, to Mrs. Clinton and Ms. Lynch.[314]

On March 23, 1992, Mr. Patten faxed Mrs. Clinton the final summary version of the Patten firm's report, which contained three type-written pages and two pages of charts.[315] A one page cover let-

ter from Mr. Patten to the Clintons states: "Pursuant to the request of James Lyons, Esq., enclosed please find Patten McCarthy & Associates, Inc's report pursuant to our recent engagement."

In a March 23, 1992 letter to the Clintons, Mr. Lyons notified the Clintons that his review of Whitewater had been completed. He noted the findings of the summary report, including that the Clintons had "invested approximately $70,000 in the corporation."[316] The Clinton campaign only released the final summary version of the Patten firm's report to the press,[317] and Mr. Patten testified that Mr. Lyons "is the only individual that received both versions of the report."[318]

On April 10, 1992, Mr. Lyons sent the Clintons the final complete version[319] of the Patten firm's report, which contained seven type-written pages and three pages of charts.[320] In his cover letter, Mr. Lyons states:

> Enclosed please find the complete report prepared by Patten, McCarthy & Associates concerning Whitewater Development. A *summary* of this report was previously sent to you and released to the press along with a cover letter from me on March 23, 1992. I have deferred sending this complete report until now to avoid any confusion or possible inadvertent production. The only copies of this report which exist (other than the enclosed original) are in my file and the confidential files of Les Patten.[321]
>
> He then explained that the summary report omitted several items:
>
> Please note the enclosed report discusses such things as the $9,000 interest deduction taken by you in 1980, lot 13 and borrowings associated with it, and the sale of 24 lots in 1985 to Ozark Air for assumption of the mortgage and an airplane. None of these items is set out in the summary report which was released to the press. Similarly, the summary report released to the press did not contain Schedule 1, which details loans and advances by the McDougals and the Clintons from 1980–1991.[322]

Mr. Lyons concluded his letter by noting: "Accordingly, *it is my recommendation to you that you maintain the complete report in strictest confidence* and do not waive either the attorney/client or accountant/client privilege which attaches to the enclosed report." (emphasis added)[323]

Mr. Lindsey testified that the complete report was not released to the press as of late 1993.[324] According to his testimony, "it turned out later [after late 1993] at least one reporter, through other sources, probably Independent Counsel, who knows, reported on the longer version of the Lyons report, but at that time I don't think anyone had reported on it."[325]

In March 1994, almost two years to the date after the Patten firm issued its report, it was discovered that the report had overstated the Clintons investment in Whitewater by $22,244.65.[326] The $68,900 investment in Whitewater by the Clintons reported by the Patten firm included a check paid by Mr. Clinton to Madison Bank and Trust in 1982 on a loan used to purchase a house for his mother in Hot Springs, Arkansas.[327] Thus, the Patten firm over-

stated the Clinton's Whitewater investment by more than 30 percent.

Less than two weeks after this error was first acknowledged, Mr. Patten, in a November 4, 1993 memorandum to Mr. Lyons, explained the problems that his firm had encountered in its analysis. Mr. Patten noted that his firm's work "did not and could not constitute an audit, review, compilation or the application of agreed upon procedures as those terms are understood within the accounting profession." He further wrote that "source documentation was not available in many instances and we had to utilize the next best available documentation," and that "[t]he financial statements that we reconstructed took into consideration monies paid by the Clintons, the McDougals and others that had not been reflected in the accountant's workpapers or tax returns."[328]

C. The Clintons Finally Get Out of Whitewater

Among the documents in Mr. Foster's office at the time of his death was his handwritten note: "Get out of White Water. "[329] To that end, Mr. Foster, Mr. Hubbell and others in the Clinton organization met with Mr. Lyons on November 24, 1992, two weeks after Mr. Clinton was elected President.[330]

Mr. Blair called Mr. McDougal's attorney, Sam Heuer, and told him that "the Clintons and the McDougals needed to be totally separated over the Whitewater thing."[331] According to Mr. Blair, he suggested that Mr. McDougal pay a nominal amount to buy the Clintons' interest in Whitewater:[332] "I think we settled on a thousand dollars as an appropriate nominal amount."[333] There was one problem: "McDougal doesn't have a thousand dollars."[334] Mr. Blair then told Mr. Heuer, "[W]ell, what the heck, I will loan him the thousand dollars. I'll just Fed Ex you a check to your trust account. And I believe that's what I did."[335] The loan was made without interest,[336] and Mr. McDougal has never repaid Mr. Blair.[337]

On December 22, 1993, Mr. McDougal and the Clintons executed the transaction to get the Clintons out of Whitewater.[338] Mr. Foster obtained the Clintons' signature for the documents executing the sale.[339] It is unclear whether Mr. Foster, Mr. McDougal, or the Clintons knew that Mr. Blair gave Mr. McDougal the $1000 to buy the Whitewater shares from the Clintons.[340]

Mr. Blair then assigned Mr. Foster the task of contacting the accountants and preparing the Clintons' tax returns.[341] The issue facing Mr. Foster in the months preceding his death was how to treat the $1000 sale on the Clintons' 1992 tax returns. The basic dilemma stemmed from the Clintons' claim, bolstered by the publicly released Lyons report, that they had incurred significant losses on their investment in Whitewater. The problem with declaring the loss on the Clintons' tax return was the lack of a proper basis with which to calculate the cost of the venture to the Clintons. Despite their claim that they were 50% partners in the venture, the Clintons had contributed less than 25% of the funds used to cover Whitewater's losses.

Also among the documents in Mr. Foster's office at the time of death were his notes of conversations with the Clintons' accountant, Yoly Redden.[342] The notes, in Mr. Foster's hand, identified the tax problem as a "can of worms you shouldn't open."[343] His notes

in the file outlined the basic tax issues the Clintons faced in connection with Whitewater:

"(1) What was nature of deductions
A. How deduct interest/principal payments *for* corp.?
(2) Can you use contribution which predated incorporation?
(3) Contribution/advancements of $68,900 to the McD
(4) Inability to utilize $8000 capital loss"[344]

Mr. Foster's objective was to avoid calling attention to Whitewater during the annual audit of the President and Mrs. Clinton's tax returns by the Internal Revenue Service audit.[345] One approach was simply to report a wash, that is, to show no loss and no gain from the venture, thereby obviating the need for any tax treatment. The problem with such treatment, however, was that it would have bolstered the allegation that the Clintons were insulated from Whitewater losses and thus the company was a vehicle for Mr. McDougal to channel funds to the Clintons.

In notes titled "Discussion Points," Mr. Foster wrote:
(1) An argument that they were protected against loss:
(A) wash is consistent with this theory[346]

But Mr. Foster did not a have a proper cost basis with which to calculate the Clintons' true losses or gains. His discussion points continued:

(2) Improper to reduce basis by improper tax benefit
(3) Computation of economic loss was based, in part, on assumptions Whereas computation of tax gain or loss must be defensible in audit.[347]

Therein lay the problem. To claim a loss based on economic assumptions, as the Lyons report did, was one thing.[8] But to claim a loss on the Clintons' 1992 tax returns without proper support and documentation increased the likelihood of calling attention to Whitewater during the IRS audit—of opening the can of worms that Mr. Foster and the Clintons' accountant wished to keep sealed.[348]

Mr. Foster's notes summarized the options as follows:
"10 Options $1000 basis so no tax effect but is arbitrary & still risks audit
vs
0 basis w/ $1000 gain avoids any audit of issue"[349]

In a letter to Mr. Foster days before the tax returns were due, Ms. Redden, the accountant the Clintons hired to handle Whitewater tax issues, wrote: "Because of the numerous problems with Whitewater records and the commingling of funds with other companies and individuals, I believe many explanations may have to be made if we claim a loss."[350] This letter, addressed to Mr. Foster, was not among the documents in Mr. Foster's office that the

[8] Elsewhere in his notes, Mr. Foster wrote:
A. Colo analysis was of *economic loss*
(1) did not take into account interest deductions
(2) calculation included some items for which there were no canceled cks.
Williams & Connolly Document DKSN000517. "Colo analysis" was an apparent reference to the Lyons report.

White House produced to the Special Committee. It was obtained by the Special Committee through another source.[351] Ms. Redden testified that after the Clintons were in the White House she had a number of discussions with Mr. Foster concerning tax issues related to Whitewater.[352] The main focus of these numerous communications was the tax basis for the Clintons' contributions to Whitewater and how to treat the $1000 payment.[353]

The Clintons' final tax returns for 1992 reported a capital gain of $1000 from the sale of stock to Mr. McDougal.[354] According to Ms. Redden, "I think we need to claim no gain or a loss."[355] Mr. Foster did not follow her advice, however, because he was also consulting with another accountant, and "[a]t the end we compromised what we were going to put in the return in connection with Whitewater."[356]

IV. The Clintons' Questionable Tax Treatment of Whitewater: A History of Unreportable Income and Improper Deductions

During the years that the Clintons owned an interest in Whitewater, the Clintons adopted an aggressive approach to the tax treatment of their investment. This approach sometimes resulted in errors on their federal income tax returns. From 1978 to the early 1990s, the Clintons invested a total of $42,192 in Whitewater.[357] During this same period, the Clintons deducted $42,656 of their Whitewater related expenses on their federal income tax returns—almost $500 more than their total investment in the corporation.

The Special Committee's analysis of the Clintons' treatment of individual Whitewater-related items on their federal income tax returns reveals that the Clintons took a number of questionable tax positions relating to Whitewater. From 1992 to the present, the Clintons have admitted taking improper deductions of $7,928 and omitting income of $8,171 on their federal income tax returns during the period of their Whitewater investment. Therefore, the Clintons have admitted understating their income by $16,099 during this period. Based on its analysis of the available evidence, the Special Committee concluded that the Clintons could have understated their income on Whitewater related items by an additional $33,771, for a total increase in taxable income of $49,870.

The Clintons have explained that errors on their tax returns relating to Whitewater were due to mistakes made by their accountants. The Clintons did not fully disclose, however, all of their financial information to their accountants,[358] did not discuss the details of important financial transactions with them,[359] and sometimes simply ignored their accountant's advice.[360]

Gaines Norton, the Clintons' personal accountant from 1978 to 1984, stated that the Clintons provided him with the information used to prepare their tax returns.[361] According to Mr. Norton, a former IRS revenue agent and a certified public accountant, the Clintons did not provide him with underlying documents, but instead provided him with summaries,[362] such as handwritten lists on notepads.[363] In one case, Mr. Norton raised specific tax concerns about the structure of Whitewater and Mr. Clinton told him "to back off and leave the issue alone."[364] The errors and questions

discussed in this section, therefore, cannot be dismissed as merely mistakes by the Clintons' personal accountants.

A. 1978: The Clintons' Unreported Income of $5,405 from 15-Acre Installment Sale

The Clintons may have unreported income of $5,405 from their 1978 installment sale of 15 acres of land originally purchased from Rolling Manor Inc., a company owned and controlled by Mr. McDougal. On January 25, 1977, then-Attorney General Clinton purchased 20 acres of land from Rolling Manor Inc. for $11,400.[365] The Clintons' 1978 federal income tax return reports that they sold 20 acres of land in 1978 in two separate transactions, a cash sale of five acres and an installment sale of 15 acres. On May 17, 1978, the Clintons sold five acres on a cash basis for $5,000, resulting in a gain of $2,150, which was properly reported on Schedule D (Capital Gains or Losses) of their 1978 return.[366] On July 23, 1978, the Clintons sold 15 acres of unimproved land on the installment method for $14,985, resulting in a gain of $6,435.[367] Since the Clintons elected to report this $6,435 gain on the installment method, only $886 of the gain was taxable in 1978 and was reported by the Clintons on their return.[368] The $5,549 balance of the gain ($6,435—$886) from this 15-acre land sale was to be reported in future years as the Clintons received the payments from the buyer.

$5,405 of the $5,549 deferred gain reported on the Clintons' 1978 return does not appear, however, in their subsequent federal income tax returns. The Clintons did not report any income from the 15-acre installment sale on their 1979 tax return.[369] The Clintons did report $144 in capital gains from an installment sale on Schedule D (Capital Gains and Losses) of their 1980 tax return.[370] The Clintons did not report any income from the 15-acre installment sale on any of their tax returns after 1980.[9] How the Clintons collected a total of $2,066 in 1978 on the sale of this 15 acre tract of land, collected no funds in 1979, collected a total of $335 in 1980, of which $144 was reported as a gain on their 1980 tax return, and then collected no other funds from the buyer remains unexplained.

If the Clintons collected the funds due from the buyer of the 15-acre parcel, they were required to report a portion of each payment as a gain on their tax returns, just as they reported a $144 gain on their 1980 return.[10] As described above, the Clintons reported no other gains on any of their subsequent returns. Of course, if the Clintons did not receive payments from the buyer, they would not have been required to report gains on their income tax returns. If

[9] Haddon Morgan & Foreman Document LP 00690–95 (Clinton 1981 income tax return); Haddon Morgan & Foreman Document LP 00696–719 (Clinton 1982 income tax return); Haddon Morgan & Foreman Document LP 00720–739 (Clinton 1983 income tax return); Haddon Morgan & Foreman Document LP 00740–762 (Clinton 1984 income tax return); Haddon Morgan & Foreman Document LP 00763–786 (Clinton 1985 income tax return); Haddon Morgan & Foreman Document LP 00787–815 (Clinton 1986 income tax return); Haddon Morgan & Foreman Document LP 00816–860 (Clinton 1987 income tax return). Haddon Morgan & Foreman Document LP 00861–894 (Clinton 1988 income tax return); Haddon Morgan & Foreman Document LP 00895–942 (Clinton 1989 income tax return); Haddon Morgan & Foreman Document 133–00005495–5503 (Clinton 1990 amended income tax return); Haddon Morgan & Foreman Document 133–00005520–5583 (Clinton 1990 income tax return); Haddon Morgan & Foreman Document 133–00005827–5904 (Clinton 1991 income tax return); Haddon Morgan & Foreman Document 133–00006319–6346 (Clinton 1992 income tax return).

[10] Internal Revenue Code § 453 allows, under certain conditions, taxpayers to pay gains on the sale of property on the installment method.

the buyer of the property defaulted, however, the Clintons could have foreclosed on the property and then resold the property to another buyer, but there is no evidence on any of their subsequent tax returns that such action was taken by the Clintons. In addition, if the buyer defaulted, the Clintons could have taken a $7,194 deduction for their remaining basis in the 15 acres, but there is no evidence of such a deduction on any of the Clintons subsequent tax returns.[11] Moreover, if the property was foreclosed upon and not sold, then the Clintons would still own it, but this property is not shown on the Clintons 1991 Federal Election Disclosure form.[371]

B. 1979: The Clintons' Improper Interest Deduction of $2,400

The $2,400 interest deduction claimed by the Clintons on their 1979 tax return may have been improper under federal income tax law. On December 7, 1979, Whitewater deposited in its account a check from the Clintons in the amount of $2,900.[372] On the books of Whitewater, this check was recorded as $500 for capital and $2,400 as "Loan—Bill Clinton".[373] According to its books, Whitewater's first interest payment in the amount of $4,352.63 was made to Citizen's Bank of Flippin on May 5.[374] On their 1979 federal income tax return, the Clintons claimed an interest deduction of $11,749 for payments to "Bank and Loan Companies."[375] This amount included the Clintons' $2,400 payment to Whitewater.[376]

Federal income tax law allows a deduction for "all interest paid or accrued within the taxable year on indebtedness,"[377] but the burden of proof for establishing the propriety of an interest deduction is on the taxpayer.[12] In this case, there is no evidence that the Clintons' $2,400 payment to Whitewater was for interest on indebtedness. Indeed, the only available evidence, the $2,900 deposit slip and the entries on Whitewater's books, indicates that the $2,400 payment was a loan to the corporation, which the corporation had an obligation to repay, and not an interest payment. Moreover, Whitewater did not make its first interest payment to a bank until May 5, 1980, almost five months after the Clintons' payment of $2,400 was deposited, and there is no evidence that Whitewater's first interest payment of $4,352.63 included the Clintons $2,400.[378]

An IRS audit of the Clintons' 1979 income tax return resulted in no changes. However, there is no evidence that the revenue agent reviewed all of the relevant documents regarding this interest deduction.[379] Absent proof that Whitewater's books and records were made available to the revenue agent by the Clintons, the result of the 1979 audit is inconclusive on this issue. Indeed, it is possible that the revenue agent would have reviewed only a canceled check or bank records, determined that less than the full payment was deducted, and accepted this as sufficient evidence to verify the deduction.

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[11] The gross profit percentage on this transaction was 42.9%. Haddon Morgan & Foreman Document LP 00672 (Installment Gain on Sale Schedule—attachment to Clinton 1978 income tax return). Since the remaining gain was $5,405, the basis would be $7,194.

[12] Treas. Regs. § 1.6001–1(a) states that taxpayers shall keep records which "are sufficient to establish the amount of gross income, deductions, credits . . ." on the taxpayer's return.

C. 1980: The Clintons' Improper Interest Deduction of $9,000

The $9,000 interest deduction claimed by the Clintons on their 1980 tax return may have been improper under federal income tax law. On August, 23, 1980, Mrs. Clinton wrote a personal check in the amount of $9,000.[380] The Clintons deducted this $9,000 payment on their 1980 federal income tax return as interest paid to "James McDougal."[381] A third-party endorsement by Citizens Bank of Flippin, dated September 5, 1980, is on the reverse side of the Clintons' check.[382]

Federal income tax law allows a deduction for "all interest paid or accrued within the taxable year on indebtedness,"[383] but the burden of proof for establishing the propriety of an interest deduction is on the taxpayer. In this case, there is no evidence that the Clintons' $9,000 payment was used to pay interest on indebtedness. Nor is there evidence on the face of this check that it was intended to be used to pay interest. The payee on the check was left blank, and there is no designation or notation on the check that it was intended to be used to pay interest.[384] In addition, the absence of a notation on the check that it was for interest is particularly probative, since Mrs. Clinton made such a notation on the other checks that she wrote to pay interest on the Whitewater debt. Mrs. Clinton wrote at least four other personal checks to pay interest on Whitewater related debt—three before and one after the $9,000 check, and, on each of these checks, Mrs. Clinton wrote a notation that the checks were for interest.[13] Moreover, the Clintons' checkbook entry designates this check as a "land payment," not an interest payment.[385] "Land payment" could refer either to a principal or interest payment. Since Mrs. Clinton generally noted when a payment was for interest, however, her notation that this check was for a "land payment" would tend to confirm that this payment was for principal, not interest.

Analyses of the available bank records also indicate that the $9,000 check was used to pay principal, not interest. A report prepared by Patten, McCarthy & Associates, a Denver accounting firm hired by the 1992 Clinton Presidential Campaign, states:

> In our telephone conversation with her [Mrs. Clinton] and you [James Lyons] on March 18, 1992, she reaffirmed that she believed that it was an interest payment. Based on our reconstruction of the probable amortization of the mortgage loan at Citizens Bank & Trust, we believe the $9,000 went to reduce principal.[386]

The report of Pillsbury, Madison & Sutro is even more conclusive on this point. It states:

On August 23, 1980, the Clintons paid $9,000 to an unknown payee. Through a reconstruction of the Citizens Bank mortgage, it

[13] Haddon Morgan & Foreman Document LP 00523 (check 697, dated December 28, 1978, issued to Great Southern Land Company, Inc. in the amount of $10,130.58 states "Reimbursement for six months interest"; check 396, dated December 29, 1979, issued to Citizens Bank & Trust in the amount of $4,752.88 states "Interest Payment"; check 395, dated December 29, 1979, issued to James B. McDougal in the amount of $237.50 states "Reimbursement of Interest pd."). Haddon Morgan & Foreman Document 00528 (check 1623, dated December 30, 1986, issued to Security Bank in the amount of $1,635.51 states "Int on note 957585.").

has been determined that this payment was applied as principal to the outstanding balance of the Citizens Bank loan.[387]

Thus, the available evidence indicates that the bank applied the $9,000 to reduce principal, not interest.

According to the report prepared by the President and Mrs. Clinton's counsel, David Kendall, since the Clintons "owed interest to Citizens Bank of Flippin, WDC [Whitewater] or the McDougals, if they intended that their $9,000 check represents the interest, then Mr. and Mrs. Clinton accurately deducted the $9,000 payment as interest."[388] However, there is no evidence of any unconditional and legally enforceable indebtedness between the Clintons and Whitewater or Mr. McDougal at the time of this payment. While an indebtedness did exist between the Clintons and Citizens Bank, Mrs. Clinton's intent that a payment on the note was for interest is not sufficient to support an interest deduction under federal income tax law.

Courts generally will give effect to an arrangement between a creditor and a debtor allocating payments on an indebtedness to principal and/or interest where that arrangement is bona fide and done at arm's length.[389] There is no evidence of that such an arrangement existed between Mrs. Clinton and Citizen's Bank. Nor is there evidence that Mrs. Clinton communicated to the bank or any other party that the payment was for interest. Absent such an arrangement, payments by a debtor are first allocated to accrued but unpaid interest and then to principal.[390]

The available evidence indicates that no accrued but unpaid interest was due on the Citizens Bank loan when the Clintons' $9,000 check was endorsed by Citizens Bank on September 5, 1980. One month earlier, on August 5, 1980, the Citizens Bank note was extended and modified and, at the same time, the Clintons paid Citizens Bank the quarterly interest owing and due of $4,350, which they properly deducted on their 1978 return.[391] No principal payment had been made on the loan as of the date of its renewal.[392] Just 18 days later, Mrs. Clinton wrote the $9,000 check for "land payment." The next quarterly interest payment on the note would not have been due until November 5, 1980, two months after Citizens Bank endorsed the Clintons' $9,000 check.

D. 1980: The Clintons' Unreported Income of $10,000 from Whitewater payment of the $20,000 Union Bank Note

Whitewater's 1980 payment of a 1978 $20,000 unsecured, personal note of Mr. McDougal and Mr. Clinton may have resulted in $10,000 of income to the Clintons that was not reported on their 1980 federal income tax return. On June 19, 1978, Mr. McDougal and Mr. Clinton obtained a $20,000 unsecured, personal loan (Loan # 0004197) from Union National Bank of Little Rock.[393] The proceeds of this loan were used to make the down payment on the 230 acres of land in Marion County, Arkansas that became Whitewater.[394] On December 17, 1979, the Union National Bank note was renewed for 6 months, with a new maturity date of June 16, 1980.[395] As of the date of that renewal, the principal of the note remained $20,000.[396] On June 10, 1980, Mr. McDougal borrowed $20,000 from the Bank of Cherry Valley in Cherry Valley, Arkansas,[397] and deposited those funds in Whitewater's account at the

Union National Bank.[398] On June 23, 1980, Whitewater disbursed $21,346.29 to Union National Bank, using a corporate check with the notation "For Note # 0004197 Plus interest thru 6/23/80," to pay off the accrued interest and principal owed personally by Mr. McDougal and Mr. Clinton to Union National Bank.[399]

Section 61 of the Internal Revenue Code states that "gross income means all income from whatever source derived, including . . . income from discharge of indebtedness."[400] Courts have ruled that amounts expended by a corporation for an individual taxpayer's benefit would constitute income to the taxpayer.[401] Section 108(e)(4)(A) of the Code states that income is realized if debt is discharged or acquired by a related entity.[402]

The central issue is whether Whitewater's payment to Union National Bank discharged any debt owed by Mr. Clinton. Mr. McDougal and Mr. Clinton were jointly and severally liable on the Union National Bank note.[403] Whitewater's incorporation did not change this, since the Union National Bank note was not transferred to Whitewater.[404] Therefore, Whitewater's payment to Union National Bank eliminated Mr. Clinton's obligation to that bank.

However, if Mr. Clinton was an obligor on the Bank of Cherry Valley note, from which Whitewater received the funds to pay Union National Bank, then Whitewater's debt would not have discharged any debt owed by Mr. Clinton. In this case, the debt simply would have shifted from Union National Bank to the Bank of Cherry Valley.[405] [14] On the other hand, if Mr. Clinton was not an obligor on the Bank of Cherry Valley note, then Whitewater's payment would have discharged debt owed by Mr. Clinton. In this case, the Union National Bank debt, on which Mr. Clinton was jointly and severally liable, would have been replaced by the Bank of Cherry Valley debt, on which Mr. Clinton was not liable. In the latter case, Mr. Clinton would owe the IRS additional taxes on the $10,000 of discharged debt, his share of the Union Bank debt.

Was Mr. Clinton an obligor on the Bank of Cherry Valley note? Mr. Clinton has stated that "any shift of this $20,000 loan from Union Bank did not affect its character as an acquisition loan, for which my wife and I considered ourselves equally responsible with the McDougals for repayment."[406] However, testimony by the Bank of Cherry Valley's former President, Maurice Smith, indicates that the loan was made to Mr. McDougal individually, and most of the bank documents support his testimony. Indeed, Mr. Smith testified that the bank "just loaned it to Jim McDougal" and that Mr. Clinton did not make payments on the loan.[407]

Most of the available loan documents indicate that Mr. McDougal was the sole obligor on the Bank of Cherry Valley note.[408] Mr. McDougal's name, and not Mr. Clinton's, is typed on each of the documents, and Mr. McDougal signed each of the documents.[409] Only one loan document appears to have Mr. Clinton's signature on it, and Mr. Clinton's name is not typed on that document.[410] More-

[14] There is also no evidence that the Clintons had an obligation to repay, or did repay, Whitewater. Whitewater's books for the year ending May 31, 1981 do not show that the corporation reduced the Clintons' notes payable that was established when the land was transferred into the corporation. Nor do they show that the corporations recorded a receivable from the Clintons. Haddon Morgan & Foreman Documents LP 01957–69.

over, that document is dated more than two years after the note was originated.[411]

E. 1982: The Clintons' Unreported Income of $5,691 for Whitewater Payment of Citizens Bank of Jonesboro Note

A 1982 payment by Whitewater of the principal and interest on a $5,000 note between the Citizens Bank of Jonesboro and Mr. Clinton may have resulted in $5,691.20 of income to the Clintons that was not reported on their 1982 federal income tax return. A May 21, 1981 personal financial statement of the Clintons lists a $5,000 note payable to Citizens Bank of Jonesboro as a liability under the heading "general debt."[412] On February 17, 1981, Mr. Clinton wrote a personal check in the amount of $243.82 to Citizens Bank, which had a notation "Interest on Note #585–270."[413] On February 22, 1982, Whitewater disbursed a check in the amount of $5,691.20 to Citizens Bank.[414] The notation on the check states "Note 585–270,"[415] and the Whitewater checkbook entry designates this check as payment of "Note #585–270—Bill Clinton."[416]

Section 61 of the Internal Revenue Code states that "gross income means all income from whatever source derived, including . . . [i]ncome from discharge of indebtedness."[417] Courts have ruled that amounts expended by a corporation for an individual taxpayer's benefit would constitute income to the taxpayer.[418] Whitewater paid Mr. Clinton's note at Citizens Bank of Jonesboro, but Mr. Clinton has stated that "[i]t is possible that it was a WDC-related loan."[419] If Mr. Clinton invested the proceeds of this loan in Whitewater and Whitewater then repaid the loan, Mr. Clinton would have received no personal benefit from Whitewater's payment of the note, and, therefore, would not have been required to recognize income from discharge of indebtedness.

The evidence is inconclusive on whether this Citizens Bank of Jonesboro loan was related to Whitewater. A March 1, 1982 letter from Jim McDougal to Bill Clinton states:

> I have paid from the Whitewater Development Corporation the note you owed Citizens Bank of Jonesboro. You are correct in your belief that the sum of money borrowed was part of your investment in Whitewater. [420]

Yet, there is no evidence on Whitewater's books that it received $5,000 from either the Clintons or Citizens Bank of Jonesboro.[421] [15] Indeed, when Whitewater disbursed $5,691 to Citizens Bank of Jonesboro, it recorded the full amount as "interest" paid, which indicates that the corporation had never recorded a liability that could be reduced upon payment of the note.[422]

Although the evidence is inconclusive on whether these funds were invested in Whitewater, under federal income tax law the Clintons would bear the burden of proof that this payment did not result in any benefit to them personally. It is unclear whether the March 1, 1982 McDougal letter would be considered sufficient proof that the Clintons invested the funds received from the Citizens

[15] There is also no evidence that the Clintons had an obligation to repay, or did repay, Whitewater. Whitewater's books for the year ending May 31, 1982 do not show that the corporation reduced the Clintons' notes payable that was established when the land was transferred into the corporation. Nor do they show that the corporations recorded a receivable from the Clintons. Haddon Morgan & Foreman Documents LP 01957–88.

Bank of Jonesboro in Whitewater. If found insufficient, the Clintons would have unreported income of $5,691.20, excluding any interest and penalties.

F. 1984: The Clintons' Improper Deduction of $144 for Real Estate Taxes

On their 1984 federal income tax return, the Clintons improperly deducted $144 for real estate tax payments for which they were reimbursed by Whitewater. On October 10, 1984, the Clintons paid $144 to Marion County for the payment of real estate taxes on Whitewater lot 13. On November 4, 1984, Whitewater reimbursed the Clintons for this amount.[423] Since the Clintons were reimbursed for the taxes paid, this deduction was improper. On May 24, 1996, the Clintons acknowledged this error and repaid the federal taxes owed to the Bureau of Public Debt and the state taxes owed to an Arkansas charity.[424]

G. 1984 and 1985: The Clintons' Improper Interest Deductions of $2,811 and $2,322

On their 1984 and 1985 federal income tax returns, the Clintons improperly deducted $5,133 for interest payments made paid by Whitewater, not the Clintons.[425] In 1984 and 1985, Whitewater made interest payments to the Security Bank of Paragould in the amounts of $2,811 and $2,322, respectively, that the corporation deducted on its corporate tax returns.[426] The Clintons also claimed these same interest deductions on their 1984 and 1985 federal income tax returns.[427] Since Whitewater made the interest payments to the bank, it, and not the Clintons, was entitled to those deductions. On December 28, 1993, almost two years after the errors were first reported, the Clintons repaid the taxes owed due to these errors.[428] The Clintons did not explain the delay.[429]

H. 1987: The Clintons' Improper Interest Deduction of $2,561

On their 1987 federal income tax return, the Clintons improperly deducted $1,636 for interest which they also deducted on their 1986 federal income tax return. On December 30, 1986, Mrs. Clinton wrote a check in the amount of $1,635.51 to Security Bank of Paragould.[430] On their 1986 federal income tax return, the Clintons deducted $1,636 for interest paid to "Security Bank."[431] In 1987, Security Bank of Paragould sent the Clintons a statement of interest paid on their loan during 1987, which listed interest paid of $2,561.33.[432] On their 1987 Federal income tax return, the Clintons deducted $2,561 in interest paid to "Security Bank."[433]

The $2,561 of interest deducted on the Clintons' 1987 tax return improperly included the $1,635.51 payment made by the Clintons in 1986 and deducted on their 1986 tax return. The $925 balance of this amount ($2,561 − $1,636) was also improperly deducted by the Clintons on their 1987 tax return. This interest was paid by Hillman Logan, the owner of Whitewater lot 13. On May 24, 1996, the Clintons acknowledged these errors and repaid the Federal taxes owed to the Bureau of Public Debt and state taxes owed to an Arkansas charity.[434]

Documents show that these Mrs. Clinton may have discussed this error with her personal accountant, Yoly Redden, and Loretta

Lynch on March 23, 1992—almost four years before the Clintons acknowledged the error. Notes taken by Ms. Redden of a March 23, 1992 telephone conversation between herself, Mrs. Clinton and Ms. Lynch state:

> *Clinton Campaign—Issue discussed with HC & Loretta Lynch*
> 1987 $2,651 deducted per return to Security Bank of Paragould. [found canceled check from Clintons dated 12/30/86 check # 1623 for 1635.51.]
> 1986 1,636 paid [an arrow in Ms. Redden's notes points from this entry to the 1987 entry] [435]

Ms. Redden testified that in this conversation she had discussed with Mrs. Clinton and Ms. Lynch whether or not certain deductions had been "double-counted" on the Clintons' 1986 and 1987 federal income tax returns and that this issue had been discussed even prior to this conversation.[436]

I. 1988: The Clintons' Improper Deduction of $1,275 for Real Estate Taxes

The $1,275 real estate tax deduction claimed by the Clintons on their 1988 tax return may have been improper under federal income tax law. On October 28, 1988, Mrs. Clinton reimbursed Ozark Realty $1,275.15 for real estate taxes due on several Whitewater lots.[437] On their 1988 federal income tax return the Clintons deducted $1,275 as real estate taxes.[438] Generally, only the owner of real property is entitled to deduct real property taxes on the property, since those taxes are the liability of the owner under federal income tax law.[439] Since the Clintons did not own the property on which the taxes were assessed, they were not entitled to a deduction for the payment of those real estate taxes. A taxpayer who owns a beneficial interest in property and who pays taxes thereon to protect that interest may deduct the taxes, even though legal title is in another.[440] Beneficial interest is narrowly defined, however, and does not appear to the Clintons interest, if any, in the lots on which these real estate property taxes were assessed. Therefore, the Clintons' $1,275 payment to Ozark Realty for real estate taxes may not be an allowable deduction.

J. 1988: The Clintons' Unreported Income of $1,673 from the Sale of Lot 13

On May 24, 1996, the Clintons acknowledged that they under-reported the capital gain from the sale of a Whitewater lot owned by Mrs. Clinton by $1,673 on their 1988 federal income tax return.[441] On that return, the Clintons reported a $1,640 long-term capital gain from the sale of lot 13.[442] In computing the capital gain from this sale, the Clintons included in their basis calculation payments made by the previous owner of the lot.[443] As a result, the cost of the property was artificially inflated by $1,673, reducing the gain reported by the Clintons by this same amount on their 1988 tax return. The have repaid the federal taxes owed to the Bureau of Public Debt and the state taxes owed to an Arkansas charity.[444]

PART II. GOVERNOR CLINTON'S QUESTIONABLE RELATIONSHIP WITH JAMES MCDOUGAL

While Mr. McDougal was carrying the Clintons share on the Whitewater loans, Governor Clinton, using the power of his political office, acted favorably on Mr. McDougal's other business ventures and accepted Mr. McDougal's recommendations regarding state action. These favors took the form of granting Mr. McDougal influence in appointments to state positions,[445] steering lucrative state leases to Madison Guaranty,[446] and making decisions for Mr. McDougal concerning state regulators.[447] This pattern of favoritism was important to Mr. McDougal, whose thrift was experiencing serious financial trouble.

The motive for this favoritism is clear. From the standpoint of Governor Clinton, if Madison Guaranty failed or Mr. McDougal experienced financial troubles, the Clintons could be liable for the full Whitewater debt. Thus, Governor Clinton had a reason to act to ensure the viability of Mr. McDougal's savings & loan, even if such action was adverse to the interests of the state.

I. James McDougal's Madison Guaranty: A Corrupt Savings & Loan

In January 1982, James and Susan McDougal, along with several others, purchased 90% of the stock of the Woodruff County Savings & Loan Association for $246,500, which they renamed Madison Guaranty Savings & Loan Association ("Madison Guaranty").[448] To finance the purchase of Madison Guaranty, the McDougals borrowed $70,000 from Worthen Bank. Mr. McDougal inaccurately indicated on the change of control applications that he had obtained the money through "funds received from closely held corporations."[449] In June 1983, the McDougals borrowed another $142,186 from Worthen Bank to acquire stock belonging to other investors in Madison Guaranty in order to acquire exclusive control over the S&L.[450]

Mr. McDougal's true interest was always real estate investments, and his control of Madison Guaranty allowed him to pursue such investments. On the other hand, Madison Bank & Trust, Mr. McDougal's other federal institution, was prohibited from such investments.[451] In early 1982, Mr. McDougal incorporated Madison Financial Corporation as a subsidiary of Madison Guaranty for the sole purpose of real estate investment.[452]

From the beginning, Mr. McDougal viewed Madison Guaranty as a personal "candy store."[453] Soon after its purchase Mr. McDougal began to borrow personally from Madison Guaranty to pay down other loans including financing Whitewater.[454]

In 1984, the Federal Home Loan Bank Board ("FHLBB") examined Madison Guaranty and concluded that "[t]he viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects." The FHLBB attempted to force Madison, through a cease and desist order and a supervisory agreement, to stop lending money to the McDougals or any McDougal-controlled entity, and require Madison Guaranty to raise additional capital.

Shortly thereafter, Mr. McDougal hired Mrs. Clinton and the Rose Law Firm to represent Madison Guaranty and then-Governor Clinton appointed Beverly Bassett Schaffer to the position of Arkansas Securities Commissioner, based possibly on Mr. McDougal's recommendation. Mrs. Clinton and Ms. Schaffer discussed—and Ms. Schaffer approved—a novel proposal for Madison Guaranty to raise capital through the issuance of preferred stock. Ms. Clinton and the Rose Law Firm also represented Madison Guaranty in connection with land transactions and real estate investments, notably Castle Grande.

Beginning in March 1986, the FHLBB again examined Madison Guaranty.[455] James Clark, the examiner-in-charge, testified that the examiner discovered "a group of insiders was obtaining cash in what amounted to a pyramid scheme" led by the principal insider, James McDougal.[456]

Mr. Clark testified that in his 20 years as a bank examiner, Madison Guaranty was on of the top five worst financial institutions that he examined in terms of self dealing by insiders.[457] The 1986 examination report concluded that "management blatantly disregarded numerous regulations," "ignored" parts of the Supervisory Agreement.[458] Moreover the report stated that Mr. McDougal's effective control of Madison Guaranty "enabled [him] to use corporate resources to develop large land developments [and] to divert substantial amounts of funds from the projects to himself and others."[459] The examiners cited Campobello, Maple Creek, and Castle Grande as problematic projects.[460] Although Madison Guaranty's financial statements indicated that the institution was in the black, the FHLBB report noted that improper accounting appeared to be the source of the profit, not successful investing. The report stated that, "[i]f profits [of the real estate projects] were booked properly, the Institution would be, in fact, insolvent."[461]

A. Madison's Fraudulent Land Deals

Examiner Clark testified that Mr. McDougal "had total control of Madison Guaranty funds" and that Mr. McDougal could "dispense those funds at any time he wished, and he did so through the land development projects."[462] The 1986 federal examination uncovered several instances where Madison Guaranty insiders engaged in "sham transactions" or acted as a "straw man," an arrangement whereby the "purchaser of the property would obtain legal title to a property without having any actual financial interest in the property simply as a means to hide true ownership of the property."[463] The sham transactions were used as a means to place phony profit on the books in attempt to falsely inflate net worth.[464]

For example, the 1986 examination found that the Castle Grande project was "purchased and sold in a series of fictitious transactions" to straw buyers.[465] At the recently concluded McDougal-Tucker trial, Don Denton, chief lending officer of Madison, testified that Seth Ward was a "nominee" buyer in the purchase of part of the land.[466] These transactions were structured in this way to enable Madison Guaranty to violate the Arkansas state regulation prohibiting Madison Guaranty from investing more than 6% of its assets into Madison Financial Corporation.[467]

Bank examiners also found that Madison Guaranty insiders obtained financing for real estate projects that were fully funded by Madison Guaranty.[468] In addition, insiders received real estate commissions that they did not earn.[469]

B. Madison's Phony Books and Records

The 1984 examination of Madison Guaranty had concluded that the books and records were "inadequate."[470] The books and records at Madison Guaranty were "poor, missing, and in some cases, intentionally misleading."[471] The loan files did not sufficiently document the disbursements of the loan proceeds.[472] Mr. Denton testified that prior to the arrival of the examiners in March 1986, the staff of Madison Guaranty went through the loan files to find out what was missing, back dated documents, and had phony appraisals prepared.[473] Robert Palmer, a Madison appraiser, confirmed that he prepared several inflated appraisals for Madison Guaranty and backdated several appraisals.[474] Moreover, Mr. Clark testified that the appraisals were "wholly inadequate" and "the reports seemed to us to be essentially shams, some documents to put into the loan file."[475]

The 1986 FHLBB examination of Madison Guaranty lasted from March through September of 1986, as opposed to the three to four weeks that it would normally take for an S&L that size, because "Madison Guaranty's problems were so severe and its records were so poor."[476] Moreover, Madison Guaranty's management actively obstructed the examination by retaining needed loan files or withholding information.[477]

C. Federal Regulators Oust Mr. McDougal from Madison

On June 19, 1986, Walter Faulk, the FHLBB's Supervisory Agent responsible for Madison Guaranty, issued the preliminary report of the examination.[478] This report was so devastating that the Arkansas Securities Commissioner Beverly Bassett Schaffer believed it "effectively put Madison out of business."[479]

Curiously, on July 2, 1986, Ms. Schaffer forwarded a letter which Mr. Faulk had sent to Madison Guaranty, to Samuel Bratton, then Counsel to Governor Clinton, with a personal note attached. The note stated, "Madison Guaranty is in pretty serious trouble. Because of Bill's relationship with McDougal we probably ought to talk about it."[480] Mr. Bratton, who had already spoken with Governor Clinton several times about Madison Guaranty's financial difficulties, was well aware of the Governor's personal ties to Mr. McDougal.[481] After Mr. Bratton received the note, he spoke with Ms. Schaffer about the possible closure of Madison Guaranty by the FHLBB,[482] and the upcoming FHLBB meeting in Dallas on July 24 where Madison's financial problems would be discussed.[483] After Mr. Bratton received Ms. Schaffer's memorandum he contacted Governor Clinton, telling him of the FHLBB's plans.[484] Mr. Bratton also went to see Betsey Wright, the Governor's Chief of Staff, and they "together carried this to the Governor rather than my sending it in his normal mail."[485]

Although the exact date of Governor Clinton's receipt of the copy of the FHLBB's letter is unknown, he certainly received it before July 14, 1986.[486] It is clear that Governor Clinton knew that Mr.

McDougal—his business partner, friend, and client of his wife's law firm—was in serious financial trouble before it was ever made public.

Results of an examination by the FHLBB are to be kept confidential, and "[t]he law requires that release of an exam report be restricted."[487] Bank regulators should not share the results of exams with anyone outside of the regulatory agency. James Clark, the FHLBB examiner, could not think of one reason why it would be appropriate for a state bank regulator to tip off the governor's office with regard to an ongoing bank examination.[488] Moreover, Mr. Clark testified that, given Governor Clinton's business relationship with Mr. McDougal, the "tip off" from Ms. Schaffer certainly "had the appearance of a conflict."[489]

On July 11, 1986 the Federal Home Loan Bank Board met to discuss Madison. Ms. Schaffer, her associate Charles Handley, nine persons from the FHLBB, and the Madison Board of Directors were all present.[490] Mr. and Mrs. McDougal were not present.[491] Mr. Clark expressed some concerns about Ms. Schaffer's presence at the FHLBB meeting because she had performed legal work for Madison Guaranty when she was in private practice, and he viewed that as a conflict with her oversight capacity as the Arkansas Securities Commissioner.[492]

During the meeting, Dawn Pulcer of the FHLBB mentioned that she thought Ms. Schaffer's conduct during the meeting was peculiar. Ms. Pulcer's contemporaneous notes of the meeting reflect that during the course of discussion at the FHLBB meeting Ms. Schaffer appeared to be frowning, and asked only one question: "[w]ho is representing the McDougals?"[493] Ms. Pulcer stated that she "[t]hought it was a little odd. I, too, would have expected her to say something in support of the actions that the Federal Home Loan Bank Board supervisory authorities were taking."[494]

At this meeting, FHLBB determined that Mr. McDougal and Mr. Latham should be removed from Madison. On July 14, 1986, just three days after this meeting, Ms. Wright wrote a telling message to Governor Clinton that reads:

> White Water stock (McDougal's company)
> Do you still have? (pursuant to Jim's current problems
> If so, I'm worried about it.[495]

Governor Clinton responded by writing "No-Do not have any more—B."[496] Ms. Wright claimed it was then well known that Mr. McDougal had been removed from the bank. But the local newspaper did not report the event until July 25, 1996, eleven days later.[497]

Curiously, on the very same day that Ms. Wright inquired about Governor Clinton's relationship with Mr. McDougal, Mrs. Clinton wrote a letter to Mr. McDougal and Mr. Latham terminating the Rose Law Firm's retainer agreement with Madison Guaranty.[498] Along with the letter, Mrs. Clinton sent a check from the Rose Law Firm refunding Madison Guaranty's outstanding retainer balance.[499]

Mrs. Clinton has given at least two different accounts regarding why she terminated the Rose Law Firm's representation of Madison Guaranty.[500] In a press conference on April 22, 1994, Mrs.

Clinton said that the Rose Law Firm's relationship with Madison Guaranty was terminated because Madison Guaranty could not meet the requirements imposed by Ms. Schaffer for the issuance of preferred stock.[501] However, in response to interrogatories on February 4, 1994, Mrs. Clinton said that the representation of Madison Guaranty was terminated due to "the increasing work the Rose Law Firm was doing for FSLIC ... the firm had decided in early July, 1986, generally to avoid taking on any new or expanded representations of S&L's."[502] In Mrs. Clinton's February 14, 1996 interview with the FDIC, Mrs. Clinton stated that the letter to Madison Guaranty was written in direct response to a memorandum written by Herb Rule, then the managing partner of the Rose Law Firm, to all attorneys.[503]

II. Governor Clinton Provides Benefits to James McDougal and Madison S&L

During the time when Mr. McDougal was running Madison Guaranty and carrying the Clintons on the Whitewater investment, Governor Clinton acted favorably on Mr. McDougal's various proposals before the state. Indeed, substantial evidence supports Mr. McDougal's claims that he had "clout" with the Governor.[504]

A. Governor Clinton Steers Valuable State Leases to Madison

Governor Clinton exercised the power of his office to steer two lucrative lease contracts to Madison Guaranty.[505] Helen Herr, the former Leasing Administrator for Arkansas State Building Services ("ASBS"), testified that she first learned in January or February 1984 that Madison Guaranty was interested in leasing space to Arkansas Housing Development Agency ("AHDA") during a meeting in the office of Paul Mallard.[506] Mr. Mallard, the Director of ASBS called Ms. Herr into his office to meet Susan McDougal. Mr. Mallard told Ms. Herr that the McDougals were developing a building on South Main Street in Little Rock, in Quapaw Quarter, and that they had additional office space that they wanted to rent.[507] This office space was difficult to lease because it was located in an unsafe part of Little Rock and the real estate market in Little Rock was soft. Many commercial landlords were eager to fill their office space with long term tenants.[508]

In fall 1983, AHDA developed a need for additional office space. ASBS was considering office space on Brookwood Drive that the Director of AHDA, Wooten Epes, felt would be suitable.[509] After meeting with Mrs. McDougal, Mr. Mallard instructed Ms. Herr to examine the Madison office space.[510]

When Mr. Epes, AHSA's Director, complained to Ms. Herr about the Madison space, she recommended that he state his complaints in writing. On March 5, 1984, Mr. Epes wrote a letter to Ms. Herr rejecting the proposal that AHDA lease the office space from Madison.[511] Mr. Epes was concerned that the Madison space was not sufficiently large and was not located in a safe part of Little Rock.[512] When Ms. Herr brought Mr. Epes' letter to Mr. Mallard's attention, Mr. Mallard told her that the leasing contract was going to Madison Guaranty because the McDougals were "friends" of the Governor.[513] Ms. Herr specifically testified: "When I presented the objections from Mr. Epes about the Madison space, [Mallard] said

that the governor's office wants us to lease that space ... and that the McDougals were friends" of Governor and Mrs. Clinton.[514] Mr. Mallard also told her that "they weren't going to consider other proposals" because the "governor's office wants us to lease this space and that's the way it's going to be."[515] Mr. Epes took his concerns to the Governor.[516] Mr. Epes testified that Governor Clinton refused to overrule Mr. Mallard's decision, and that was the Governor's final word.[517]

On April 1, 1984, the AHDA entered into a lease with Madison Guaranty.[518] The lease was for a 60-month term at $4,800 per month.[519] The contract realized nearly $300,000 in payments to Madison.[520]

In 1985 AHDA became the Arkansas Development Finance Authority ("ADFA").[521] ADFA subsequently sought to lease additional office space for their new employees.[522] As a result of this change, ADFA entered into another contract with Madison.[523] In August 1987, however, ADFA canceled its lease with Madison because it needed still more space, which was the concern that Mr. Epes had from the beginning.[524]

Moreover, the State of Arkansas, through ASBS, leased space in an additional building from Mr. McDougal, in Quapaw Quarter, to house the Arkansas Revenue Department.[525] Other than the three leases entered into with McDougal-owned entities, Ms. Herr could not recall any other leases the state entered for office space in the lease in Quapaw Quarter.[526]

Don Denton, a Madison loan officer, believed that the state leases were a political payback by Governor Clinton to the McDougals. Mr. Denton testified that the connection "[s]tood out like a beacon at night."[527]

B. McDougal Holds a Questionable 1985 Fundraiser for Clinton

On April 4, 1985, James McDougal hosted a fundraiser for Governor Clinton at Madison Guaranty to raise money to pay off the Governor's outstanding personal debt from his 1984 gubernatorial campaign.[528] In the closing days of that race, Governor Clinton had obtained an unsecured personal loan in the amount of $50,000 from the Bank of Cherry Valley.[529]

The exact amount of money raised at the event is not known. The campaign finance report listing the contributions received at the fundraiser is missing from the Pulaski County Clerk's office and has never been located. By all accounts, however, the fundraiser netted more than $30,000 to pay off Governor Clinton's personal debt.[16]

Four $3,000 checks were collected at the fundraiser.[530] The names on the checks were James B. and Susan McDougal, J.W. Fulbright, Ken Peacock, and Dean Landrum.[531] J.W. Fulbright is

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[16] Betsey Wright, who ran Governor Clinton's 1984 campaign, testified that $30,500 was raised at the event. (Wright, 1/26/96 Dep. p. 278.) Ms. Wright, the custodian of records for that campaign, she based that figure on checks from 17 persons or entities that she said had been collected in connection with the fundraiser. (O'Melveny & Myers Production CCBW-0017-24.) Mr. McDougal has stated in various interviews that the fundraiser raised about $35,000. (E.g. New York Times, 12/15/93 p. B8.) Notes taken by Susan Thomases in 1992 of a conversation she had with Sherry Curry reflect that "MacD FR raised $39,150." (Willkie Farr & Gallagher Production ST 45.)

the late former Senator. Ken Peacock is the son of former Madison director and borrower Charles Peacock.[532] Dene Landrum, who is now deceased, was Mr Peacock's business associate.[533] His first name was misspelled on the check as "Dean."[534]

All four checks were dated April 4, 1985.[535] The James McDougal check was written on the McDougal's personal checking account at Madison Guaranty and was signed by Susan McDougal.[536] The Fulbright, Peacock, and Landrum checks were Madison Guaranty cashier's checks bearing numbers 2496, 2497, and 2498, respectively.[537]

There is strong evidence suggesting that the $3,000 check in Senator Fulbright's name was purchased by Mr. McDougal out of funds from his Flowerwood Farms account. Senator Fulbright did not attend the fundraiser, although he was expected to.[538] In 1994, Kent Goss, an RTC investigator, questioned Senator Fulbright's lawyer, a former aide to the Senator, about the $3,000 check.[539][17] Mr. Goss wrote that although it was "evident" that Senator Fulbright was "a meticulous record-keeper," there was no record of any charitable donation in the amount of $3,000 between 1984 and 1991.[540] Nor did Senator Fulbright's bank statements reflect a $3,000 debit during the relevant time.[541] Senator Fulbright's lawyer added that he believed that the Senator had "no knowledge" of a $3,000 contribution to Governor Clinton.[542]

The Pillsbury Madison & Sutro Report on Madison Guaranty and Whitewater commissioned by the Resolution Trust Corporation attempted to trace the source of funds of the Fulbright check.[543] According to this report, on April 4, 1985, the same day that the Fulbright check was issued, a $3,000 check payable to Madison Guaranty was written on Flowerwood Farms' account at Madison Guaranty.[544] The Flowerwood Farms check was apparently deposited in the Madison cashier's check account, as it was encoded with "7001312"—the number of that account.[545] A $3,000 deposit was posted in the account 7001312 on April 4, 1985.[546]

Despite this evidence, the Pillsbury Report erroneously concluded that the link between the Flowerwood Farms check and the Fulbright check "has not been conclusively confirmed" because Madison Guaranty issued two other cashier's checks for $3,000 on April 4, 1985, i.e., those in the names of Ken Peacock and Dean Landrum.[547] However, Charles Peacock, an attendee and donor at the fundraiser, has admitted to purchasing those two checks.[548] The Pillsbury report recognized: "[I]f the Ken Peacock and Dene Landrum cashier's checks were funded by Charles Peacock III, the Flowerwood Farms check could have funded the remaining $3,000 cashier's check, the one from Fulbright."[549]

Mr. Peacock's testimony establishes, and the documentary evidence confirms, that he caused the checks to be issued. Mr. Peacock admitted that he purchased the $3,000 checks in the names of his son and Dene Landrum.[550] Mr. Peacock said he bought the check in his son's name because he thought it might help his son secure a job with Governor Clinton.[551] He testified that he bought the check in Mr. Landrum's name because Mr. Landrum wanted to

[17] Senator Fulbright himself could not be interviewed because he had a stroke several years ago and died in February 1995.

help the child of a friend receive a scholarship awarded by Governor Clinton.[552]

The documentary evidence is consistent with Mr. Peacock's admission that he procured the checks. On April 4, 1985, Mr. Peacock wrote a $6,000 counter check payable to Madison Guaranty, apparently on his account #15253.[553] The check was encoded with "7001312"—the number of the Madison cashier's checking account. That same day, Mr. Peacock purchased a cashier's check for $4.[554] Madison Guaranty charged a $2 fee for cashier's checks.[555] When asked whether he bought this cashier's check to pay the $4 fee on the two $3,000 checks, Mr. Peacock said, "I'm sure that's what happened."[556] It seems clear that since Mr. Peacock purchased two of the $3,000 cashiers checks, the third $3,000 check was purchased with proceeds from Flowerwood Farms.

There is evidence that Mr. Peacock purchased the Ken Peacock and Dean Landrum checks with proceeds diverted from loans made by Madison Guaranty.

On the day of the fundraiser, April 4, 1985, Dixie Continental Leasing, a company owned by Mr. Peacock, purchased 29.77 acres of land on Woodson Lateral Road for $335,000.[557] Most of the sale was financed by Madison Guaranty with a $297,000 mortgage.[558] Mr. Peacock borrowed an additional $50,000 from Madison Guaranty in his own name to fund the down payment on the property.[559] The loan was executed on April 5, 1985, but was funded on April 4, 1985, with a $50,000 Madison Guaranty check payable to Mr. Peacock.[560] The loan was secured by commercial air conditioning equipment appraised at $273,000 but ultimately sold as scrap by Madison Guaranty for $1,500.[561]

On April 5, 1985, Mr. Peacock wrote a check for $38,940 to Quapaw Title Co. to pay the down payment on the Woodson Lateral Road property.[562] The check was deposited in Madison Guaranty.[563] There is no documentary evidence indicating what happened to the remaining $11,060. Mr. Peacock does not remember how the remaining $11,060, a sum sufficient to fund the checks to Governor Clinton, was spent.[564] Moreover, he does not recall what funds he used to pay for the cashier's checks: "I don't remember how I paid for them, whether I paid for them with a check or whether I paid for them out of funds or what I did."[565]

The Pillsbury Report concludes that the source of funds for Mr. Ken Peacock's and Mr. Landrum's checks "cannot be established from the available documentation,"[566] because Mr. Peacock's April 1985 Madison Guaranty bank statement is missing.[567] Thus, it is not possible to ascertain what Mr. Peacock's balance was when he wrote the $6,000 check to Madison Guaranty, or what it would have been absent the infusion of an extra $11,060.[568] Nevertheless, the Pillsbury Report does indicate that "it is possible that a portion of this $11,060 could have been used to reimburse Charles Peacock III for the campaign contributions he funded that were made in the names of Ken Peacock and Dene Landrum."[569]

In spring 1987, after Mr. McDougal was ousted from Madison Guaranty, the S&L filed several suits against Mr. Peacock, other members of his family, and related entities to recover on unpaid loans.[570] On March 12, 1987, Madison Guaranty filed suit against Dixie Continental Leasing to recover on the loan executed on the

day of the fundraiser.[571] On April 1, 1987, Madison Guaranty filed four additional suits against the Peacocks and their companies.[572] In all, Madison Guaranty sought to recover approximately $500,000 from the Peacocks with these suits.[573]

Madison Guaranty was represented in these actions by Lance Miller of the law firm of Mitchell, Williams, Selig & Tucker ("Tucker Firm").[574] Patricia Heritage, a Madison Guaranty collections officer, was the Madison Guaranty liaison to the Mitchell Williams attorneys with respect to these cases.[575]

On April 21, 1987, Greg Hopkins, Mr. Peacock's attorney, visited Ms. Heritage in her office.[576] Ms. Heritage testified that Mr. Hopkins was obviously angry and made certain allegations to her involving, the Dixie Continental loan, Mr. McDougal, and the Clinton campaign.[577] Immediately after Mr. Hopkins left, Ms. Heritage called Mr. Miller to relate Mr. Hopkins' allegations.[578]

Mr. Miller took contemporaneous notes of his conversation with Ms. Heritage,[579] which he then memorialized in a three-page memorandum, addressed to John Selig, the partner on the matter.[580] Ms. Heritage confirmed that Mr. Miller's memorandum accurately reflects what Mr. Hopkins said to her.[581]

Mr. Miller's memorandum reflects that Mr. Hopkins claimed that there had been "substantial wrongdoing" at Madison Guaranty as a result of which people were "going to go to prison."[582] Mr. Hopkins also made the serious allegation that "a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a state agency would lease space from Madison Guaranty at its headquarters on Main Street in Little Rock."[583]

There is every reason to believe that Mr. Hopkins actually made the serious and troubling allegations attributed to him, and that Mr. Miller's memo accurately reflects what Mr. Hopkins. Ms. Heritage's memory of the conversation is vivid.[584] Indeed, Ms. Heritage testified that Mr. Hopkins "was angry and shouting" at her, and that "that's the sort of thing that would stick out" in her mind.[585]

It appears that Mr. Hopkins did not make these allegations out of whole cloth. Ms. Heritage testified that, with respect to the allegations about campaign contributions to Governor Clinton, she "thought it was entirely possible that it was true."[586] She thought Mr. Hopkins may have been "posturing," but not lying.[587]

Although Mr. Hopkins did not recall speaking with Ms. Heritage in April 1987 or making allegations, he did not dispute that he may have done so and has no reason to doubt Ms. Heritage's recollection.[588]

Mr. Hopkins testified that he could not think of a "conceivable reason for making up an allegation about the Governor and Jim McDougal exchanging money for favors."[589] He also testified that "it was not [his] habit to lie or make up baseless allegations."[590] He acknowledged that the allegations about Governor Clinton are serious and not the sort of thing that he would say without a basis for doing so.[591] Mr. Hopkins admitted that he "probably had suspicions."[592]

Moreover, Mr. Hopkins was likely in a position to learn about the diversion of loan proceeds to Governor Clinton and Madison Guar-

anty's award of a lease contract through his representation of Mr. Peacock, who owned Dixie Continental and was a Madison director. However, Mr. Hopkins, invoked the attorney-client privilege and refused to answer questions about what Mr. Peacock has told him.[593]

If Mr. Hopkins did make the statements attributed to him, and they were false, he would be in violation of an Arkansas ethical rule.[594] The Rule states: "In the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or law to a third person."

The memorandum written by Mr. Miller reflects that Mr. Hopkins said that "in return for the substantial campaign contribution, Bill Clinton assured McDougal that a state agency would lease space from Madison Guaranty at its headquarters on Main Street in Little Rock."[595] Indeed, on August 13, 1985, the State of Arkansas awarded a contract to expand the Madison lease office space in its Main Street office to the Arkansas Development Finance Authority (ADFA).[596] Governor Clinton had previously used his influence to steer an ADFA lease contract to Madison Guaranty.[597]

C. Governor Clinton Vetoes Legislation For McDougal Business Partners

The 1985 McDougal fundraiser appears to have been used as leverage to secure action by Governor Clinton on proposed state legislation. On February 14, 1986, Castle Sewer & Water Company—an entity owned by Jim Guy Tucker and R.D. Randolph—entered an agreement to purchase the sewer and water system at Castle Grande for $1.2 million.[598] On July 15, 1986, following Mr. McDougal's removal from the Madison Guaranty, there was a special meeting of its Board of Directors.[599] At the meeting, Mr. Tucker explained to the board that he had an old agreement with Mr. McDougal for 110 utility hook-ups per year and that, although the utility company was not a registered public utility under Arkansas Law, it was not a problem.

Mr. Tucker raised a number of issues in the July 15, 1986 meeting. Some of the concerns voiced by Mr. Tucker brought into question the validity of legal work performed by Hillary Clinton and the Rose Law Firm.

Mrs. Clinton supervised Rose Law Firm associate Rick Donovan's analysis on the need for Castle Sewer and Water to register as a public utility with the Arkansas Public Service Commission.[600] The memorandum concluded that the cost of becoming a "public utility"—and thus being regulated by the Public Service Commission—would be greater than the risk of being reported by a resident to the Public Service Commission.[601] Such a citizen report would simply require the payment of a civil fine.[602] Mrs. Clinton, after reviewing various memoranda and billing records, recalled that she supervised Mr. Donovan on certain "questions relating to the provisions of water and sewer service by a utility which was located within IDC property."[603]

It is not clear exactly what work was performed by the Rose Law Firm on the utility issues related to Castle Grande because Mrs. Clinton ordered those client records destroyed in July 1988.[604] But, the work performed by Mrs. Clinton clearly became an issue when

Mr. Tucker threatened to sue Madison Guaranty, which was under then the "close scrutiny of FSLIC"[605], for recision.[606]

The sale of the sewer and water system occurred on February 28, 1986.[607] Yet, the Rose Law Firm continued to do work on utility related issues and continued to bill Madison Guaranty.[608] Six days after the final transfer of the Industrial Service Corporation stock to Castle Sewer, Mr. Donovan wrote a memorandum on whether "Madison Guaranty/IDC" can provide services to customers inside Little Rock's city limits.[609] Mr. Donovan could not explain why he was preparing a legal memorandum for a client who had sold the utility a week earlier.[610]

The Rose Law Firm charged Madison Guaranty thousands of dollars for work on utility issues.[611] There may have been work performed on utility issues in January 1986, the bill which reflected 14.5 hours of unaccounted billing by Mrs. Clinton for Madison.[612]

Two years later, the utility work performed by the Rose Law Firm became an issue when Mr. Tucker threatened to sue Madison Guaranty for recision of contract, based on the fact that "a utility, subject to regulation by the Public Service Commission, is prohibited from mortgaging utility property without permission of the Public Service Commission."[613] This threat would have directly called into question the legal work performed by the First Lady and the Rose Law Firm.

Mr. Tucker refused to rescind his purchase contract for Industrial Services Corporation unless legislation was enacted barring the Public Service Commission from regulating Castle Sewer and Water's rates.[614] On February 24, 1987, Mr. Tucker wrote a memorandum to Representative Mike Wilson outlining a proposed bill, a copy of which was attached to the memorandum.[615] This proposal, House Bill 1780, passed both houses of the State legislature without a single dissenting vote.[616]

Governor Clinton, however, vetoed the bill. According to the Governor's Chief Counsel, Samuel Bratton, Governor Clinton vetoed the bill because it was local and specific and this violated the Arkansas constitution.[617] Prior to the veto, the Governor was not aware that the legislation was designed to help Madison Financial, Mr. Tucker, Mr. Randolph, and tangentially The Rose Law Firm and Mrs. Clinton.[618]

In early April 1987, Mr. Randolph spoke with Mr. Bratton about a way to reverse the Governor's veto of House Bill 1780.[619] Unable to resolve the matter, Mr. Randolph went to see the Governor.[620]

On April 14, 1987, because the Governor was unavailable, Mr. Randolph left a message with[621] Nancy Hernreich, the Governor's scheduler.[622] The message indicated that Mr. Randolph had spoken with the Governor the previous Sunday, and that he wanted to know if the water bill veto was going to stand.[623] Mr. Randolph advised Ms. Hernreich that the Governor should call Mr. Tucker about the legislation. Ms. Hernreich's message indicates that Mr. Randolph "mentioned a meeting between you [Governor Clinton], Tucker, and Jim McDougal a couple of years ago which involved $33,000."[624]

The evidence indicates that Mr. Randolph was referring to the April 4, 1985 fundraiser at Madison Guaranty. This "meeting" involving $33,000 appears to be the 1985 fundraiser. Mr. Randolph,

Mr. Tucker and Mr. McDougal contributed at the April 5, 1985 fundraiser,[625] which was almost exactly "a couple of years" before Mr. Randolph's visit to the mansion. Also, $33,000 is approximately what was raised at the event.

Ms. Wright, Governor Clinton's Chief of Staff, read the memorandum, and wrote, "see if Sam Bratton will call him."[626] The Governor wrote "ugh" in response.

Mr. Tucker wrote a letter to Governor Clinton requesting that he or the representatives who sponsored the legislation be given the opportunity to speak with the staff person who recommended the veto.[627] Mr. Tucker met with or had conversations over the telephone with Mr. Bratton to discuss Castle Sewer's need for a legislative remedy.[628] On May 13, 1987, Representative Walker called the Governor's office and left a message "Rep Walker want and appt with BC ASAP. He wants to bring Jim Guy Tucker and R.D. Randolph."[629] Underneath the typed message Governor Clinton wrote "This is B.S. I thought Sam, called J. Guy, did he? I thought PSC not regulating this project, right?"[630] There is no doubt that the Governor was aware of the problems his veto created for Castle Sewer.

On May 19, 1987, Mr. Bratton prepared a memorandum to Governor Clinton related to "Sewer District legislation/Jim Guy Tucker-R.D. Randolph, Mike Wilson, Bill Walker."[631] The memorandum is revealing about the true nature of the discussions between Mr. Bratton and Mr. Tucker. The first paragraph contains a discussion of the fact that Madison Guaranty could not legally own and operate a utility, and this limitation was the reason the S&L sold it.[632] In addition, the first paragraph mentions that the problem stems from the fact that a utility regulated by the Public Service Commission was barred from mortgaging utility property without permission of the Public Service Commission. Therefore, in Mr. Tucker's opinion, the mortgage was invalid because the utility had not obtained approval of the mortgage.[633] The entire first paragraph mentions nothing about legislation remedying the cost of the Public Service Commission regulation or the burdens that such regulation places on small utilities.

It was Mr. Bratton's position that Representative Walker was interested in seeing the legislation passed because it could save money for the citizens of the City of Wrightsville.[634] Mr. Tucker informed Mr. Bratton that if the legislation were not passed that litigation "would result because of the question of the validity of the mortgage and the fact that the S&L is now being operated under the close scrutiny of FSLIC and is no longer controlled by McDougal, et. al."[635] Thus, there was a threat of a lawsuit involving Madison Guaranty calling into question the legal work performed by the Rose Law Firm because the mortgage was invalid.[636] In none of these subsequent paragraphs is there any mention of the merit of the legislation.

In the last paragraph, Mr. Bratton indicated that he spoke with Robert Johnston, at the Public Service Commission and asked Mr. Johnston to review options available to solve the "Tucker/Randolph problem short of the deregulation proposed by H.B. 1780."[637]

On June 12, 1987, Act 37 of 1987 was enacted into law.[638] Act 37 of 1987 divests the Public Service Commission of regulatory au-

thority over small sewer and water companies.[639] Interestingly, six days after the legislation was signed, Castle Sewer indicated to Madison Guaranty that they were prepared to enter into a new contract.[640]

D. Clinton Promises to McDougal on Brewery Legislation

Mr. McDougal consistently turned to Governor Clinton and Mrs. Clinton when he faced state regulatory obstacles involving his land development projects.

McDougal had many creative ideas for developing real estate. At Castle Grande, he proposed to build a brewery with a tasting room[641] that he hoped would become a profitable local tourist attraction.[642] Mr. McDougal spoke with William Lyon, an Arkansas developer, who had borrowed $300,000 from Madison Guaranty.[643] Mr. Lyon had already invested the money he borrowed from Madison Guaranty in a brewery in Little Rock.[644] At that time, Mr. Lyon was interested in expanding his existing brewery so he could serve and sell alcohol on the same premises.[645] However, existing Arkansas state law prohibited the sale of alcohol at a manufacturing facility.

Mr. Lyon and Mr. McDougal discussed the potential for success of a "brew pub" and the need to change the current state law in order to implement this plan. Mr. Lyon testified that he discussed the change in the law with Mr. McDougal because he knew Mr. McDougal had "clout" with then-Governor Clinton.[646] Mr. Lyon believed that "Jim McDougal thought that he owned Bill Clinton."[647]

Indeed, Mr. McDougal assured Mr. Lyon that he would be able to take care of the regulatory problems that prevented Mr. Lyon from building a brew-pub. Mr. McDougal intended to rely on his contacts in the state government, and particularly his friendship with Bill Clinton.[648]

On December 12, 1984, Mr. McDougal wrote a letter to Betsey Wright, Governor Clinton's chief of staff, about a bill that had been pre-filed with the Arkansas State Senate. The letter states: "Governor Clinton has made a commitment concerning this bill which I need to discuss with you at your convenience."[649] The bill provided exactly the type of legislative relief necessary for Mr. Lyon to successfully build his brew-pub.[650]

On February 18, 1985, the state senator sponsoring the bill withdrew it due to lack of support from the ABC Board.[651] Mr. McDougal assured Mr. Lyon, however, that he could have the alcohol regulation changed instead through the ABC Board.[652]

Two days later, on February 20, 1985, the ABC Board enacted a regulation that permitted the tasting of alcohol on the premises of a manufacturing facility.[653] As promised, Mr. McDougal was able to provide the necessary changes in the state regulations.

Later that year, Mr. Lyon and Mr. McDougal discussed the prospect of moving Mr. Lyon's brewery to Castle Grande and placing it in a building that was already on the Castle Grande property.[654] Unfortunately, Castle Grande was located in a "dry" township and another change in the Arkansas state law or regulations was needed in order to open a brew-pub on the property. Mr. McDougal again told Mr. Lyon that he would "take care" of the necessary regulatory changes.[655] In a letter dated November 20, 1985, Mr.

McDougal informed Seth Ward, who was involved in Mr. McDougal's Castle Grande development, that Governor Clinton would help obtain approval for the brewery. Mr. McDougal wrote: "I have spoken with the Governor [Clinton] on this matter and expect it will be approved."[656]

Shortly thereafter, Mr. McDougal enlisted Mrs. Clinton's assistance in performing some legal analysis on the "wet/dry" issue. In a January 3, 1986 memorandum from Rick Donovan, a Rose Law Firm associate, to Mrs. Clinton,[657] Mr. Donovan confirmed that Castle Grande was in a "dry" township. The memorandum reported that the only way to change the "dry" status was to pass a referendum in the township, or to seek a regulatory change through the ABC Board. This memorandum was followed by an undated handwritten note from Hillary Clinton. The note states:

> "Rick—
> I visited with *Seth Ward* and gave him a copy of your memo and with Ken Shemin. Please see Ken about a *strategy to approach the ABC* to argue the "dissolved township" theory.
> Thanks,
> Hillary[658]

Mr. Ward passed the January 3 memorandum on to Mr. McDougal. The Rose Law Firm billing records mysteriously discovered in the White House Residence indicate that Hillary Clinton billed for a "conference with Mr. Ward and Mr. Shemin" on January 7, 1996, and charged it to the Madison/IDC matter number.[659] Mr. Donovan continued to research the wet/dry issue, writing a second memorandum to Mrs. Clinton January 23, 1986. In his second memo, Mr. Donovan again concluded that without a regulatory change or a vote, the Castle Grande property would still be considered "dry."[660] On February 7, 1986, Mr. McDougal wrote a memo to Jim Guy Tucker, "It looks like our township is dry. Attached is a legal opinion Seth got from his attorney." The legal opinion attached is Mr. Donovan's January 3rd memorandum.

At the end of February, the federal S&L examiners arrived at Madison Guaranty, and Mr. McDougal was removed from the S&L before his plans for the brewery could be successfully completed.

E. McDougal Asks Governor Clinton to Fire Tough State Regulators

Mr. McDougal asked Governor Clinton for assistance related to Madison and his real estate projects. For example, after Mr. McDougal received unfavorable treatment from Health Department officials monitoring Maple Creek Farms Land Development, Governor Clinton's assistance directly resulted in the removal of the state employees regulating the project.

Maple Creek Farms was one of Mr. McDougal's real estate projects that he intended to subdivide into single-family lots. On June 23, 1983, however, shortly after McDougal had purchased Maple Creek Farms, Lex Dobbins, a Saline County Health Unit Sanitarian, wrote to Mr. McDougal warning about the instability of the soils and the inadequate absorption fields.[661] Mr. Dobbins suggested that "individual sewage disposal permit[s] be obtained prior

to any construction," in order to ensure the safety of the sewage system.[662] As a result, Mr. McDougal signed a "Memorandum of Agreement" pledging that each lot would be individually evaluated and approved for a septic tank system and that the lots would not be less than 3 acres in size.[663] Without obtaining the permits required by the Memorandum of Agreement, Mr. McDougal began construction on Maple Creek Farms in February of 1984. Mr. Dobbins reminded him of the need for the proper permits and maintaining lots of at least 3 acres in size[664] and again urged Mr. McDougal to consider installing a community sewer system instead of septic tanks.[665]

Mr. McDougal wrote to Mr. Dobbins on March 6, 1984, assuring him that the customers would contact the Health Department before beginning construction and that the community sewer system would be available to any lot where a septic system failed.[666] On April 26, 1984, Mr. McDougal signed another agreement with the Health Department, which stated, "The Department of Health agrees to issue temporary permits with a condition that property owner shall connect to the sewerage system when said system is available."[667]

After seeing no significant improvement in the situation at Maple Creek Farms, Mr. Dobbins wrote to his supervisor, William Teer, Director of Sanitarian Services, of the problems.[668] In response to Mr. Dobbins' memorandum, Mr. Teer wrote to Mr. McDougal on July 3, 1984, instructing him to correct the problems.[669] Two weeks later, Mr. McDougal wrote back stating: "We are in agreement on your recommendations as to site protection and site drainage and are in the process of the continued implementation of these recommendations."[670]

Despite Mr. McDougal's assurances that the problems at Maple Creek would be alleviated, the situation was not. On July 2, 1985, one year later, Mr. Teer informed Mr. McDougal that, absent corrective action, the Department of Health would not issue additional temporary individual sewage disposal permits in the poorly drained areas.[671] Contrary to the agreements he had signed and letters he had written promising to correct the sewage problems on Maple Creek Farms, Mr. McDougal continued to ignore the warnings of the Health Department.

By January 1986, Mr. McDougal was so frustrated by the persistent reprimands from the Health Department that he met with Governor Clinton. Mr. McDougal provided Governor Clinton with a list of detailed grievances that he had with health regulators.[672] Governor Clinton granted a meeting with Mr. McDougal and called Mr. Butler in order to summon the state workers as well.[673] Mr. Butler recalled Governor Clinton telling him during the call: "the reason I think some of your staff is messing with this development is because this gentlemen [McDougal] has been a supporter of mine since I ran for Congress and has never asked me for anything."[674]

On March 4, 1986, Dr. Saltzman, Director of the Health Department, Jerry Hill, Environmental Chief of the Health Department, Janice Choate, an aide to Governor Clinton, Mr. Butler, Mr. McDougal and the Governor met in Governor Clinton's office.[675] As a result of this meeting, Mr. Butler removed the three sanitation workers from their positions regulating Maple Creek. A memoran-

dum from Ms. Choate informed the Governor of this action and noted: "I believe they took their cue from you when you told them that Jim was your friend of 20 years who had never asked for a favor."[676]

No witnesses denied that Governor Clinton "ordered" the firing of the sanitation workers,[677] and the documentary evidence indicates that the termination decisions were made in response to the Governor's wishes.

F. McDougal Helps Select S&L Regulators

In addition to obtaining the removal of state health regulators, Mr. McDougal was able to select some of the state regulators charged with overseeing Madison Guaranty. The evidence indicates that Governor Clinton looked to Mr. McDougal to provide him with the names of appointees for banking board positions. A handwritten memo about appointments on Governor's Office stationary reads, "Banking Board—ask McDougal."[678]

In fact, the Governor's staff contacted Mr. McDougal for his recommendations for the State Savings and Loan Board.[679] On February 7, 1985, Mr. McDougal wrote a memorandum to Governor Clinton recommending that John Latham, Chairman of Madison Guaranty, and Jerry Kendall be appointed to the Savings and Loan Board.[680] A memorandum announcing Governor Clinton's appointments on March 4, 1985 reflected that Mr. Latham and Dr. Kendall were named to the Savings and Loan Board.[681] Mr. McDougal had an obvious interest in having his own employee, Mr. Latham, appointed to a board that would have direct regulatory control over Madison Guaranty.

Indeed, the evidence indicates that, with then-Governor Clinton's assistance, Mr. McDougal consistently pushed through the appointments of persons who would be favorable to him and Madison Guaranty. This pattern is demonstrated by the troubling case of William Lyon, an Arkansas developer and business associate of Mr. McDougal. Mr. Lyon testified that: "Mr. McDougal called me, literally out of the blue, and asked if I would be on the Arkansas State Bank Board."[682] Mr. McDougal informed Mr. Lyon that he could get then-Governor Clinton to appoint Mr. Lyon, "and he did."[683]

During Mr. Lyon's term, however, Mr. McDougal informed him that it "would be more beneficial" if he sat on a different board—the Savings and Loan Board—which would be voting on whether Madison Guaranty could issue preferred stock in order to raise capital.[684] Mr. McDougal made it clear to Mr. Lyon that the Governor would support Mr. McDougal in his effort to have the preferred stock issue passed.[685]

Mr. McDougal told Mr. Lyon that if he did not agree to serve on the Savings and Loan Board he would be asked to resign from the Bank Board.[686] Mr. Lyon believed the preferred stock deal was "a rip-off of the stockholders" and told Mr. McDougal the he would not go over to the Savings and Loan Board.[687] Ultimately, Mr. Lyon rejected Mr. McDougal's offer to move to the Savings and Loan Board because he did not want anyone controlling his vote.[688]

Mr. McDougal asked Mr. Lyon to resign but Mr. Lyon "told him that he no longer had anything to do with the State of Arkansas"

and therefore only the Governor could ask him to resign.[689] Mr. McDougal then informed Mr. Lyon that he would ask Governor Clinton to ask Mr. Lyon to resign. Perhaps not coincidentally, Governor Clinton called Mr. Lyon a month or so later and told Mr. Lyon that he had spoken with Mr. McDougal, and that the Governor wanted Mr. Lyon to resign.[690] Mr. Lyon resigned from the State Bank Board in February 1984.[691]

Documents indicate that later that year, Mr. McDougal played a role in the appointment of the Arkansas Securities Commissioner, Beverly Bassett Schaffer, who ultimately did approve Mr. McDougal's proposal for preferred stock. Woody Bassett, Ms. Schaffer's brother, wrote to the Governor several times recommending her for the position of Securities Commissioner, however, on a letter dated November 26, 1984, Governor Clinton wrote: "she'd be good but may need to do something else—B."[692] After a December 22, 1984, message for the Governor from Mr. McDougal, however, in which he recommended Ms. Schaffer for the position of Securities Commissioner,[693] Governor Clinton appointed Ms. Schaffer to the position of directly overseeing Madison Guaranty.

G. McDougal Hires Mrs. Clinton and Her Law Firm

1. The Questionable Retention of the Rose Law Firm

Perhaps as a favor to then-Governor Clinton and Mrs. Clinton, and in an effort to obtain a favorable state regulatory ruling from Ms. Schaffer, in April 1985, Mr. McDougal retained Mrs. Clinton and the Rose Law Firm to represent Madison Guaranty in its proposal for the issuance of preferred stock.

Mrs. Clinton has provided several versions of how the Rose Law Firm came to be retained by Madison Guaranty contradicted both her own statements and those of others. Mr. McDougal made statements during the 1992 Clinton Presidential campaign and to the press in 1993 that he put Mrs. Clinton on retainer as a favor to Bill Clinton. In 1992, Mr. McDougal told James Blair, a longtime Clinton friend and legal advisor to the campaign, and Loretta Lynch, a campaign lawyer who worked on the Whitewater-Madison matters, that Governor Clinton, in jogging pants, visited Mr. McDougal's office and told him that he and Mrs. Clinton were pressed for money and asked Mr. McDougal to give some work to Mrs. Clinton.[694] According to Mr. McDougal, two hours later, Mrs. Clinton came by to set up the retainer.[695] According to notes taken by Mr. Blair, Mr. McDougal said that he remembered the encounter "explicitly" because Governor Clinton, in his exercise clothes, left a permanent stain on Mr. McDougal's "new leather contour chair."[696] In 1993, Mr. McDougal gave a similar account of the incident to the Los Angeles Times. President Clinton does not recall asking Mr. McDougal to place Mrs. Clinton on retainer.[697]

Mrs. Clinton has given a markedly different account of the circumstances surrounding Madison Guaranty's retention of the Rose Law Firm. According to Mrs. Clinton, Richard Massey, then a first year associate at the Rose Law Firm, brought in Madison Guaranty as a client. Mrs. Clinton claims that although she was the Madison Guaranty billing partner on the matter, she was merely acting as

a "backstop" because the firm did not permit associates to bill clients directly.[698]

During a press conference on April 22, 1994, Mrs. Clinton stated that Mr. Latham, Chief Executive Officer of Madison Guaranty, asked Mr. Massey whether he would be interested in representing Madison in connection with a proposed stock offering. Mrs. Clinton further explained that Mr. Massey was aware that she knew Mr. McDougal, so "he came to me and asked if I would talk with Jim to see whether or not Jim would let the lawyer and the officer go forward on this project. I did that, and I arranged that the firm would be paid $2,000 retainer."[699] In a statement to the RTC in November 1994, Mrs. Clinton similarly told investigators that "she recalled Massey came to her and asked her to be the billing attorney which was a normal practice when an associate was handling the matter. . . Mrs. Clinton recalled that a Madison official (individual unknown) approached Rick Massey regarding a preferred stock offering in an effort to raise capital."

In a sworn response to an RTC interrogatory in May 1995, Mrs. Clinton elaborated on her story. Mrs. Clinton stated that Mr. Massey approached her because "certain lawyers" in the Rose Law Firm were "opposed" to representing Mr. McDougal until Mr. McDougal paid an outstanding bill, and he was aware that Mrs. Clinton knew Mr. McDougal. Mrs. Clinton wrote:

> In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum. . . I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him.[700]

Mr. Massey, however, contradicts Mrs. Clinton's account in sworn testimony before the Special Committee. According to Mr. Massey, he was not responsible for bringing in Madison as a client.[701] Mr. Massey stated specifically[18] that Mr. Latham never offered him Madison's business,[702] and that he did not recall approaching Mrs. Clinton with a proposal to represent Madison.[703] Contrary to Mrs. Clinton's unsworn statement of November 1994 to the RTC, Mr. Massey also indicated that he did not ask Mrs. Clinton to be the billing attorney.[704]

David Knight, a former Rose partner specializing in securities law, testified that he attended the lunch meeting during which, according to Mrs. Clinton, Mr. Latham allegedly hired Mr. Massey.[705] Mr. Knight confirmed Mr. Massey's testimony that Mr. Latham did not ask Mr. Massey to represent Madison on the preferred stock offering. Quite to the contrary, according to Mr. Knight, the subject of the stock offering never arose.[706] Indeed, according to Mr. Knight, Mr. Latham informed him and Mr. Massey at the lunch

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[18] Mr. CHERTOFF. Did Mr. Latham come to you and offer you work for the Madison Guaranty Savings & Loan?

Mr. MASSEY. I don't believe so.

Mr. CHERTOFF. Did Mr. Latham come to you and ask you to help him—come to you directly, that is to say, before you'd been assigned to the matter, and ask you to help him with an effort by the savings and loan to issue preferred stock?

Mr. MASSEY. Sir, I don't remember that. It could have happened, but I don't remember that.

that Mr. McDougal made all hiring decisions and that Madison Guaranty already had outside counsel.[707]

Mr. Latham confirmed that Mr. McDougal made the decision[19] to retain the Rose Law Firm.[708]

The essence of Mrs. Clinton's account of the Madison retainer was that she became involved due to an alleged outstanding debt that Mr. McDougal's Madison Bank & Trust owed to the Rose Law Firm in 1985. Mrs. Clinton claimed that it was to relieve the concerns of her partners that she insisted on the $2000 per month retainer.

Documentary evidence and testimony provided to the Special Committee, however, indicate that the outstanding balance of Rose's bill to Madison Bank & Trust was paid in November 1984, months prior to Mrs. Clinton's retainer in April 1985.

Gary Bunch, President of Madison Bank & Trust, produced documents evidencing the bank's payment of the Rose legal fees in late October of 1984. Minutes of Madison Bank for October 1984 indicate that $5,000 in legal fees are owed to the Rose Law Firm for work on the "Huntsville move appeal,"[709] litigation relating to the relocation of the bank. The minutes state: "Mr. McDougal seconded that Mr. Bunch will negotiate settlement with the firm."[710] Mr. Bunch testified that Mr. McDougal directed him to pay the outstanding Rose Law Firm bill for the Madison Bank & Trust matter in full in October 1984.[711]

Following the discovery of the Rose billing records and the testimony of Mr. Massey before the Special Committee, Mrs. Clinton's story changed in a February 1996 interview with RTC investigators.[20] Mrs. Clinton claimed the late Vincent Foster first informed her that Mr. Massey wanted to do work for Madison: "I believe it was Vince Foster who came to me, who said that Mr. Massey wanted to do this work, but the partners didn't want him to do it."[712] When asked who suggested that she approach Mr. McDougal, Mrs. Clinton replied, "I don't have a specific recollection. I believe it was Vince Foster, but I'm not positive."[713]

2. Mrs. Clinton Asks the Arkansas S&L Regulator to Approve a Novel Stock Issue

The Rose Law Firm billing records belatedly discovered in the White House Residence show that Mrs. Clinton called Ms. Schaffer the day before the Rose Law Firm submitted to the Arkansas Securities Department Madison's proposal to offer preferred stock in

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[19] In an interview with RTC investigators, Mr. Latham stated that "McDougal had friends over there and he suggested we use them. When asked who the friends were Latham said that they were Hillary Rodham Clinton and others."

[20] Well as I have said consistently since 1992. . . my recollection is that Mr. Massey wanted to do the work he had discussed with Mr. Latham, that some partners, I believe in the securities section, had advised Mr. Massey that they were not enthusiastic about undertaking the representation on behalf of Jim McDougal and Madison because of some problems in having work paid for in the past, and that there were discussions among partners.

I believe it was Vince Foster who came to me, who said that Mr. Massey wanted to do this work, but the partners didn't want him to do it . . . And I was asked, as someone who knew McDougal, if I could intervene and perhaps set up an opportunity for Mr. Massey to do this work.

So I talked with Mr. Massey about the work. Mr. Massey told me, as his testimony relates, that he had a talk with Mr. Latham, but it wasn't up to Mr. Latham, and he wasn't getting any support from others within the firm, and I told him I would talk to Mr. McDougal, which I did. (1996 Pillsbury, Madison & Sutro Interview of Hillary Rodham Clinton, pp. 27–31, Resolution Trust Corporation Document S-INTV000628–632.)

order to raise badly need capital.[714] Ms. Schaffer notified Mrs. Clinton of the approval of the proposal two weeks later in a letter addressed to "Dear Hillary." Ms. Schaffer and Mrs. Clinton both denied that Madison was given any preferential treatment.[715]

Prior to the discovery of the billing records, Mrs. Clinton claimed in her sworn responses to RTC interrogatories in May 1995 that she called the Arkansas Securities Department to find out "to whom Mr. Massey should direct any inquiries" but she did not recall to whom she spoke.[716]

In testimony before the Special Committee, Ms. Schaffer directly contradicted Mrs. Clinton and stated that the proposal was discussed during the phone call. According to Ms. Schaffer,

> She called and said they had a proposal, and what it was about; and I said I'm familiar with that; I've already looked at that. You know, I agree with the—basically I have no problem with that position, and you'll be getting a letter soon to that effect .. . I think in substance I said, basically, I agree with the position—I mean, that preferred stock can be issued pursuant to the Business Corporation Code.[717]

Mr. Massey likewise contradicted Mrs. Clinton's account of the phone call. Mr. Massey testified that he drafted the proposal and knew exactly to whom the proposal should be sent.[718] Mr. Massey also said that Mrs. Clinton never gave any instructions about addressing the transmittal letter.[719] Mr. Massey did not recall asking Mrs. Clinton to make such an inquiry and was not aware that she had.[720]

Prior to the Rose Law Firm's engagement of Madison, the law firm, Mitchell, Williams, Selig, Jackson & Tucker started to perform research related to a preferred stock proposal.[721] The firm even opened a file labelled "Madison Guaranty—Sale of Stock" on February 6, 1985.[722] For some reason, then, Mr. McDougal decided to send the work to the Rose Law Firm.

On April 30, 1985, The Rose Law Firm wrote a letter to Charles Handley, Assistant to the Arkansas Securities Commissioner.[21] to request an opinion as to whether Madison Guaranty was authorized to issue nonvoting preferred stock.[723] Mr. Massey drafted the letter.[724] This was the first time the Arkansas Securities Department was asked to make a determination on the ability of a savings and loan to issue preferred stock.[725] After receiving the letter from the Rose Law Firm, Mr. Handley, an accountant, wrote, in a routing memorandum on May 6, 1985, that "perhaps one of our attorneys should review the matter and issue a legal opinion."[726] Ms. Schaffer forwarded a copy to William Brady, who was the only staff attorney at the Arkansas Securities Department.[727] Attached to the letter was a memorandum from Ms. Schaffer which said "Brady: Please review and draft reply to Hillary 6 May 1985."[728] It was Mr. Brady's understanding that this was to be an approval letter.[729] Therefore, any review was merely to get an understanding of the issues, because he believed it had already been determined that the proposal would be approved.

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[21] The Rose Law Firm letter had misspelled Mr. Handley's name; they wrote "Hanley".

Mr. Brady did not draft a reply. Instead he drafted a memorandum to Ms. Schaffer explaining his objection to the plan.[730] "The more I looked into the Rose Law Firm request concerning the issuance of preferred stock . . . the less I supported the position presented in the Rose Law Firm."[731] Because the plan had never been done in Arkansas before, Mr. Brady disagreed with the Rose Law Firm analysis: "I was not sure it was permissible."[732] Mr. Brady believed the Arkansas Securities Commission should seek an opinion from the Arkansas Attorney General.[733]

Mr. Handley was also concerned about the right of Arkansas savings and loan associations to issue preferred stock. Mr. Handley testified that after receiving the Rose Law Firm's letter his "initial belief was that Madison guaranty could not issue preferred stock because under the Arkansas State Savings and Loan Act, state institutions could only issue common stock."[734] Mr. Handley relented after his supervisor, Ms. Jones, disagreed.[735]

On May 14, 1985, just two weeks after receiving this unique proposal, and despite the objections of her staff attorney, Ms. Schaffer approved the Rose Law Firm's position that Madison Guaranty could issue preferred stock.[736]

Over the course of the next seven months, the Rose Law Firm continued to prepare the documents for a preferred stock offering.[737] Madison Guaranty, however, had lost interest in issuing preferred stock. Instead, Madison tried to raise capital through property syndication and a proposed offering[22] of subordinated debt.

III. The Castle Grande Land Deal: A Series of Fraudulent Loans

The land development commonly known as "Castle Grande" consisted of about 1,050 acres of property near Little Rock. Madison Guaranty's wholly-owned subsidiary, Madison Financial Corporation, and Seth Ward, Webster Hubbell's father-in-law, jointly purchased the property for $1.7 million and then sold the land in parcels to various Madison insiders.[738] Almost all of the sales were financed by loans from Madison Guaranty, and most of the loans were not repaid. As a consequence, the Castle Grande deal caused nearly $4 million in losses to Madison Guaranty.[739] These losses were borne ultimately by U.S. taxpayers.

Numerous transactions related to Castle Grande were fraudulent, criminal, or both. Indeed, the recent convictions of Mr. McDougal, Mrs. McDougal, and Governor Jim Guy Tucker on criminal fraud and conspiracy charges stemmed in part from certain aspects of the Castle Grande deal.

Under this sham transaction, Mr. Ward purchased 60% of the available land—with 100% nonrecourse financing by Madison Guaranty—and Madison Financial had the right to buy the property from him once it had found other buyers. The inclusion of Mr. Ward in the deal was intended to, and had the effect of, circumventing an Arkansas regulation that limited investment in a service corporation such as MFC by a savings and loan. In essence,

[22] In addition, starting on May 14, 1985 and until the end of 1985, the Rose Law Firm attempted to secure approval for a broker-dealer subsidiary for Madison. (Massey, 6/15/95 RTC Statement p. 3). The proposal was submitted to the Arkansas Savings and Loan Board Association.

Mr. Ward was nothing more than as "straw man" who held the property in his name for Madison Financial because Madison could not own it all. As compensation for his role, Mr. Ward earned hundreds of thousands of dollars in commissions on the sale of the Castle Grande property.

New evidence indicates that Mrs. Clinton played a direct role in transactions involving Castle Grande and has never admitted the extent of her role. The billing records discovered in the White House Residence in January 1996 indicate that between late 1985 and early 1986 Mrs. Clinton had numerous conferences with Mr. Ward about the matter and billed Madison for approximately 30 hours of work related to Castle Grande.[740] Of importance, the billing records indicate that Mrs. Clinton drafted an option agreement dated May 1, 1986, between Mr. Ward and Madison. Mrs. Clinton drafted this option at a time when Madison Guaranty was intense scrutiny from federal regulators. According to James Clark, the chief examiner of the 1986 Federal Home Loan Bank Board examination of Madison Guaranty, the May 1 option "was created in order to conceal" the true purpose of questionable notes executed between Seth Ward, Madison Guaranty, and Madison Financial.[741]

The use to which Mrs. Clinton's work product was put raises questions about the state of her knowledge concerning what was going on at Madison Guaranty. The Special Committee has identified one occasion where Mrs. Clinton was apparently put on notice of suspect loans related to Castle Grande. When Madison Guaranty's top lending official, Don Denton, expressed concerns to Mrs. Clinton about questionable notes involving Seth Ward, she "summarily dismissed" his concerns.[742] Mr. Denton gathered from her response that she was saying he should "take care of savings and loan matters and she would take care of legal matters."[743]

Furthermore, the Rose Law Firm billing records indicate that Mrs. Clinton had spent time studying a letter prepared by the Rose Law Firm explaining why the Ward notes were questionable—i.e., the rule limiting direct investment by a savings and loan in real estate ventures. Thus, it is reasonable to conclude that Mrs. Clinton was apprised of both the law and the facts that made Castle Grande an illegal transaction.

In the view of the Special Committee, Mrs. Clinton's role in the Castle Grande deal cannot be assessed in isolation from her reluctance to be forthcoming about the extent of that role. Mrs. Clinton's role in the Castle Grande transactions was all but unknown prior to the discovery of her billing records in the White House residence in January 1996. Indeed, in a sworn interrogatory given to the RTC in May 1995, Mrs. Clinton represented that she knew nothing about Castle Grande.[744] In light of the billing records and other evidence, the Committee finds that Mrs. Clinton's representation is difficult to credit.

A. Structuring of the Acquisition of the Castle Grande Property to Evade State Regulations

Mr. Ward and Madison Financial purchased the Castle Grande together in fall 1985 from Industrial Development Company of Little Rock ("IDC") for $1.75 million.[745] Mr. Ward, who was working as a part-time consultant for Madison Financial, brought the pos-

sible purchase of this property to Mr. McDougal's attention.[746] On September 13, 1985, Madison Financial and IDC entered into a purchase agreement, which Mr. Ward signed on behalf of Madison Guaranty.[747] The closing was held on October 4, 1985.[748]

At an early stage, Rose Law Firm attorneys were involved in the deal. Rose partner Thomas Thrash was involved in the acquisition of the IDC property for Madison Financial and attended the closing, although he has no recollection of it.[749] In addition, the Rose Law Firm billing records reflect that, on November 14, 1985, Mrs. Clinton had a "conference with Seth Ward regarding purchase from [IDC Chairman] Brick Lile."[750]

Although some aspects of the deal struck by Mr. Ward and Madison Financial are disputed, the following is not in doubt. Madison Financial purchased the property south of 145th Street—about 40% of the total land area—plus some other parcels for $600,000.[751] Mr. Ward purchased most of the land north of 145th Street, plus the property's sewer and water utility, for $1.15 million.[752] The entire purchase was financed by Madison Guaranty, which loaned Mr. Ward the $1.15 million on a nonrecourse basis.[753]

Madison Financial and Mr. Ward agreed that the property would be parceled, developed, and sold as quickly as possible; that proceeds from sales would be applied toward the mortgage on the property; and that Mr. Ward would receive a commission on any sale, whether the land belonged to him or Madison Financial.[754] Finally, Madison Financial had the right to purchase all or some of Mr. Ward's property from him.[755]

B. The fraudulent nature of the Castle Grande purchase

The purchase of the Castle Grande property by Madison Financial and Seth Ward has been described by federal regulators as a fraudulent transaction. In essence, Mr. Ward warehoused the property to allow Madison Guaranty to evade regulatory limitations upon its investment in real estate.

Under Section V of the Rules and Regulations of the Arkansas Savings and Loan Association Board, Arkansas thrifts may establish service corporations to pursue real estate development ventures.[756] Madison Financial Corporation, Madison Guaranty's wholly-owned subsidiary, was such a service corporation.

Section V(C), however, limits a savings and loan's investment in its service corporation to 6% of the thrift's assets. This rule is known as the 6% rule or the direct investment rule. Section V(C) provides:

> An association may make any investment under this section if its aggregate outstanding investment in the capital stock, obligations, or other securities of service corporations and subsidiaries thereof * * * would not exceed thereupon six (6%) percent of the association's assets.[757]

According to James Clark, the Examiner-in-Charge of the 1986 Federal Home Loan Bank Board ("FHLBB") examination of Madison Guaranty,[758] the purpose of the direct investment rule was "[t]o limit the amount of risk that Madison Guaranty or any Arkansas thrift could take. Direct investments in service corporations or in

property are considered to be more risky than just lending on property."[759]

The FHLBB's May 8, 1986 examination report on Madison Guaranty sharply criticized the purchase of Castle Grande as having been structured to circumvent the direct investment rule:

> Ward apparently warehoused this land to reduce Madison Financial's investment and the attendant borrowing from Madison Guaranty. In this way, limitations on Madison Guaranty's investment in its Service Corporation are avoided * * *. By using this circuitous route, additional Madison Guaranty investment in Madison Financial was disguised as a loan to Ward.[760]

In a recent interview with the FDIC's Office of Inspector General, Mr. Clark stressed that "had MGSL purchased Castle Grande directly, they would have exceeded their direct investment limit."[761] In hearings before the Special Committee, Mr. Clark expressed the view that Mr. Ward was a "straw purchaser,"[762] or someone "who obtains legal title to a property without having any actual financial interest in the property simply as a means to hide the true ownership of the property."[763] Mr. Clark also explained that as a federal examiner he was concerned about the state direct investment rule because "internal FHLBB procedures called on an institution to be in compliance with state regulations" and "violating the state regulation would mean that the institution was not operating safely and soundly."[764]

Others have confirmed that the purchase of Castle Grande was structured to evade the direct investment rule. Don Denton, Madison Guaranty's Chief Lending Officer, testified in the McDougal trial that "[t]here was a limitation on the amount of investment that Madison Financial Corp. could make, so Madison took the amount it could legally take and the balance of the acquisition was taken by Seth Ward."[765] And in a recent interview, Mr. Denton "said that it was his understanding that Ward was acting as a 'nominee' purchaser in the acquisition of the IDC property, acting on behalf of the institution and carrying the property at no risk."[766] In a deposition taken in connection with the *Ward* v. *Madison* case, Madison Guaranty's CEO, John Latham testified that the purchase was divided between Madison Financial and Mr. Ward to escape the direct investment rule.[767]

In sum, the Special Committee finds that substantial evidence demonstrates that the purchase of the Castle Grande property was a fraudulent transaction that violated the direct investment rule and involved the use of Mr. Ward as straw man.[23] Mr. Ward testified to the Special Committee that he had no knowledge of the limitation on direct investment at the time of the Castle Grande purchase or that limitation dictated the structure of the transaction.[768] That testimony, however, is contrary to a statement that Mr. Ward made to investigators working for the Pillsbury law firm. An April 29, 1994 interview reflects that "Ward indicated with respect to

[23] The Pillsbury law firm reached the conclusion that "a court might hold that the acquisition, as structured, was fraudulent," and noted that "the use of Seth Ward as a straw has some of the earmarks of a fraudulent or intentional attempt to violate the law." 2/6/96 Pillsbury Report pp. 142, 146.

Castle Grand [sic] that he understood when he purchased the property that the money was being loaned to him and the property purchased in his name because of a limitation on Madison Financial Corporation's investments."[769]

Moreover, Webster Hubbell, Mr. Ward's son-in-law—with whom Mr. Ward talked about business constantly[770]—has stated that he was aware in September 1985 "based on what Mr. Ward told me" was that "Madison had limits on what it could own in its own name, and so Mr. Ward was going to own part of it until it could be sold."[771] In another interview, Mr. Hubbell indicated that Mr. Ward may have told him that there was a regulatory limit on what Madison could purchase.[772]

Finally, in a December 1986 interview of James McDougal conducted by the Memphis, Tennessee law firm Borod & Huggins (which had been retained as special counsel by Madison Guaranty's Board of Directors), McDougal indicated that "Madison Financial took the property south of 145th Street and Ward took the property north of 145th Street. This split was done because the entire project would have been beyond the capacity of Madison Financial due to bank board regulations."[773] It seems likely that if Mr. McDougal knew about the limiting regulation he communicated this to Mr. Ward.

The sham perpetrated in connection with Castle Grande did not end with the purchase of the property in the fall of 1985. In subsequent months, the property was sold in a series of transactions.[774] In most cases, the property was sold to Madison insiders and friends of the McDougals with 100% Madison financing. Because many of these loans were not repaid, Madison Guaranty suffered large financial losses. These losses were passed on to the American taxpayer after the institution's failure. The RTC estimated that Castle Grande caused losses in excess of $3.8 million.[775]

Under his agreement with Madison Financial, Seth Ward reaped sizable commissions on all Castle Grande sales, which ultimately totalled over $300,000.[776] The last of these sales took place in late February 1986, when 486 acres were sold to former Senator J.W. Fulbright for $77,600, and the Castle Grande sewer and water utility was sold to a company owned by Jim Guy Tucker and R.D. Randolph for $1.2 million.[777] After these sales, there remained only two parcels, both owned by Mr. Ward. One of these was tracts 27 and 28 of Holman Acres.[778]

According to Don Denton, after February 28, 1986, Ward began to demand his commissions for Castle Grande sales but Madison Guaranty lacked ready funds to pay him.[779] It seems likely that an even greater obstacle to the payment of the commissions was the presence of federal savings & loan regulators, who commenced their examination of Madison Guaranty and moved into its offices on or around March 4, 1986.[780] Indeed, Mr. Latham testified in the *Ward* v. *Madison* trial that the presence of the examiners was a concern in this regard.[781]

As a result of these difficulties, Madison Guaranty, Madison Financial, and Seth Ward executed a series of notes and loan transactions. On March 31, 1986, Madison Guaranty loaned $400,000 to Mr. Ward.[782] Notably, the loan was secured by the mortgage on the Holman Acres property. Mr. Ward returned $100,000 within a

week or so, leaving him with $300,000.[783] Then, on April 7, 1986, MFC gave—but did not fund—two promissory notes to Seth Ward, one for $300,000, the other for $70,943.[784]

According to Mr. Denton, the exchange of these offsetting notes was intended to pay Mr. Ward his commissions.[785] That is, the $400,000 loan (less the $100,000 that was returned) satisfied the commissions and the notes from Madison Financial offset any obligation by Mr. Ward to repay that loan. Similarly, in the Ward trial, Mr. Ward testified that the $370,943 in notes was intended to document for the regulators his entitlement to commissions.[786] [24]

In September 1987, after he had a falling out with Mr. McDougal, Mr. Ward filed suit against Madison Guaranty claiming that he was entitled to collect unpaid commissions on the sale of Castle Grande property.[787] He was represented in that action by Alston Jennings, a prominent local attorney in the Little Rock law firm of Wright, Lindsey & Jennings.[788]

The *Ward* v. *Madison* case is significant because the meaning of several documents bearing upon the Castle Grande transaction, including the May 1 option drafted by Mrs. Clinton, was disputed at the trial. Specifically, Mr. Latham, testifying for the defense, took the position that the option was related to Mr. Ward's unpaid commissions.[789] Mr. Ward maintained at the trial that the option had nothing to do with his commissions and claimed that Madison Financial had simply wanted the right to purchase Holman Acres from him.[790]

The jury returned a verdict in Mr. Ward's favor and awarded him over $391,000.[791] In 1993, however, Mr. Ward and the RTC as the successor to Madison Guaranty reached a settlement under which Mr. Ward agreed to pay $325,000 to the RTC in exchange for a release from all liability.[792]

Prior to the trial, Madison Guaranty had suggested in a document filed with the court that the underlying transactions as to which Mr. Ward claimed an entitlement to commissions were questionable. Specifically, Madison Guaranty indicated that it might argue that it did not owe any commissions to Mr. Ward because of his own "unclean hands." By way of explanation, Madison Guaranty stated in its court filing: "With knowledge, the Plaintiff [Mr. Ward] agreed to purchase a section of the Undeveloped Property in his name so that Madison Financial Corporation would not exceed its investment limitation, imposed by the FHLBB, of 6% of the assets of the corporation. In effect, Plaintiff acted as a straw man for the real estate purchase for the mutual benefit of himself, Jim McDougal and other individuals." No witness at the trial, however, suggested that Mr. Ward's commissions were ill-gotten and Madison Guaranty's lawyers made no such argument.

C. The September 24, 1985 Letters

The essential terms of the initial agreement between Mr. McDougal and Mr. Ward as described above were set forth in a let-

[24] At trial, Mr. Ward took the position that the notes worth $370,943 were evidence of his entitlement to unpaid commissions, but he denied that the $400,000 loan was related to any commissions. That loan, he maintained, was separate and fully discharged when he quitclaimed the property securing the mortgage—Holman Acres—back to Madison. 12/28/95 Pillsbury Report pp. 31–32.

ter dated September 24, 1985 from Seth Ward to Jim McDougal.[793] Two versions of this document exist. According to Seth Ward, one of the letters was typed on September 24, 1985, by Susan Strayhorn, James McDougal's secretary, and the other version was prepared sometime thereafter and then backdated.[794] Ms. Strayhorn agreed that she typed the first letter at Mr. Ward's direction.[795] Mr. Ward has testified that he had the backdated letter prepared or prepared it himself.[796]

The major difference between the two versions of the September 24 letter concerns Madison Financial's right to purchase Seth Ward's property. While the original letter gave Madison Financial the right to purchase all of Mr. Ward's property, the backdated letter excluded from Madison's reach a 22½ acre parcel known as Holman Acres. A detailed legal description of the 22½ acre parcel—identified as "Part of Tracts 27 & 28, Holman Acres, Pulaski County, Arkansas"—was attached as an addendum to the letter.

Although Seth Ward testified that the backdated version of the September 24, 1985 letter was prepared within several weeks or a month of that date,[797] there is substantial evidence that it was created much later than that. Former Madison President John Latham has testified that he had never seen the letter until Mr. Ward brought it to his attention in May or June of 1986.[798] Ms. Strayhorn testified that the document was not in the S & L's files, and that she had never seen it before 1987.[799] Don Denton, who initially refused to state whether he had any knowledge about the backdating of the letter for fear of "digging a hole for myself", later said that "I'll go so far as to say [it was] drawn after July, 1986."[800] And James Clark, lead investigator for the 1986 examination of Madison Guaranty, has stated that he does not recall ever seeing the document during the time he was at the savings and loan.[801]

D. The May 1 Option Disguises the Questionable Payments to Seth Ward

While Mr. Clark examining Madison Guaranty, Madison insiders did not disclose to him that commissions might be owed to Seth Ward, and Mr. Clark was not aware of this issue until he discovered by chance the original September 24, 1985 letter in a desk drawer.[802] The letter was the first indication Mr. Clark had that Seth Ward might be owed commissions.[803]

Mr. Clark also saw the March 31 and April 7 notes during the examination and became concerned that there might be a connection between the notes.[804] Specifically, his suspicion was that the crossing notes might represent a payment to Mr. Ward and thus constitute "independent financing of MFC by Madison Guaranty"[805] Such "independent financing" would raise the concerns underlying the direct investment limitation.[806]

When Mr. Clark inquired about the March 31 and April 7 notes, however, he was told that they were unrelated, "completely separate deals."[807] Instead, the April 7 notes—evidencing the $373,000 debt from Madison Financial to Mr. Ward—were said to be related to a plan by Madison Financial to purchase Holman Acres from Mr. Ward. The transaction was to be accomplished through an as yet undrafted option agreement which would replace the notes. The

notes, Mr. Clark was told, existed simply to guarantee that Madison Financial would go through with the deal pending preparation of the option and would be canceled after the exercise of the option.[808]

According to Mr. Clark, if he had known that the exchange of notes was a device to pay Mr. Ward's commissions—and thereby transfer money from the savings and loan to the service corporation—it would have affected his examination in several respects. Mr. Clark said "that if he and known about the commissions, at the very least he would have called it a direct investment by Madison Guaranty into MFC because MGSL would be funding MFC's obligations, and he would have been asking what Ward did to earn the commissions."[809] He also expressed the view that "the commissions would [have] been a further indication that Ward was a 'straw' buyer in the IDC purchase" and that "if the loan had been made to pay commissions, he would have considered the loan 'deceptive on its face.'"[810]

An option was prepared on May 1, 1986, and entitled "Option To Purchase Real Estate."[25] [811] Under the May 1 option—which was executed by Mr. Ward and Mr. Latham—Madison Financial had the right to purchase tracts 27 and 28 of Holman Acres from Mr. Ward for $400,000 and Mr. Ward was to be paid $35,000 for extending this option to Madison Financial.[812]

That Mrs. Clinton was involved in the creation of this option is indisputable. The Rose Law Firm billing records reflect that on May 1, 1986, Mrs. Clinton billed Madison Guaranty for two hours of time for the following work: "Conference with Seth Ward; telephone conference with Seth Ward regarding option; telephone conference with Mike Shauffle; prepare option."[813] Furthermore, there appears in the lower left hand corner of the option a word processing code ("0190g") that, according to the Rose Law Firm's counsel, indicates the document was created at the Rose Law Firm by or for Mrs. Clinton.[814] Mrs. Clinton, however, has sworn that she has no recollection of the option agreement or the transaction it reflects.[815]

According to Mr. Clark, the May 1, 1986 option prepared by Mrs. Clinton was used to disguise the fact that the crossing notes between Seth Ward, Madison Guaranty, and Madison Financial were designed to funnel commissions to Mr. Ward. He stated that "based upon what he has now learned the option was created 'in order to conceal the connection—whatever it was—between'" the notes.[816]

When Mrs. Clinton prepared the May 1 option, she may have known about the relationship involving the May 1 option and its use to disguise the fact that Madison Guaranty had paid Mr. Ward's commissions. A message slip produced by Mr. Denton reflects that Mrs. Clinton called him from the Rose Law Firm on April 7, 1986.[817] Mr. Denton returned the call and spoke to Mrs. Clinton.[818] The subject of the conversation was the notes between Mr. Ward, Madison Financial, and Madison Guaranty.[819] Mr. Denton had the sense that Mrs. Clinton was preparing a $400,000 note involving Madison Financial and Mr. Ward and he told her that

[25] As with the September 24, 1985 letter, there is a second version of the May 1 option. (RTC Document SW1–070—SW1–74). The only substantive difference between the two is that the property at issue in the second option is not Holman Acres, but a 6.67 acre parcel of land containing the Levi Strauss Building. (RTC Document SW1–070–SW1–074).

such a note had already been prepared and executed.[820] Mrs. Clinton asked him to send whatever notes there were to her and Mr. Denton did so, sending copies of the notes by courier.[821]

Mr. Denton recalled that during the conversation he indicated to Mrs. Clinton that a problem might exist with respect to the Ward notes because "they constituted in effect a parent entity fulfilling the obligation of a subsidiary."[822] Mrs. Clinton, however, "summarily dismissed" that concern in a way that he took to mean that "he would take care of savings and loan matters, and she would take care of legal matters." [823]

On June 13, 1996, the same day that the Special Committee received Mr. Denton's testimony, the Committee in a letter addressed to Mr. Kendall, Mrs. Clinton's counsel, requested that the First Lady attempt to refresh her recollection regarding the matters discussed by Mr. Denton and inform the Committee of what she recalls about them.[824] The Special Committee's request was made in response to an earlier offer by Mrs. Clinton through a White House spokesman to answer in writing questions regarding the subject of the Special Committee's work.

On June 17, 1996 the Special Committee received an affidavit from Mrs. Clinton accompanied by a letter from Mr. Kendall. In the affidavit, Mrs. Clinton gave no indication as to her recollection regarding the subject matter of Mr. Denton's testimony. Instead, she simply requested that Special Committee refer to Mr. Kendall's letter "addressing certain allegations recently made by Mr. Don Denton."[825] In his letter, Mr. Kendall maintained that Mr. Denton's recollection is "wholly unreliable" but gave no indication as to the recollection of the First Lady.[826] In sum, the First Lady has neither confirmed nor denied Mr. Denton's testimony.

E. Mrs. Clinton's previously unknown legal work for questionable Castle Grande transactions

Prior to the discovery of the Rose Law Firm billing records in the White House Residence, the nature and extent of Mrs. Clinton's work on Castle Grande matters was virtually unknown. Indeed, Patricia Black, former Counsel to the RTC Office of Inspector General, testified in 1995 that "[w]e have no evidence that she [Hillary Clinton] worked on Castle Grande."[827] The evidence obtained in the course of the Special Committee's investigation now establishes that Mrs. Clinton had substantial direct involvement in Castle Grande.

From the billing records, the Special Committee learned that, over a seven month period from late 1984 to mid 1985, Mrs. Clinton billed almost 30 hours of time to Castle Grande related matters while representing Madison Guaranty—more than any other Rose Law Firm attorney;[828] that she had 15 conferences with Seth Ward, the central figure in the transaction—seven of them occurring within 18 days in December, 1985;[829] that she had a telephone conference with Don Denton on April 7, 1986;[830] and that she drafted an option agreement between Seth Ward and Madison Financial Corporation on May 1, 1986.[831] Because Mrs. Clinton has no recollection of any of these events, however, the Special Committee's understanding was limited. But just days before the conclusion of its investigation, the Special Committee obtained new

evidence illuminating Mrs. Clinton's Castle Grande-related work on April 7 and May 1, 1986.

From Jim Clark, the FHLBB examiner in charge of the 1986 examination of Madison Guaranty, the Special Committee now knows that the option drafted by Mrs. Clinton, in his view, "was created in order to conceal" a direct investment in Madison Financial through the payment of questionable commissions to Seth Ward.

From Don Denton, Madison's former chief lending officer, the Special Committee has learned that apparently on April 7 Mrs. Clinton "summarily dismissed" concerns he expressed to her by Mr. Denton about questionable notes involving Seth Ward—notes she apparently was set to prepare had they not already been drafted. Mr. Denton understood from Mrs. Clinton's response that she was saying he should "take care of savings and loan matters and she would take care of legal matters."

The Rose billing records also suggest that Mrs. Clinton learned of the direct investment rule by June 1985. In a letter dated June 17, 1985, Richard Massey, then a Rose associate working with Mrs. Clinton, wrote a letter to officials of the Arkansas Securities Commission ("ASC") regarding Madison Guaranty's application to engage in brokerage activities.[832] The letter was a response to a May 22, 1985 ASC memorandum about the same matter in which the ASC discusses the 6% "assets limitation which is set forth in Rule V(C),"[833] i.e., the direct investment rule found in Rule V(C) of the Rules and Regulations of the Arkansas Savings and Loan Association Board ("ASLAB"). Mr. Massey's June 17 letter likewise refers to "the limitation set forth in Rule V(C)."[834] It concludes by saying, "[w]ith this response, Madison hereby amends the Application."[835] The billing records indicate that on June 17, 1985, Mr. Massey billed time to "draft/revise response to ASLAB application,"[836] and Mrs. Clinton billed time to "review applications amendments."[837] Mrs. Clinton would have become aware of the direct investment rule through this review of Mr. Massey's letter.

The use to which Mrs. Clinton's work product was put raises questions about her knowledge of the state of affairs at Madison Guaranty. The billing records suggest that Mrs. Clinton should have been aware of the rule against excessive direct investments. Furthermore, from her conversation with Don Denton, Mrs. Clinton apparently was put on notice—prior to the drafting of the option—that Mr. Ward was taking part at Madison in transactions that were at least questionable if not fraudulent. Unless she was engaged in conscious avoidance, Mrs. Clinton should have known these facts when she drafted the May 1 option, which concealed from the regulators the very transactions Mr. Denton warned her about.

In 1995, when asked about her knowledge of Castle Grande and several other land developments, Mrs. Clinton stated, under oath, "I do not believe I knew anything about any of these real estate parcels and projects."[838]

The billing records, however, revealed that Mrs. Clinton performed a substantial amount of legal work for Madison Guaranty related to the Castle Grande property and billed this time to a matter called "I.D.C." The records indicated, for example, that Mrs. Clinton had more than a dozen conferences with Seth Ward. Mrs.

Clinton's claim that she did not know anything about Castle Grande appears contrary to the billing records.

In response to a set of supplemental interrogatories propounded by the RTC in 1996, Mrs. Clinton sought to explain her prior blanket denial of knowledge of Castle Grande by saying that she thought of the larger property as "IDC" and a small portion of the property as Castle Grande Estates.

> In the RTC's interrogatories which I answer on May 24, 1995, the term "Castle Grande" was not defined, and we construed this reference to be to Castle Grande Estates, a mobile home development which I now understand to be a portion of the 1050-acre tract. In these responses to the Supplemental Interrogatories, I will refer to the entire tract not as Castle Grande but as the "IDC property", because "IDC" was the billing name for work involving that property at the Rose Law Firm.[839]

Mrs. Clinton's attempt to claim she had misunderstood the name of the project appears contrary to a wealth of evidence to the effect that the entire 1000+ acre tract was known as "Castle Grande." That is the term by which Madison Guaranty officials and federal regulators commonly referred to the parcel.

The minutes of a MFC Board of Directors meeting dated September 12, 1985, reflect that the Board discussed the purchase of 400 acres of land on 145th Street for $600,000 and that "[a]fter a lengthy discussion, the Board unanimously approved the purchase of this development to be known as Castle Grande Estates."[840] Consistent with these minutes, Don Denton testified at the McDougal trial that the property "was renamed Castle Grande shortly after the acquisition" from IDC.[841] At the same trial, Mr. McDougal said that Castle Grande was the name of "about a thousand acres" of property.[842] And Susan McDougal, denying any distinction between Castle Grande and IDC, has stated that "[i]t was always the same thing. As far as I know, IDC and Castle Grande were one and the same."[843]

Two former FHLBB examiners who participated in the 1986 examination of Madison and scrutinized the Castle Grande transaction, James Clark and Dawn Pulcer, testified that Madison insiders referred to the whole project as Castle Grande.[844]

Finally, Davis Fitzhugh, a former Madison Financial Vice President, testified that he understood all of the property south of 145th Street to be Castle Grande.[845] But Mr. Fitzhugh agreed that the $50,000 check he used to make the down payment on his purchase of the Levi Strauss building—which is located north of 145th Street—carried the notation, "For: sale of bldg C Castle Grande."[846]

In the summer of 1988, Mrs. Clinton ordered the destruction of her files related to Castle Grande. A July 21, 1988 memorandum from Mary Russell to Mrs. Clinton reflects that the Rose Law Firm was in the process of making retention decisions with respect to the files of closed cases.[847] The memorandum gave Mrs. Clinton three options with regard to any file: keep it intact, microfilm and then destroy it, or destroy it without microfilming. The memorandum asked for a response by August 9, 1988.

Mrs. Clinton requested destruction, without microfilming, of four Madison Guaranty files, including two related specifically to the "I.D.C." matter and the "Ward Option." The Special Committee finds it troubling that in July or August of 1988 Mrs. Clinton would order the destruction of these files. Because the *Ward* v. *Madison* case was ongoing at the time, Mrs. Clinton might well have destroyed evidence relevant to the case. Indeed, the May 1 option drafted by Mrs. Clinton was an important piece of evidence in the trial. It seems reasonable to assume, moreover, that Mrs. Clinton was aware of the *Ward* v. *Madison* litigation, involving as it did her former clients. Moreover, Webster Hubbell, her law partner and close friend, attended at least some of the trial.[848]

F. Webster Hubbell's mysterious role in structuring questionable Castle Grande transactions

It is unclear the extent of the involvement Webster Hubbell, Seth Ward's son-in-law, with respect to providing legal advice to Mr. Ward relating to the Castle Grande transaction. Mr. Hubbell's statements on this matter are contradictory to each other, contradictory to the testimony of other witnesses and contradictory to documentary evidence. His statements also defy common sense. Even Mr. McDougal's secretary, Ms. Strayhorn, expressed surprise when told that Mr. Hubbell did not prepare the May 1 option for his father-in-law.[849] In a hearing before the Special Committee she asked, "Why wouldn't he [Ward] have his son-in-law prepare the document?"[850]

Mr. Hubbell was in frequent contact with Mr. Ward. Mr. Hubbell said that Mr. Ward and he talked about business constantly.[851] Mr. Hubbell testified that Mr. Ward "talked to [Hubbell] a lot about deals," and "you couldn't stop him basically" from talking about business.[852]

With respect to the Castle Grande transaction, Mr. Hubbell altered his story with respect to when he learned that Mr. Ward was a nominee purchaser for Madison Financial. First, Mr. Hubbell testified that he understood in September 1985 based on what Mr. Ward told him that "Madison had limits on what it could own in its own name, and so Mr. Ward was going to own part of it until it could be sold."[853] Also, in an interview with the RTC Inspector General, Mr. Hubbell "said that Ward told him that he was negotiating on behalf of Madison to buy the IDC property, which would then be split up between Madison and Ward."[854] In testimony before the Special Committee, however, Mr. Hubbell repeatedly testified that he was not aware of the deal between Madison and Ward until after the closing in early October 1985.[855]6

Mr. Hubbell was reluctant to answer questions regarding his own view of the legality of Mr. Ward's role in the purchase of the IDC property. When asked if he viewed it as a way to evade a regulatory restriction, Mr. Hubbell answered, "I have never represented an S&L. I don't know whether it's illegal or not."[856] When he was asked if he considered this transaction as a classic parking or warehousing transaction, Mr. Hubbell answered, "I think of parking and warehousing a little bit differently."[857] When asked if he thought Mr. Ward could be considered a "straw man," Mr. Hubbell

testified, "I didn't give it any consideration, you know. 'Straw man' means, to me, somebody who you clear title through."[858]

Mr. Hubbell has denied advising Mr. Ward with respect to the transaction.[859] He specifically denied preparing the backdated September 24, 1985 letter or advising Mr. Ward with respect to its preparation.[860] Mr. Hubbell claimed that although he was aware of his father-in-law's deal with Mr. McDougal and discussed it with Mr. Ward, he does not recall discussing the September 24th letter.[861] Mr. Hubbell claimed, "I recall discussing the nature of his deal with Madison, but not the letter, no."[862]

There is evidence, however, that Mr. Hubbell may have prepared a backdated September 24, 1985 letter, which was found in his files at the Rose Law Firm.[863] Martha Patton, Mr. Hubbell's secretary at the Rose Law Firm, has stated that although she does not recall typing the letter she believes she did because the type is similar to that of the IBM typewriter she used and the second page of the document is formatted in the style she used while a Rose secretary.[864] She added that the letter appears to be "her style of typing."[865] Mr. Hubbell testified that "it's certainly possible" that his secretary typed the agreement.[866][26] And Alston Jennings testified that Mr. Ward told him that Mr. Hubbell's secretary had typed the letter.[867]

There is also some indication that Mr. Hubbell was supposed to prepare the May 1, 1986 option agreement. Handwritten notes taken by James Clark, the examiner in charge of the 1986 examination of Madison Guaranty, reflect the following:

> MFC Commitment to buy land at corner of Route 145
> * * *
> Option will be prepared, atty out of town (Hubbell) to replace note.[868]

The note strongly suggests a hitherto unknown involvement in Castle Grande by Mr. Hubbell.

Mr. Clark has stated that he believes that the information reflected in the above note came from former Madison chief loan officer Don Denton.[869] Although Mr. Denton does not believe that he was the source of information recorded by Mr. Clark, Mr. Denton has implied at other times that Mr. Hubbell advised Mr. Ward on the Castle Grande matter.[870] For example, Mr. Denton believed that the wording on the note dated October 15, 1985 stating that Mr. Ward was not personally responsible for the note was prepared by Mr. Hubbell.[871] Also, Mr. Denton believed that he had some conversations with Mr. Hubbell about the February 28, 1996 transaction.[872]

Furthermore, Mr. Denton implied in his recent interview that Mr. Hubbell was involved in the March 31 and April 7 notes between Mr. Ward, Madison Guaranty, and Madison Financial. He stated that he was "reasonably confident" that when Mrs. Clinton called him regarding these notes she was acting on Mr. Hubbell's behalf.[873] Mr. Denton would not testify as to whether he ever dealt with Mr. Hubbell on the matter of the notes.[874] He also declined

[26] Mr. Hubbell stated that "I remember that Mr. Ward would come to my office and on occasion, ask my secretary to type letters that he had handwritten or had been drafted somewhere else." Hubbell, 2/7/96 Hrg. p. 11.

to answer whether he had visited Mr. Hubbell's office at Rose regarding Mr. Ward or Madison Guaranty.[875]

Mr. Hubbell has not provided complete and accurate statements about his legal representation on other occasions. He did so in 1989 when the Rose Law Firm was retained to represent the FDIC in the case against Madison Guaranty's former accountants.[876] April Breslaw, the RTC attorney who hired the Rose Law Firm for the Frost litigation, testified that when she asked Mr. Hubbell about Mr. Ward, Mr. Hubbell informed her that he did not represent Mr. Ward. He also told her "that his relationship with his father-in-law was not close."[877] Ms. Breslaw was asked whether she believed Mr. Hubbell lied to her when she hired him, and she replied, "Yes, sir. I do."[878] Even Mr. Hubbell admitted that he did not disclose to Ms. Breslaw his knowledge of the IDC transactions.[879]

Mr. Hubbell did not provide complete and accurate statements about his legal representation again in 1993 when he failed to disclose information he had learned the previous year from reading the Rose Law Firm billing records to FDIC investigators looking into the 1989 retention of Rose.[880] In 1993, FDIC investigators reported that in 1985, the Rose Law Firm represented Madison Guaranty before the Arkansas Securities Department on two matters.[881] Mr. Hubbell admitted, however, that he was aware of additional matters on which the Rose firm had worked, including the IDC closing and the option agreement, on behalf of Madison, and that he did not disclose it to investigators.[882]

In view of the foregoing, the Special Committee has no confidence in Mr. Hubbell's claim that he did not advise Mr. Ward with respect to Castle Grande.

PART III. GOVERNOR CLINTON'S QUESTIONABLE RELATIONSHIP WITH DAN LASATER

I. Governor Clinton's Close Personal Relationship With Dan Lasater

After Governor Clinton was defeated for re-election in 1980, he met with Dan Lasater, George Locke and David Collins, Mr. Lasater's partners[27] in Collins, Locke & Lasater,[28] later changed to Lasater & Co., a newly formed investment bank.[883] According to Mr. Locke: "[I]t was a short time after the election, in fact I want to think maybe the next day * * * [H]e didn't take a day off."[884] Mr. Clinton wanted to see "if Dan would support him in his efforts to regain the governor's seat."[885]

The meeting lasted a "couple" of hours, and the main topic of conversation was Mr. Clinton's plan to run for governor.[886] Mr. Locke believed that Mr. Clinton approached Mr. Lasater because Stephens, Inc., Little Rock's largest financial firm, had supported Mr. Clinton's opponent, Frank White.[887] Mr. Lasater claimed that he did not recall the meeting.[888]

In 1983, Roger Clinton, the Governor's brother, went to work for Mr. Lasater at his horse racing farm in Ocala, Florida.[889] Mr. Lasater first met Roger Clinton when Roger was working as a mu-

[27] All three were subsequently arrested and convicted for felonies involving drug use and distribution.

[28] Mr. Lasater testified that he was first introduced to President Clinton by the President's mother Virginia Kelly at Oaklawn Racing Park in Hot Springs Arkansas in the 1970's. Lasater, 5/1/96 Hrg. p. 10.

sician in Hot Springs,[890] sometime in the late 1970's or early 1980's,[891] and that either Governor Clinton or his mother, Virginia Kelly, asked Mr. Lasater to hire Roger.[892] In a 1986 FBI interview, however, Mr. Lasater stated that Governor Clinton, as opposed to Mrs. Kelly, asked him to hire Roger.[893] Similarly, White House Deputy Director of Personnel Patsy Thomasson, Mr. Lasater's longtime friend and associate,[894] testified that sometime in 1982 or 1983 Governor Clinton asked Mr. Lasater to give Roger Clinton a job.[895]

Mr. Lasater supported Roger Clinton when he had trouble paying a drug-related debt. In late February 1985, Roger Clinton was a witness at a friend's cocaine distribution trial in which he testified that Mr. Lasater, after learning of Roger Clinton's drug debts, loaned him $8,000 to retire them.[896] Ms. Thomasson confirmed that Mr. Lasater provided Roger Clinton with a check for an amount "between $5,000 and $10,0000,"[897] and Mr. Lasater admitted that he loaned Roger Clinton $8,000 to pay a debt to drug dealers.[898] According to Mr. Lasater:

> Roger came to me and said that he owed a drug dealer $8,000, and that the drug dealer had threatened him, his mother and his brother [Governor Clinton] if they didn't pay and wanted to know if I would loan him the money, and I did.[899]

Mr. Drake testified that Mr. Lasater provided him with cocaine while he was an employee of Lasater & Company, and that he believed that Mr. Lasater used cocaine as a tool to manipulate people.[900] Mr. Lasater admitted before the Special Committee that he did give drugs to his employees.[901]

On December 12, 1986, Mr. Lasater entered a guilty plea to the felony of "knowingly and intentionally conspiring to possess and to distribute cocaine."[902] He served a 30-month sentence in prison.[903]

Mr. Lasater claimed "that it has never been alleged that I committed any fraudulent act or lied in the course of any investigation."[904] A federal bankruptcy judge, however, found, in open court, that Mr. Lasater lied under oath during the bankruptcy trial of his former business partner, George Locke, and also found that Mr. Lasater was involved in a conspiracy to defraud Mr. Locke's creditors.[905] In January 1985, a Little Rock paper reported the judge's findings.[906] During the same period of time, Mr. Lasater was attempting to secure the bond underwriting for the Arkansas State Police Radio bond financing.[907] When asked about these findings, Mr. Lasater told the Special Committee, "I had forgotten about that."[908] Mr. Lasater also admitted that he did not disclose to the state police his involvement in the conspiracy.[909]

In 1984, Mr. Lasater sponsored a fundraiser for Governor Clinton in 1984.[910] This fundraiser, held for over 100 people in Little Rock, raised approximately $50,000.[911] Mr. Lasater testified that he and his family contributed a total of $8,000 to Governor Clinton in 1984, and that he also bought a table at a fundraiser for the Governor that cost between $6,000 and $12,000.[912] Mr. Lasater believed that in 1982 he only contributed between $4,000 and $5,000 to Mr. Clinton.[913] An affidavit that was supplied to the FDIC by Mrs. Clinton's attorney, David Kendall, identified at least $8,000 in

contributions that were made by Mr. Lasater and Lasater controlled entities in 1982.[914] Mr. Kendall's affidavit also listed $4,000 in contributions that Mr. Lasater and Lasater controlled entities gave to Governor Clinton in 1985.[915] In addition, according to Mr. Lasater, Mr. Lasater provided Governor Clinton free use of Lasater owned aircraft.[916]

Mr. Lasater testified that he saw Governor Clinton only infrequently, and that he was "not a close friend" of Governor Clinton.[917] Mr. Lasater claimed that he only visited Governor Clinton at the Mansion on two occasions, and that they "were both social events. They weren't one-on-one meetings."[918] There is evidence to the contrary. Arkansas State trooper Barry Spivey has testified that while he was assigned to Governor's security unit from 1982–1984,[919] he observed Mr. Lasater visiting Mr. Clinton at the Governor's Mansion, and that[920] the Governor went "to Dan's a lot. We went down there more than Dan came down there I would say."[921] Mr. Spivey has testified that he normally did not enter Mr. Lasater into the Mansion's security logs "because I knew that he and Bill were friends, that they visited socially. I had flown on his plane. I knew that Bill spent a lot of time at Dan's office, and that Dan spent time at the Mansion."[922] According to Trooper Spivey, "I probably saw Dan [at the Mansion] half a dozen times at least. And I'm going to say that I took him by his office even more than that, just me personally."[923] Mr. Spivey has testified that he took the Governor to visit Mr. Lasater's offices:

> I remember a lot of times taking Bill down to Dan's office and he would jump out and I'd circle and wait until he came back and, or I would go inside and stay in the lobby.[924]

Mr. Lasater did not recall Governor Clinton visiting the Lasater & Co. offices.[925]

II. Governor Clinton Provides Favors to Dan Lasater

A. Dan Lasater's special access to Governor Clinton

Mr. Lasater further claimed that he felt he "never received any special treatment from Governor Clinton or anyone on his staff."[926] Governor Clinton's staff, however, paid attention to recommendations to state board appointment by Mr. Lasater.[927] For example, the Governor received a list of persons[928] recommended by Mr. Lasater and his firm, Lasater & Co., for appointment or re-appointment to the Arkansas Housing Development Agency ("AHDA") Board, the agency to which Lasater & Co. submitted proposals to participate as underwriters in state bond issues.[929]

Documentary evidence indicates Mr. Lasater met with Governor Clinton. On February 15, 1985, for example, Mr. Lasater wrote to Governor Clinton in part to thank him "for the opportunity to sit down and visit with you."[930] Mr. Lasater admitted that the meeting referred to in the letter is "more than likely" a one-on-one meeting in January or February 1985 that he had with the Governor in his office in the State Capitol.[931] One of the subjects raised in the letter deals with discussions held between the Governor and Mr. Lasater about the appointment of one of Mr. Lasater's AHDA Board candidates, Donald Spears.[932]

Mr. Lasater also requested that Lasater & Company be advised "of all financing proposals effecting the state," prior to public announcement and stated that:

> we would be more comfortable if you would take the opportunity or ask someone on your staff to take the opportunity to appraise me or my staff of any actions by you or your staff prior to any public announcements so that we will not be surprised or in some instances embarrassed because of the announcement."[933]

On at least one occasion, Governor Clinton wrote a note to Chief of Staff Betsey Wright, Maurice Smith and "CG," on a piece of Lasater & Company stationary that appears to state, "need to fill their [Lasater & Co.] recs for SEC [Securities Commissioner]/AHDA."[934] The Lasater & Co. stationary was attached to a written presentation that was prepared by Lasater & Co. and EF Hutton for a meeting that they had with the Governor on January 10, 1985 at the Legacy Hotel in Little Rock.[935] An agenda for the meeting listed appointments for the Arkansas Securities Commissioner and the Arkansas Housing Development Agency as the first two orders of business.[936]

B. The Governor's office steers valuable State bond business to Dan Lasater

The Special Committee is troubled by documentary and testimonial evidence indicating that Governor Clinton's office directed board members of the AHDA to award bond underwriting contracts to Mr. Lasater's firm, and that the Governor's office monitored and assisted Lasater & Co.'s efforts to secure the underwriting contract for the $29.2 million bond financing of a state police radio system.

Prior to 1983, Collins, Locke & Lasater did not participate as an underwriter for any AHDA bond offerings.[937] On February 17, 1983, the AHDA Housing Subcommittee selected Collins, Locke & Lasater to serve as an underwriter for one of the agency's housing bond financing.[938] Charles Stout, who was Chairman of the agency's board at the time, described the circumstances surrounding the inclusion of Collins, Locke & Lasater as a member of the AHDA's Single Family Housing underwriting team.

According to Mr. Stout, thirty minutes before an AHDA Board meeting, he received a telephone call from Bob Nash, who was Governor Clinton's assistant for economic issues:[29]

> He was on the governor's staff over there. We had selected underwriters for an issue, and he called over and asked me to cut in Lasater for 15 percent. I said Bob that's not right, the governor's office is not to interfere with this agency. And he said, well, that's the way we want it anyway.[939]

The Governor's office directive to award Collins, Locke and Lasater fifteen percent of the underwriting contract concerned Mr. Stout for a number of reasons. He stated that "he [Lasater] was a local underwriter and rather inexperienced, that was what I didn't like about it."[940] The AHDA had also already selected the group of

[29] Mr. Nash is currently the Director of the White House Personnel Office.

underwriters that it wanted to cover the offering in question.[941] Mr. Stout had difficulty recalling with specificity that the phone call was received on February 17, but he did know that Collins, Locke & Lasater had not participated as an underwriter for any AHDA offerings prior to Mr. Nash's call.[942]

Linda Chandler, formerly Linda Trent, then acting executive director of AHDA and a Lasater-recommended appointee, testified that the Lasater firm had never been a member of an underwriting team prior to February 17, and that she had never even heard of the firm prior to the firm's inclusion in the single family underwriting.[943]

Mr. Stout was upset by the instructions from the Governor's office to choose the Lasater firm, and he told his fellow Board member Mort Hardwicke:[30] "I thought it was wrong for the governor's office to tell us how to run our business over there."[944] Mr. Stout further testified: "[w]ell the governor's office doesn't interfere with the directors of the Arkansas Housing Development Agency and tell them what underwriter to use. That business is the director's business, nobody else's."[945]

Mr. Nash's directive had surprised Mr. Stout, and he believed that the request threatened the independence of the AHDA.[946] Mr. Stout was not aware of any previous instances where the governor's office had ever inserted itself into the underwriting selection process—particularly to tell the board "what underwriter to use."[947] The request threatened the independence of the agency in fulfilling its responsibilities.[948]

Mr. Stout recognized the significance of Mr. Nash's directive, and he asked Mr. Hardwicke to pick up another telephone receiver to listen to the call.[949] Mr. Hardwicke claimed in his deposition that he had no knowledge that the Governor's office identified an individual firm that it wanted to receive AHDA business.[950] When Mr. Hardwicke was confronted with Mr. Stout's testimony that he had actually listened to the phone conversation that took place between Mr. Stout and Mr. Nash, he said that he did not "recall the incident," but he did not doubt Mr. Stout's testimony.[951] After Mr. Stout and Mr. Hardwicke got off the phone with Mr. Nash, they discussed what Mr. Nash had told Mr. Stout to do and decided that they would have to approach each of the board members individually and tell them that Mr. Nash had given the directive to include the Lasater firm in the underwriting.[952]

After Mr. Nash told Mr. Stout to "cut in" Lasater for 15 percent of the underwriting for the 1983 Series A $26,365,000 Single Family issue that was discussed during the February 17 Housing Sub-Committee meeting, Mr. Stout informed him that the board would comply with the governor's office's request.[953] In fact, the minutes of the Subcommittee show that Collins, Locke & Lasater received 13⅓ percent of the bond underwriting contract.[954]

Mr. Stout also explained that Mr. Nash's request to include the Lasater firm as an underwriter was not limited to the one issue that was considered on February 17. Mr. Nash's directive required that Collins, Locke & Lasater be included as an underwriter in

[30] Mr. Hardwicke was appointed by Governor Clinton to the AHDA board, and served from 1980 to 1986 or 1987. Hardwicke, 2/15/96 Dep. p. 6. Mr. Hardwicke testified that he has been a "pretty close" personal friend of Bill Clinton since 1974. Hardwicke, 2/15/96 Dep. p. 11.

"any future issues for 15 percent."[955] Mr. Stout confirmed that Mr. Lasater's firm was included in subsequent issues in compliance with Mr. Nash's directive.[956] Mr. Lasater's company participated as an underwriter in $637 million dollars worth of AHDA/ADFA bond offerings between 1983 and 1986.[957]

According to the minutes of the AHDA Executive Board minutes for April 12, 1983, the Board unanimously approved the recommendation of the Multi-family Housing Sub-Committee to retain Merrill Lynch as the lead underwriter and to include Stephens Inc. and TJ Raney & Sons as the local underwriters for the agency's Multi Family Housing issue.[958] [31] The AHDA Special Executive Board minutes from April 19, 1983, show that Collins, Locke & Lasater was added to the "underwriting team for the agency's proposed 1983 Multi-Family Issue."[959]

Linda Chandler, AHDA's Executive Director, agreed that before Collins, Locke and Lasater was added to the Multi-Family Housing issue, that the board had already "carefully considered and discussed" which local firms would participate in the offering.[960] The last-minute inclusion of Mr. Lasater's firm into this bond underwriting syndicate was a circumvention of the normal process of careful debate that was part of the AHDA's underwriter selection process.[961] In fact, Ms. Chandler agreed that during her four years at the agency, she is not aware of any other "circumstance where, at the last minute, after the recommending committee had made up its lists of participants," another firm was added to the syndicate.[962]

After Collins, Locke & Lasater's unprecedented inclusion on the underwriting team, Stephens, Inc., one of the firms that had been chosen during the April 12 Executive Board meeting, withdrew from the deal in protest.[963] Ms. Chandler said that no financial firms had ever withdrawn from an AHDA underwriting because they were upset that the normal process of selection had been violated.[964] Mr. Nash denied that he ever directed Mr. Stout to award business to the Lasater firm.[965]

In 1984, an Arkansas state trooper was shot and killed during a traffic stop in a section of Arkansas that was not covered by the state's antiquated communications system.[966] Although the state police had recognized the need to acquire a new communications system as early as two years before the trooper's death, this event served as a catalyst for the police to plan for the acquisition of a new system.[967] On the way to the trooper's funeral with Governor Clinton, Colonel Tommy Goodwin, the Director of the Arkansas State Police ("ASP"), approached the Governor about the need for the state to acquire a new communications system.[968] Colonel Goodwin informed the Governor that a new system would cost the state an estimated $17–$18 million and the Governor indicated he would support the acquisition of a new system.[969]

On April 4, 1985, Governor Clinton signed into law Act 817, "An act authorizing the leasing of communications equipment for the Department of the Arkansas State Police; providing for the payment and security of the costs of the equipment; and for other pur-

[31] The Multi-Family Sub-Committee made this recommendation after considering both oral and written proposals from eight financial firms. ADFA Document 10/19/95 (Not Numbered).

poses."[970] This legislation established, among other things, the methods of financing that could be used in connection with providing the state with a new police communications system.

Flight logs maintained for Mr. Lasater's aircrafts show that Governor Clinton received a free flight on a Lasater-owned plane shortly after he signed the enabling legislation.[971] On May 10, 1985 the Arkansas State Police Commission ("Commission") voted to award the underwriting contract for the financing of the new system to a syndicate of financial firms that included Lasater & Company.[972] Lasater & Co.'s share of the fees for this project was $115,040.00.[973]

The Special Committee has obtained information indicating that the Lasater syndicate obtained an unfair advantage over the other firms competing for this lucrative underwriting contract. The Lasater group worked closely with the law firm that advised the Governor's office on this matter and drafted the actual legislation.[974] Moreover, once the legislation was passed, the governor's office monitored the Lasater firm's progress in the bidding process.[975] Later, the same law firm that had represented Lasater and drafted the legislation, was retained to write an opinion on the meaning of the law; the opinion would, in large measure, determine which firm won the underwriting contract.[976] Not surprisingly, the statement the firm favored the Lasater firm, which was awarded a portion of the lucrative contract.[977]

Michael Drake, an executive vice president at the Lasater firm testified that Lasater, T.J. Raney, and E.F. Hutton formed a syndicate to compete for the financing contract for the police radio project "right after Bill [Clinton] was elected to his second term [of office]."[978] Bob Snider of T.J. Raney testified that he first discussed this offering with Mr. Drake in November 1984, and that Mr. Drake indicated to him that the Lasater firm had already been working on "the state police deal."[979] Mr. Snider was under the impression that Mr. Drake had been engaged in discussions with Samuel Bratton, Governor Clinton's Counsel, about the police radio project prior to a meeting that Mr. Snider had with Mr. Bratton in November.[980]

According to Mr. Drake, Lasater & Co. was approached by T.J. Raney because of Mr. Lasater's relationship with Governor Clinton:

> One, they knew that while Bill was [out of] office, that there were two firms in Little Rock that—two investment firms that helped him with a variety of different things. One was Lasater & Company—one was Dan Lasater, and the other was Doobie Sullivan.[981]

Mr. Snider testified that Mr. Lasater's strong political connections was one of the reasons that his firm decided to include them in the syndicate.[982]

After Mr. Drake was contacted by T.J. Raney, he told Mr. Lasater that T.J. Raney had approached Lasater & Co. "because of your relationship with Bill, to try to get this legislation passed."[983] Mr. Drake said he then identified for Mr. Lasater the steps that he thought were necessary in order to secure the underwriting contract for the police radio financing. The three steps he identified included finding a law firm to draft the legislation, working with the

Governor's office, and explaining to the state police "what we are trying to do."[984]

Betsey Wright, the Governor's Chief of Staff testified that she was under the impression that the Mitchell, Williams firm was working on the legislation for the Governor's office, and that they were not working for the Lasater syndicate.[985] Ms. Wright further stated that she was not aware that the Lasater firm had retained Mitchell, Williams to represent them in connection with their efforts to secure the underwriting contract.[986]

Billing records from Mitchell, Williams, however, indicate that the law firm had numerous meetings and conferences with members of the Governor's staff on behalf of the Lasater group, and that the Governor's office likely knew that Mr. Lasater had engaged the Mitchell firm.[987] In fact, in a letter dated January 23, 1985 that Mr. Lasater sent to the Governor, Mr. Lasater informed the Governor that he was working with Bill Woodyard, a Mitchell, Williams attorney, "to help work out financing details."[988] Mr. Young testified that Mr. Lasater engaged Mitchell, Williams to "develop the legislation and other things to implement the transaction."[989] [32]

During the May 10, 1985 ASP Commission meeting where the Lasater group was chosen to perform the underwriting for the financing of the project,[990] "some" of the firms that had given presentations to the Commission, "requested permission to revise their proposals as they felt there had been some misunderstanding of the Act."[991] This dispute centered around the fact that the Lasater group's proposal called for annual and semi-annual lease payments, and First Capital's proposal called for monthly lease payments.[992] A proposal that incorporated deferred payments, "allowed for more arbitrage to be credited against that present value cost."[993]

In an apparent effort to quiet the controversy surrounding the different interpretations of the law, the Mitchell—Mr. Lasater's firm—was retained by the Arkansas Office of State Purchasing to render a legal opinion as to "whether Section Five of the Act requires Lease Payments, as defined in Section Three of the Act, are required to be made on a monthly basis to investors who purchase an interest in a Lease Agreement authorized by the Act."[994] This issue had been raised by the First Capital firm and was the basis for their request for a chance to revise their proposal.[995]

Mr. Mitchum, the Police Commissioner who was asked to review the different proposals for the Commission, testified that First Capital and the Lasater group were "neck and neck," but that the delayed payments called for in the Lasater proposal made their bid more attractive.[996] As a result, the opinion given by Mitchell Williams[33] favored the interpretation of the law that their client Lasater & Co. had relied on.

> Section Five does not state to whom the monthly transfers out of the Lease Fund are to be made. Therefore there

[32] Mitchell Williams billed Lasater & Co. $32,150.93 for legal services performed related to "legislative advice" and the "leasing proposal." TJ Raney Production 72.

[33] The Mitchell Williams attorney who signed the May 16 opinion letter, was Anne Ritchey, one of the lawyers who had performed work for the Lasater group.

> is no requirement that the transfers be made to the ultimate payee or lessor under the Lease Agreement.[997]

Mr. Mitchum agreed with First Capital's analysis that the Act called for the state to make these payments on a monthly basis.[998]

On May 1, 1985 nine days before the ASP Commission awarded the bond underwriting contract to the Lasater syndicate, Michael Gaines of the Governor's staff,[34] sent a memorandum directly to the Governor that contained a head count as to which ASP Commissioner's favored or disfavored giving the police radio underwriting contract to Mr. Lasater.[999] Lasater & Co. is the only firm that is referenced in Mr. Gaines' report to the Governor. In addition, the memorandum contains handwritten notes from Betsey Wright that are directed to the Governor, which read in part, "[w]e have a real problem here since 'street talk' is that Lasater (sic) put in unreasonably low bid knowing that he can raise it once he gets it."[1000] Ms. Wright's note implies that the governor's office had an interest in Mr. Lasater's participation in the project, and that if Mr. Lasater was involved in submitting a low bid it could cause the Governor's office a "real problem." The Governor replied: "Lasater should be told bid must price."[1001]

Ms. Wright sent Governor Clinton sent another memorandum on the subject of Mr. Lasater's activities related to the state police radio financing on May 13, 1985.[1002] The memorandum informed Governor Clinton that the Lasater group faced potential threat from a member the Legislature that was threatening to go to the Telecommunications Study Committee to insist on an alternative form of financing that would eliminate the deal Lasater had made with the ASP Commission.[1003] Ms. Wright also informed the Governor that she alerted "Drake," suggesting that the Governor was familiar with Mr. Lasater's executive vice president.[1004]

On May 15, 1985, Mr. Gaines drafted yet another memorandum on the subject of Lasater's ability to participate as an underwriter on the police radio project.[1005] The May 15 memorandum was addressed to Ms. Wright and dealt specifically with the controversy surrounding the First Capital group's protest. Mr. Gaines' memorandum reads in part:

> The Capital Resources group [First Capital], which did not get the ASP Commission's nod, intend to contest the award to Hutton, Lasater, Raney on the following points: 1) Capital offers a fixed rate rather than a floating rate, and 2) Capital's proposal was based on monthly payments by the state to repay the debt while H,R,L based their proposal on payments every 6 months. Capital points out that the legislation (written by H,R,L) requires monthly payments.[1006]

These communications between the Governor and his staff clearly indicate that the Governor's office had a keen interest in not only Mr. Lasater's participation in the police radio underwriting contest, but in helping ensure that Mr. Lasater's firm was able to secure the contract.

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[34] Mr. Gaines was the governor's office liaison with state public safety agencies.

During February 1985, two months before the ASP sent out requests for proposals for the state police radio financing, news accounts likely put Governor Clinton and members of the ASP Commission on notice that Mr. Lasater used cocaine, and that he was the possible target of a drug investigation.

On February 27, 1985, The Arkansas Gazette reported that a witness in the drug trial of Hot Springs lawyer, Sam Anderson, Gina Canada, said in her sworn testimony that Dan Lasater had given Roger Clinton $8,000 to pay off drug debts, and that Mr. Lasater "also used cocaine." [1007] The next day, another article appeared in The Arkansas Gazette that reported on the sworn testimony given by Mr. Anderson:

> In the summer of 1984, Anderson said Roger Clinton had told him that he had to see him. They arranged to meet in a boat on Lake Hamilton because [Roger] Clinton said he didn't want to be seen in a public place with Anderson * * * Anderson said [Roger] Clinton told him that he had been approached by State Police investigators and that he was very, very frightened, totally frightened to death. He said [Roger] Clinton informed him that the investigators wanted to set up three people: [Roger] Clinton's drug supplier, Anderson and Lasater. [1008]

Although this trial occurred in Little Rock, Colonel Goodwin claimed that he was not aware of this testimony about Mr. Lasater even though it was printed in one of the state's two largest papers.[1009] Colonel Goodwin also asserted that he did not believe that an investigation of Mr. Lasater's drug activity had been initiated by the "summer of 1984." [1010]

In any event, Colonel Goodwin testified that he had at least one conversation with Governor Clinton, during which Mr. Lasater's drug use was discussed. Mr. Goodwin stated:

> I remember at least one of those meetings was after the legislation had passed. Governor Clinton, myself and a lot of other people knew that Dan Lasater was a user of cocaine. The conversation with the Governor, Clinton * * * was we sure don't want any firm involved in financing this that is about to be arrested for selling cocaine. I think he directed that statement to me in particular.[1011]

Colonel Goodwin believed that he implied to Governor Clinton that Mr. Lasater should not be have been involved in the financing for the police radio system, and that he was concerned about Mr. Lasater's participation in the deal.[1012] Mr. Goodwin said that he recognized that it would have been problematic to have a financial adviser with a drug problem doing work for the state.[1013]

The fact that it was well known or understood that Mr. Lasater was a cocaine user, gave Colonel Goodwin reason enough to disqualify Mr. Lasater from getting this police radio financing contract, and he believes that he made the Governor aware of his sentiments.[1014] At this point, the Governor asked Colonel Goodwin to ascertain if Lasater was in danger of being caught for using cocaine.[1015] Colonel Goodwin agreed that Governor Clinton's focus was not on Mr. Lasater's use of cocaine, rather it was directed to-

ward determining whether he was going to be arrested for such use while his company was handling the police radio transaction.[1016]

Colonel Goodwin then asked a captain in the ASP's Criminal Investigation Department to "quietly find out if there was a major investigation or any investigation going on Dan Lasater at the time."[1017] Betsey Wright testified that she also asked Colonel Goodwin to inquire as to whether there were any ongoing criminal investigations of Mr. Lasater. She testified that he reported back to her that there were no investigations outstanding.[1018]

On December 14, 1983, Mr. Lasater sent Governor Clinton a letter discussing a forthcoming bond liquidation.[1019] At the top of the letter is a note written by Mr. Clinton. The part of the note that is discernable addresses Linda Garner,[1020] who, at the time, was Insurance Commissioner for the State of Arkansas.[1021] The note, presumably written in reaction to the information in the letter, reads, "MS [* * *] after Garner [* * *] you talk to her—we must give him [* * *] B."[1022] Although the note is not precise as to what Governor Clinton wanted to give to Mr. Lasater, he apparently wanted to give him something involving Ms. Garner. That the letter discusses a liquidation of bonds by insurance companies, and suggests that Mr. Clinton wanted to provide liquidation business to Mr. Lasater.

In the summer of 1983, during her tenure as Insurance Commissioner, Ms. Garner placed Mount Hood Pension Fund, National Investors Life Insurance, and National Investors Pension Fund into receivership and became the receiver.[1023] Near the end of 1983, Mr. Lasater's company contacted Ms. Garner and expressed a desire to help with the administration of the firm's insurance portfolios.[1024] Sometime later, according to Ms. Garner, Governor Clinton "[e]xpressed concern that an Arkansas firm that had been handling might be losing the business. * * *"[1025] The Governor also suggested "[a]pointing a broker from E.F. Hutton to select who the portfolio manager would be."[1026] Ms. Garner deemed Governor Clinton's suggestion to be inappropriate and told him so.[1027] Mr. Lasater's firm had close ties with E.F. Hutton.

PART IV. DAVID HALE AND CAPITAL MANAGEMENT SERVICES, INC.

I. The Special Committee's Attempts To Obtain Hale Testimony

The Special Committee unsuccessfully sought to obtain the testimony of David Hale, former president of Capital Management Services, Inc., who was a critical witness in the recently concluded Tucker-McDougal trial.

In October and December 1995, the Committee was informed by the Office of the Independent Counsel that the OIC's "investigations and prosecutions would be seriously hindered or impeded if the Committee examined in any forum," David Hale,[1028] and that hearings "prior to the trial of *United States* v. *James B. McDougal, et al.,* regarding * * * Capital Management Services" would hinder or impede their investigations and prosecutions.[1029] As a result, the Special Committee postponed examination of Mr. Hale and hearings into Capital Management Services until after the Tucker-McDougal trial.

On May 17, 1996, after the conclusion of the trial, the Special Committee requested that Mr. Hale make himself available to provide deposition and hearing testimony.[1030] Mr. Hale's attorney, Theodore B. Olson, responded that "based on the rights guaranteed to him [Mr. Hale] by the Fifth Amendment to the Constitution of the United States, Mr. Hale respectfully" declines to appear before the Special Committee.[1031] Mr. Olson stated that "Mr. Hale has been explicitly threatened, in writing, with prosecution in Arkansas by Arkansas state authorities."[1032] Mr. Olson further stated that Mr. Hale "has been advised that any testimony that he may give before the Special Committee may be used against him by Arkansas prosecutors in any such future proceeding in Arkansas."[1033]

On June 5, 1996, the Committee subpoenaed Mr. Hale to make himself available for deposition and public hearing. Mr. Hale again asserted his Fifth Amendment privilege.[1034] John A. Mintz, an attorney for Mr. Hale, wrote: "In absence of a court order to testify and a grant of immunity as provided by Federal law," any testimony Mr. Hale may give before the Special Committee "may be used against" Mr. Hale.[1035]

On June 11, 1996, the Special Committee was not able to secure the 12 votes required to grant Mr. Hale limited use immunity for his testimony to the Special Committee. Therefore, the Committee will not have Mr. Hale's testimony to evaluate matters related to Capital Management Services as set forth in Senate Resolution 120.

II. Mr. Hale's Testimony in the McDougal Trial: What was Governor Clinton's Role in the Making of the $300,000 Master Marketing Loan?

Mr. Hale testified as a prosecution witness for nine days at the Tucker-McDougal. Specifically, Mr. Hale testified that he has known James McDougal, Jim Guy Tucker, and President Clinton for over 20 years. He met Mr. McDougal in 1959, when he and Mr. McDougal were members of the same fraternity at University of Arkansas.[1036] Mr. Hale met Jim Guy Tucker in the mid-1960s and hired Mr. Tucker as his lawyer in 1980.[1037] Mr. Hale met President Clinton in the early 1970s.[1038] Mr. Hale continued his relationship with these three men throughout the 1980s. In 1979, Mr. Hale obtained a license for a Small Business Investment Corporation ("SBIC"), Capital Management Services, Inc.[1039] This SBIC was required to loan money to those who were economically or socially disadvantaged.[1040]

Mr. Hale testified that in the fall 1985, Mr. Tucker asked him to attend a meeting with Mr. McDougal and Mr. Tucker.[1041] The three drove to Mr. McDougal's newly purchased Castle Grande development to view the site.[1042] Mr. McDougal said to Mr. Hale, "I'm going to need some funds, and we're going to have to clean up some members of the political family."[1043] Mr. Hale testified that when Mr. McDougal said "political family," he understood that Mr. McDougal meant "Bill Clinton, and some of his aides, Jim Guy Tucker and some of McDougal's associates."[1044]

Mr. Hale testified that later that evening, he and Messrs. McDougal and Tucker went to Mr. Tucker's house and reached an agreement related to a scheme to defraud the Small Business Ad-

ministration by fraudulently obtaining money from CMS.[1045] The agreement consisted of a plan to have Mr. Tucker "get my purchase of the property completed as fast as possible."[1046] After the sale, Mr. Hale would look for a buyer of the property, "someone we could put the property's name in."[1047] Madison Guaranty would finance the purchase, and according to Mr. Hale, "Jim would see to it that Madison Guaranty would make the loan on the purchase enough so that we would have $500,000 put in the SBIC."[1048] Mr. Hale explained, "[I]n order for Jim Guy and Jim and others to have the funds they needed, we had to take the money from Madison, put it into the SBIC, and then loan it back out."[1049]

Messrs. Tucker, McDougal and Hale decided on $500,000 to enable CMS to increase its SBIC loan limit from $150,000 to $300,000.[1050] Mr. McDougal told Mr. Hale that the urgency of the loan stemmed from the fact that federal regulators were coming in to examine Madison Guaranty.[1051]

In either January or February 1986, Mr. McDougal asked Mr. Hale to meet with Mr. McDougal and then-Governor Clinton "to talk about getting the loan ready and consummated."[1052] Mr. Hale went to Mr. McDougal's office at Castle Grande (where McDougal had moved when the examiners came into the S&L), and the three allegedly discussed the loan Mr. Hale was going to make.[1053]

Mr. McDougal proposed that the loan be made to Susan McDougal.[1054] Governor Clinton allegedly offered to provide as security for the loan property in Marion County (where Whitewater is located).[1055] Mr. McDougal also offered to put up as security his stock in Madison Guaranty.[1056] Governor Clinton then allegedly told Mr. Hale "be sure—my name cannot show up on this."[1057]

The transactions were consummated in February-April of 1986. On February 28, 1986, Madison Guaranty lent Dean Paul, Ltd. $1.2 million. According to the plan, Mr. Hale used $502,000 to put capital in CMS and applied for an additional $500,000 of matching funds from the SBA.[1058] This capital infusion raised CMS's lending limit to $300,000.[1059]

On April 3, 1986, Mr. Hale, through CMS, made a $300,000 loan to Susan McDougal d/b/a Master Marketing.[1060] Mrs. McDougal's application for the loan stated that Master Marketing was an advertising company.[35] Mr. Hale knew that the statement was untruthful.[1061]

Mr. Hale testified that he looked to then-Governor Clinton and Mr. McDougal to repay the loan because he believed that they were receiving the proceeds.[1062] In May 1986, Mr. McDougal contacted Mr. Hale in an attempt to alter the original loan documents because things were going bad at Madison.[1063]

In 1991, auditors questioned Mr. Hale about repayment of the loan.[1064] Mr. Hale arranged with Mr. McDougal's attorney to obtain a judgement, which would satisfy the auditors.[1065] Suit was filed, and Mrs. McDougal agreed to the judgement, although it was not

[35] In May, 1986, Mr. McDougal asked Mr. Hale to substitute another application for the file. According to Mr. Hale, Mr. McDougal was "real frightened and he was—he said he had to see my file, he had to get the file. I asked him what the problem was. He said he was going to have to change the purpose out. He had prepared another loan application showing the loan for a different purpose and he had to exchange that out, and he had things that were going bad at Madison. (McDougal trial, p. 3308). The other application states that "real estate brokerage and land development was Master Marketing's business. (McDougal trial, p. 3347).

collectable and only affected how much money Mr. Hale could have in CMS and how much money Mr. Hale could draw.[1066] Mr. Hale persuaded a friend to buy the loan and give CMS a note for it. The purpose of the note was to give the appearance to the auditors that the loan had been paid. Mr. Hale sent a letter to the SBA indicating that the Master Marketing loan had been paid in full, thereby hiding the loss.[1067]

The district court judge in the Tucker-McDougal trial refused to allow Mr. Hale to testify to the other two meetings that Mr. Hale has asserted he had with President Clinton. Mr. Hale has stated that shortly after the initial meeting with Mr. McDougal and Mr. Clinton, he ran into Mr. Clinton on the steps of the Arkansas Capitol. Governor Clinton allegedly approached Mr. Hale and said that Mr. McDougal would call Mr. Hale. Governor Clinton allegedly hoped that Mr. Hale would help Mr. McDougal.

Mr. Hale has further alleged that a third meeting took place at a Little Rock shopping mall. Governor Clinton, agitated, allegedly asked Mr. Hale: "Do you know what that —— Susan did with the money?" [1068]

William Watt, Mr. Hale's business associate also recalled the involvement of Governor Clinton in the Dean Paul loan.[1069] Mr. Watt recalled going to Mr. Hale's office, and Mr. Hale was anxious about getting the appraisals done quickly.[1070] Mr. Hale told Mr. Watt: "I've got to have this done." [1071] Mr. Hale said he had been "to a meeting out at the Capitol * * * or the Governor's mansion." [1072] Mr. Hale also said, "And Governor Clinton is interested. He wants me to try to get it to him to help his friends." [1073] During a subsequent telephone conversation with Mr. Watt, Mr. Hale raised the Governor's name again.[1074] According to Mr. Watt, Governor Clinton asked Mr. Hale, "Did you get my friends"— "Did you get my deal done? Did you help my friends?" [1075]

Robert Palmer, a real estate appraiser who worked on the appraisal of the property, provided testimony at the Tucker-McDougal trial concerning the involvement of politicians. Mr. Palmer testified that Mr. Watt, called told Mr. Palmer that the appraisals of the property had to be increased.[1076] Mr. Watt told Mr. Palmer that "they really needed a higher figure on the property" and that "David Hale was doing a favor for Jim McDougal." [1077] Mr. Palmer testified that Mr. Watt instructed him to "do whatever [he has] to do" even if that meant they "use an inflated value." [1078] Mr. Watt told Mr. Palmer not to "worry about any repercussions.[1079] Everybody knows about the deal * * * this goes all the way, you know, to the top." [1080] Mr. Palmer asked if it was "McDougal" and Watt said "higher." [1081] Mr. Palmer said "politically" and Watt said "yes." [1082]

Special Agent Michael Patkus of the FBI testified at the trial that of the $300,000 loan from CMS to Master Marketing, $111,500 went to Flowerwood Farms to be used for loan payments.[1083] One of the checks drawn on the Flowerwood Farms account was written to Whitewater Development Corporation in the amount of $24,455.06.[1084] The memo section of the check reflected that the funds were for a loan.[1085] Agent Patkus testified that the funds were deposited in Whitewater's account at Madison Guaranty were used to cover a check, dated March 22, 1985.[1086] According to Agent

Patkus, this March 22 check was made payable to Ozark Realty for $25,000.[1087]

President Clinton admitted that he went to Mr. McDougal's office at Castle Grande one time, but denied that Mr. Hale was present during the meeting.[1088] Mr. McDougal admitted, however, that he told an FBI agent on July 17, 1995, that Mr. Clinton had visited him at his Castle Grande offices on several occasions. The President claimed he was never present at any meeting between Mr. McDougal and Mr. Hale.[1089] Moreover, he denied telling Mr. Hale that his name could not appear on any loan or financial documents or that Mr. Hale could use President Clinton's property in Marion County as security for a loan.[1090] The President denied that he ever asked or pressured Mr. Hale to make a loan to him, Mr. McDougal, Mrs. McDougal or Mr. Tucker. The President alleged that Mr. Hale "has told two or three different stories" but they are "simply not true."[1091] The President denied having knowledge of or receiving the proceeds from the $300,000 loan from Capital Management Services to Master Marketing.[1092]

The Independent Counsel presented other evidence corroborating Mr. Hale's testimony about the meetings with President Clinton. A message slip from President Clinton indicates that he wants to meet with McDougal on a Saturday in January. Mr. McDougal claimed he does not know if he told Hale about that meeting, but he believes he did not.[1093] Another message slip indicates that Mr. McDougal called President Clinton on the Friday following the Saturday meeting. Mr. McDougal claimed that he does not know why he called the Governor on that day.[1094] Mr. McDougal also did not recall why the Governor called him on February 3, 1986.[1095]

PART V. THE LENDING ACTIVITIES OF PERRY COUNTY BANK IN THE 1990 CLINTON GUBERNATORIAL CAMPAIGN

Senate Resolution 120 § 1(b)(3)(G) authorized the Special Committee to Investigate Whitewater Development Corporation and Related Matters to investigate the "lending activities of Perry County Bank, Perryville, Arkansas, in connection with the 1990 Arkansas gubernatorial election."

The Committee began its investigation into these lending activities by subpoenaing documents from a number of agencies and individuals. Although the Committee did receive relevant records, it did not complete a comprehensive examination of this matter. The Committee deferred to the Office of the Independent Counsel's concerns and has decided to not hold public hearings, or compile a public record on this matter.

The Office of the Independent counsel stated in letters dated April 30, 1996 and May 13, 1996, in response to the Special Committee inquiries of March 28, 1996 and April 18, 1996, that its investigation would be hindered if the Committee examined a number of witnesses regarding Perry County Bank. Also, as requested in a June 12, 1996 letter from the Independent Counsel, the Committee has not included matters relating to the Perry County Bank in its report.

In the interest of ensuring the ability of the Independent Counsel to pursue its investigation the Committee deferred to the request of the Independent Counsel and did not pursue matters relating to

the Perry County Bank. It is unfortunate that the Committee could not fully complete its mandate under S. Res. 120. Nevertheless the Committee does not wish to impede or hinder the efforts of the Independent Counsel, or create a situation that may impinge on the rights of any individual to receive a fair trial.

ENDNOTES

[1] Williams & Connolly Document DKSN013309.
[2] Williams & Connolly Document DKSN013309.
[3] Norton, 5/6/96 pp. 8–9.
[4] June 11, 1996 Interview of Don Denton by FDIC.
[5] Stout, 4/30/96 Dep. p. 13.
[6] House Document Fundraiser 17.
[7] 12/19/95 Pillsbury Report p. 6.
[8] 12/19/95 Pillsbury Report p. 29.
[9] Clark, 1/30/96 Hrg. p. 24.
[10] RTC Document, 99000942.
[11] 12/28/95 Pillsbury Report p. 31.
[12] Williams & Connolly Document DKSN029024.
[13] Williams & Connolly Document DKSN029026.
[14] Clark, 6/10/96 FDIC OIG Interview p. 1.
[15] Denton Document 000000021.
[16] RTC Documents SEN33125, SEN33195.
[17] Clark, 6/10/96 FDIC OIG Interview p. 8.
[18] Clark, 6/10/96 FDIC OIG Interview p. 8.
[19] Clark, 6/10/96 FDIC OIG Interview p. 9.
[20] Clark, 6/10/96 FDIC OIG Interview p. 9.
[21] Clark, 6/10/96 FDIC OIG Interview p. 9.
[22] Denton, 6/11/96 FDIC OIG Interview p. 2.
[23] Denton, 6/11/96 FDIC OIG Interview p. 2.
[24] Denton, 6/11/96 FDIC OIG Interview p. 2.
[25] Denton, 6/11/96 FDIC OIG Interview p. 2.
[26] Denton, 6/11/96 FDIC OIG Interview pp. 2–3.
[27] Denton, 6/11/96 FDIC OIG Interview p. 3.
[28] Denton, 6/11/96 FDIC OIG Interview p. 3.
[29] 6/13/96 letter from Senators Alfonse D'Amato, Richard Shelby, Christopher Bond, Connie Mack, Lauch Faircloth, Robert Bennett, Rod Grams, Pete Domenici, Orrin Hatch, and Frank Murkowski to David Kendall.
[30] Affidavit of Hillary Rodham Clinton, June 17, 1996, p. 2.
[31] 6/17/95 Letter from David Kendall to Alfonse D'Amato, p. 2.
[32] H. Clinton, Interrogatory Answers to RTC, 5/24/95 p. 73.
[33] Black, 2/5/95 Dep. Majority Exhibits 1 & 2.
[34] Black, 2/5/95 Dep. Exhibit 1; Williams & Connolly Document DKSN028984.
[35] RTC Document S–INTR00096—S–INTR00097.
[36] RTC Document, 0000091.
[37] Hubbell, 12/27/95 RTC OIG Interview pp. 21–22.
[38] Hubbell, 4/20/95 RTC OIG Interview p. 7.
[39] Hubbell, 2/7/96 Hrg. pp. 191–192, 212.
[40] Hubbell, 2/7/96 Hrg. p. 212.
[41] Hubbell, 2/7/96 Hrg. p. 212.
[42] Hubbell, 12/27/95 RTC OIG Interview p. 22.
[43] Hubbell, 2/7/96 Hrg. p. 108.
[44] Hubbell, 6/4/96 Dep. p. 46.
[45] Hubbell, 6/4/96 Dep. pp. 51–52.
[46] Patten, 12/8/94 RTC OIG Interview p. 2.
[47] Patten, 12/8/94 RTC OIG Interview p. 2.
[48] RTC Document 005222.
[49] Denton, 6/3/96 FDIC OIG Interview pp. 4, 6, 8; Denton, 6/11/96 FDIC OIG Interview pp. 4, 6, 8.
[50] Denton, 6/3/96 FDIC OIG Interview p. 4.
[51] Denton, 6/3/96 FDIC OIG Interview p. 6.
[52] Denton, 6/11/96 FDIC OIG Interview p. 3.
[53] Denton, 6/11/96 FDIC OIG Interview p. 3.
[54] Denton, 6/11/96 FDIC OIG Interview p. 3.
[55] Hubbell, 2/7/96 Hrg. pp. 14–15.
[56] Hubbell, 2/7/96 Hrg. pp. 17–26.
[57] Latham, 5/16/96 Hrg. p. 15.
[58] W. Clinton, 4/28/96 McDougal Trial Testimony p. 120.
[59] Associated Press, 5/24/95, "Text of First Lady Hillary Rodham Clinton's News Conference in the State Dining Room of the White House."
[60] Associated Press, 5/24/95, "Text of First Lady Hillary Rodham Clinton's News Conference in the State Dining Room of the White House."
[61] Knight, 05/16/96 Hrg. p. 10.
[62] Knight, 4/26/96 Dep. p. 13.

[63] H. Clinton, 11/10/94 FDIC OIG Interview p. 3.
[64] Massey, 1/11/96 Hrg, p. 233.
[65] Massey, 1/11/96 Hrg. pp. 18–19.
[66] Massey, 1/11/96 Hrg. pp. 25–26.
[67] Massey, 1/11/96 Hrg. pp. 29, 222–23.
[68] Bunch Document 5/14/96 (Not Numbered).
[69] Bunch, 5/16/96 Hrg. pp. 18–21.
[70] H. Clinton, Interrogatory Answers to RTC, 5/24/95 p. 34.
[71] H. Clinton, Interrogatory Answers to RTC, 5/24/95 p. 41.
[72] Williams & Connolly Document DKSN028934.
[73] Schaffer, 1/25/96 Hrg. pp. 24–28.
[74] Massey, 1/11/96 Hrg. pp. 184–185.
[75] Massey, 01/11/96 Hrg. p. 113.
[76] RTC Document MG0000759; Williams & Connolly Document DKSN 025966; Lyon, 12/14/95 Dep. p. 55.
[77] Herr, 4/24/96 Hrg. pp. 18–19.
[78] RTC Document DKRT800606A.
[79] Herr, 4/24/96 Hrg. pp. 18–19.
[80] Bratton, 1/5/96 Dep. pp. 44–45.
[81] Williams & Connolly Document DKSN018008.
[82] Williams & Connolly Document DKSN018011.
[83] Denton, 5/8/96 Hrg. pp. 21–23.
[84] Denton, 5/8/96 Hrg. p. 66.
[85] Norton, 5/15/96 Hrg. pp. 4–5.
[86] Norton, 5/15/96 Hrg. pp. 8–9.
[87] Ritter, 4/24/96 Dep. pp. 52–55.
[88] Ritter, 4/24/96 Dep. pp. 52–55; Pockrus, 4/26/96 Dep. pp. 41–42.
[89] Burge, 2/15/96 Dep. pp. 85–86.
[90] Strange, 5/2/96 Dep. pp. 55–57.
[91] Pockrus, 4/26/96 Dep. pp. 24–26.
[92] Jackson, 2/12/96 Dep. pp. 46–48.
[93] Jackson, 2/12/96 Dep. p. 48.
[94] Lyon, 1/23/96 Hrg. p. 30.
[95] Lasater, 2/22/96 Dep. pp. 144–145; FDIC OIG Report of Investigation, Vol. 3, Exhibit 51.
[96] Lasater, 5/1/96 Hrg. p. 28.
[97] Thomasson, 2/23/96 Dep. pp. 85–87.
[98] Stout, 4/30/96 Dep. pp. 30–31.
[99] Chandler, 5/1/96 Hrg. pp. 191–93.
[100] Stout, 4/30/96, Dep. p. 80.
[101] Stout, 4/30/96 Dep. pp. 14, 20.
[102] Garner, 6/13/96 Dep. pp. 29–31, 44.
[103] Garner, 6/13/96 Dep. pp. 32–33.
[104] Williams & Connolly Documents DKSN027162 & DKSN018184.
[105] Pillsbury Madison & Sutro, "Madison Guaranty Savings & Loan and Whitewater Development Company, Inc., A Preliminary Report to the Resolution Trust Corporation," April 24, 1995, pp. 130–131 (hereinafter the "4/24/95 Pillsbury Report").
[106] W. Clinton, 4/28/96 McDougal Trial Testimony pp. 13–14.
[107] W. Clinton, 4/28/96 McDougal Trial Testimony p. 13.
[108] W. Clinton, 4/28/96 McDougal Trial Testimony p. 13.
[109] 4/24/95 Pillsbury Report p. 17.
[110] W. Clinton, 4/28/96 McDougal Trial Testimony p. 13.
[111] 4/24/96 Pillsbury Report p. 15.
[112] 4/24/96 Pillsbury Report p. 17.
[113] 4/24/96 Pillsbury Report p. 18.
[114] 4/24/96 Pillsbury Report p. 17.
[115] 4/24/96 Pillsbury Report p. 19.
[116] 4/24/95 Pillsbury Report pp. 19–22.
[117] W. Clinton, Interrogatory Answers to RTC 5/24/95 p. 4, Williams & Connolly Document DKSN001095.
[118] H. Clinton, Interrogatory Answers to RTC, 5/24/95, pp. 27–28, Williams & Connolly Document DKSN000793–794.
[119] H. Clinton, Interrogatory Answers to RTC, 5/24/95, pp. 27–28, Williams & Connolly Document DKSN000793–794).
[120] The RTC interrogatories state, in part:

Interrogatory No. 1: DESCRIBE each and every occasion before August 1978 on which YOU:

(d) Invested in real estate (including any investments in corporations and partnerships that dealt primarily in real estate. In answering this interrogatory, be sure to DESCRIBE the real estate transactions referred to in documents DKRT900707, DKRT900715 and DKRT900716.

The referenced documents which were attached to the interrogatories sent to President Clinton include: (1) Schedule D (Form 1040) from the Clintons' 1978 Federal Income Tax Return showing capital gains and losses (DKRT900707); (2) Schedule 2B attached to the same return showing long term capital gains (DKRT900715); and, (3) an un-numbered schedule showing an installment gain on sale for 15 acres of unimproved land (DKRT900716).
[121] W. Clinton, Interrogatory Answers to RTC, 5/24/95 pp. 1–3.
[122] RTC Document DKRT900707.
[123] RTC Document DKRT900707, DKRT900716.
[124] 4/24/95 Pillsbury Report p. 13.
[125] Williams & Connolly Document DKSN022069 626

[126] Haddon Morgan & Foreman Documents LP0656–LP0672.
[127] Williams & Connolly Document DKSN022069.
[128] Williams & Connolly Document DKSN022066.
[129] Williams & Connolly Document DKSN022961.
[130] Norton, 5/15/96 Hrg. pp. 21–22.
[131] Norton, 5/15/96 Hrg. pp. 21–22.
[132] Norton, 5/15/96 Hrg. pp. 8–9.
[133] Norton, 5/15/96 Hrg. pp. 5–6.
[134] Norton, 5/15/96 Hrg. pp. 4–5.
[135] Norton, 5/15/96 Hrg. p. 7.
[136] Norton, 5/15/96 Hrg. pp. 7–8.
[137] Norton, 5/15/96 Hrg. pp. 8–9.
[138] Norton, 5/15/96 Hrg. pp. 8–9.
[139] Norton, 5/15/96 Hrg. pp. 8–9.
[140] The initial loan was made by several bank insiders with an interest in this land deal steered the loan to the bank. (*See generally,* Burge, 2/15/96 Dep., pp. 22–26). The original Whitewater loan for $182,611 was brought to the Flippin Bank by Chris Wade, a director of Flippin Bank and the local realtor who sold the property, and ushered through with the assistance of James Patterson, President and director of Flippin Bank and a shareholder in 101 River Development, Inc., the owners of a larger parcel of land that included the Whitewater property. (Burge, 2/15/96 Dep. p. 21).
[141] Mercantile Bank Document D28.
[142] Burge, 2/15/96 Dep. pp. 21–22.
[143] Burge, 5/8/96 Hrg. pp. 17–20.
[144] Burge, 5/8/96 Hrg. p. 71.
[145] Burge, 2/15/96 Dep. pp. 49, 54.
[146] Denton, 5/8/96 Hrg. pp. 75–76.
[147] Denton, 5/8/96 Hrg. p. 87.
[148] Denton, 5/9/96 Hrg. pp. 21–23.
[149] Berry, 5/10/96 Dep. pp. 29–30.
[150] Denton, 5/8/96 Hrg. p. 66.
[151] Burge, 2/15/96 Dep., pp. 85–86.
[152] Denton, 5/8/96 Hrg. p. 51.
[153] Ritter, 4/24/96 Dep. p. 24.
[154] Ritter, 4/24/96 Dep. pp. 43–46.
[155] Ritter, 5/8/96 Hrg. pp. 32–35.
[156] Ritter, 4/24/96 Dep. p. 51.
[157] Ritter, 4/24/96 Dep. p. 51.
[158] Ritter, 4/24/96 Dep. p. 54.
[159] Ritter, 4/24/96 Dep. pp. 52–55.
[160] Ritter, 4/24/96 Dep. pp. 52–57.
[161] H. Clinton Interrogatory Answers to RTC, 5/24/95 p. 7; W. Clinton, Interrogatory Answers to RTC, 5/24/95 pp. 11–12.
[162] 4/24/95 Pillsbury Report pp. 30–31.
[163] Bunch, 5/2/96 Dep. pp. 37–38.
[164] Pockrus, 4/26/96 Dep. pp. 22–23.
[165] Bunch, 5/2/96 Dep. p. 42.
[166] RTC Document DKRT070031
[167] RTC Document DKRT070031
[168] Pockrus, 4/26/96 Dep. pp. 10, 14.
[169] RTC Document DKRT400134
[170] Pockrus, 4/26/96 Dep. p. 16.
[171] Pockrus, 4/26/96 Dep. pp. 41–42.
[172] Pockrus, 4/26/96 Dep. pp. 32, 38.
[173] Jackson, 2/12/96 Dep. pp. 24–26.
[174] Jackson, 2/12/96 Dep. p. 28.
[175] Jackson, 2/12/96 Dep. pp. 45–46.
[176] Madison Cease & Desist Order
[177] Jackson, 2/12/96 Dep. pp. 24–26.
[178] Pockrus, 4/26/96 Dep. pp. 24–26.
[179] Jackson, 2/12/96 Dep. pp. 38–40.
[180] Jackson, 2/12/96 Dep. p. 44.
[181] Jackson, 2/12/96 Dep. pp. 46–47.
[182] 4/24/95 Pillsbury Report p. 65.
[183] Campbell, 4/29/96 Dep. pp. 51–52.
[184] Campbell, 4/29/96 Dep. pp. 41–44.
[185] Lyon, 1/23/96 Hrg. p. 30.
[186] Security Bank 11/20/86 Letter to HRC re: Loan over due $15,435.31.
[187] Jackson, 2/12/96 Dep. pp. 86–88.
[188] Security Bank 1/4/96 (Not Numbered) (10/5/87 HRC Loan) Application.
[189] Jackson, 2/12/96 Dep. pp. 89–91.
[190] H. Clinton, Interrogatory Answers to RTC, 5/24/95 pp. 15–16.
[191] RTC Document, DKRT100318, 200743–46, 400481.
[192] Webb, 12/18/95 Dep. pp. 12–13.
[193] Union National Bank, 4/26/96 (Not Numbered).
[194] RTC Document DKRT100649–653.
[195] RTC Document DKRT200475.
[196] 4/24/95 Pillsbury Report pp. 50,127.

[197] Strange, 5/2/96 Dep. p. 74.
[198] Strange, 5/2/96 Dep. pp. 55–56.
[199] Strange, 5/2/96 Dep. pp. 55, 67–68, 77–82
[200] *See, e.g.,* Ritter, 4/24/96 Dep. pp. 19, 69–70; Dewey, 5/3/96 Dep. pp. 15, 31, 55–56; Proctor, 5/2/96 Dep. p. 26.
[201] Ritter, 4/24/96 Dep. pp. 19–20.
[202] Proctor, 5/8/96 Hrg. p. 109.
[203] Proctor, 5/2/96 Dep. p. 52.
[204] RTC Document DKRT000376.
[205] 4/24/95 Pillsbury Report p. 22.
[206] 3/5/84 Letter from Ed Penick, TC Bancshares to the Federal Reserve Bank of St. Louis; Penick, 5/9/96 Hrg. p. 85.
[207] Strange, 5/9/96 Hrg. p. 186.
[208] Proctor, 5/2/96 Dep. pp. 63–64.
[209] Penick, 5/9/96 Hrg. p. 85.
[210] Penick, 5/3/96 Dep. pp. 10–12.
[211] Sisk/Grobmyer, 5/7/96 Dep. p. 25; Dewey, 5/3/96 Dep. p. 50.
[212] Penick, 5/3/96 Dep. pp. 47–50.
[213] Mercantile Bank Document 4/25/96 (Not Numbered) (5/27/86 File Notes of Edward M. Penick, Jr.).
[214] 1987 Ark. Acts 539.
[215] Ark. Const. Ann. amend. 14 (Michie 1987 & Supp. 19950 (Ex. A).
[216] Penick, 5/3/96 Dep. p. 52.
[217] Penick, 5/3/96 Dep. p. 48.
[218] Penick, 5/3/96 Dep. pp. 47–51; Berry, 5/10/96 Dep. pp. 36–39; 49–50.
[219] 4/24/95 Pillsbury Report pp. 131–132.
[220] RTC Document DKRT200475.
[221] RTC Document DKRT700113.
[222] Proctor, 5/2/96 Dep. p. 52.
[223] Strange, 5/2/96 Dep. p. 35.
[224] Proctor, 5/2/96 Dep. p. 52.
[225] Mercantile Bank Document D212.
[226] Proctor, 5/2/96 Dep. p. 52; Dewey, 5/3/96 Dep. p. 21.
[227] Dewey, 5/3/96 Dep. p. 22–23.
[228] Proctor, 5/8/96 Hrg. pp. 108–110.
[229] Dewey, 5/3/96 Dep. p. 66.
[230] Strange, 5/9/96 Hrg. pp. 91–93.
[231] Penick, 5/3/96 Dep. pp. 22–24.
[232] Penick, 5/3/96 Dep. pp. 22–31.
[233] Proctor, 5/2/96 Dep. p. 55.; Dewey 5/3/96 Dep. p. 28.
[234] Penick, 5/3/96 Dep. pp. 22–23, 32.
[235] RTC Document DKRT700294.
[236] Eldridge, 5/9/96 Hrg. p. 162.
[237] The McDougals never provided a financial statement for this renewal, and in December 1987, 1st Ozark waived the requirement for them. (Mercantile Bank Document D173).
[238] Mercantile Bank Document, 5/2/96 (Not Numbered).
[239] 809 F.2d. 266 (5th Cir., 1987).
[240] Hartsfield, 5/7/96 Dep. pp. 32–34, 49–50.
[241] Hartsfield, 5/7/96 Dep. pp. 69–70; Wright, Lindsey & Jennings Document JRTS00010, 00012 and 00494.
[242] Penick 5/3/96 Dep. pp. 73–79; Wright, Lindsey & Jennings Document JRTS00002, 00012, 00142–00143, 00491, 00496–00497 and 00593.
[243] Wright, Lindsey & Jennings Document 00204–00205.
[244] Wright, Lindsey & Jennings Document 000118.
[245] Wright, Lindsey & Jennings Document JRTS00012, 00593.
[246] Hartsfield, 5/7/96 Dep. pp. 53–54, 68–70.
[247] Hartsfield, 5/7/96 Dep. pp. 54–57; Wright, Lindsey & Jennings Document JRTS00142, 00593.
[248] Wright, Lindsey & Jennings Document JRTS00491.
[249] Mercantile Bank Document D163.
[250] Proctor, 5/8/96 Hrg. pp. 131–134.
[251] Mercantile Bank Document D186–187.
[252] Wright, Lindsey & Jennings Document JRTS00382.
[253] Wright, Lindsey & Jennings Document JRTS00197.
[254] Wright, Lindsey & Jennings Document JRTS00195.
[255] Wright, Lindsey & Jennings Document JRTS00109.
[256] Wright, Lindsey & Jennings Document JRTS00206.
[257] Penick, 5/9/96 Hrg. pp. 116–117.
[258] Wright, Lindsey & Jennings Document JRTS00141.
[259] Wright, Lindsey & Jennings Document, JRTS00204.
[260] Penick, 5/9/96 Hrg. pp. 191–192; 1988 Ark, Acts 12 (extraordinary session).
[261] Mercantile Bank Document D184.
[262] Proctor, 5/8/96 Hrg. pp. 133–135.
[263] Jeff Gerth, "The 1992 Campaign: Personal Finances; Clintons Joined S. & L. Operator in an Ozark Real Estate Venture," N. Y. Times, Mar. 8, 1992, p. A1.
[264] Lynch, 5/14/96 Dep. pp. 94, 107–108.
[265] Lynch, 5/14/96 Dep. pp. 104–112.
[266] Blair, 2/19/96 Dep. p. 25.

[267] Blair, 2/19/96 Dep. p. 25; Keker & Van Ness Document LML103.
[268] Lynch, 5/14/96 Dep. p. 54.
[269] Keker & Van Ness Document LML0103.
[270] Keker & Van Ness Document LML0103.
[271] Keker & Van Ness Document LML0103.
[272] Keker & Van Ness Document LML0104.
[273] RTC Document S–MG00085.
[274] RTC Document S–MG00085.
[275] Blair, 2/19/96 Dep. pp. 103–104.
[276] Blair, 2/19/96 Dep. pp. 101–103.
[277] Patterson, 5/8/96 Hrg. pp. 137–138.
[278] River Valley Bank Document 4/26/96 (Not Numbered) (Mortgage Notes for Lots 2, 9, 23, 30, 37, 43 and 44 of Whitewater Estates).
[279] Hatfield & Lassiter, 2/21/96 (Not Numbered) ($9,628.67 check from Ozark Air Services to First Ozark National Bank signed by Chris Wade designated to "payoff Whitewater Loan").
[280] Proctor, 5/8/96 Hrg. pp. 173–175.
[281] 1/4/96, Letter from Jack T. Lassiter to Special Committee.
[282] Patterson, 5/8/96 Hrg. pp. 136–138.
[283] Patterson, 5/8/96 Hrg. p. 157.
[284] Patterson, 5/8/96 Hrg. p. 153.
[285] Patterson, 5/8/95 Hrg. p. 157.
[286] Patterson, 5/8/96 Hrg. p. 158.
[287] Patterson, 5/8/96 Hrg. pp. 141; 152–153.
[288] Patterson, 5/8/96 Hrg. p. 157.
[289] Patterson, 5/8/96 Hrg. pp. 150–153; 156.
[290] Lyons, 6/5/96 Dep. p. 11
[291] Lyons, 11/2/95 Dep. p. 10.
[292] Lyons, 11//2/95 Dep. pp. 11, 13.
[293] Lyons, 11/2/95 Dep. p. 19.
[294] Lyons, 6/5/96 Dep. p. 11.
[295] Lyons, 6/5/96 Dep. p. 10.
[296] Patten, 5/31/96 Dep. p. 9.
[297] Lyons, 11/2/95 Dep. p. 47.
[298] Lyons, 11/2/95 Dep. p. 47.
[299] Haddon Morgan & Foreman Document LP01155.
[300] Patten, 5/31/96 Dep. pp. 69–71.
[301] Patten, 5/31/96 Dep. pp. 12–13.
[302] Patten, 5/31/96 Dep. pp. 12–13.
[303] Patten, 5/31/96 Dep. pp. 69–71.
[304] Haddon Morgan & Foreman Documents LP01108–114, LP01115–169 and LP01170–176.
[305] Haddon Morgan & Foreman Documents LP01177–90.
[306] Haddon Morgan & Foreman Documents LP01101–107.
[307] Patten, 5/31/96 Dep. p. 75.
[308] Patten, 5/31/96 Dep. pp. 19–20.
[309] Patten, 5/31/96 Dep. pp. 75–77.
[310] Lyons, 11/2/95 Dep. p. 103.
[311] Lyons, 11/2/95 Dep. p. 112.
[312] Haddon Morgan & Foreman Documents LP01086–92.
[313] Haddon Morgan & Foreman Documents LP01086–92.
[314] Haddon Morgan & Foreman Documents LP01058–69.
[315] Haddon Morgan & Foreman Documents LP01115–119.
[316] Lyons Documents JML 077–78.
[317] Lyons, 11/2/95 Dep. p. 112.
[318] Patten, 5/31/96 Dep. p. 68.
[319] Haddon Morgan & Foreman Documents LP01105–14.
[320] Lyons Documents JML 140.
[321] Lyons Documents JML 140.
[322] Lyons Documents JML 140.
[323] Lyons Documents JML 140.
[324] Lindsey, 6/12/95 Dep. pp. 79–80.
[325] Lindsey, 6/12/95 Dep. pp. 79–80.
[326] Lyons Documents JML 2584–85.
[327] Lyons Documents JML 2584–85.
[328] Haddon Morgan & Foreman Documents LP00014.
[329] Williams & Connolly Document DKSN000481.
[330] Hearings before the Special Committee to Investigate Whitewater Development Corporation and Related Matters, administered by the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, on the Inquiry into whether Improper Conduct Occurred Regarding the Way in which White House Officials Handled Documents in the Office of White House Deputy Counsel Vincent W. Foster, Jr., 104th Cong., 1st Sess., July 18, 1995—August 10, 1995 [hereinafter "S. Hrg."], 8/8/95 p. 28; Williams & Connolly Document DKSN000482.
[331] Blair, 2/19/96 Dep. p. 62.
[332] Blair, 2/19/96 Dep. p. 67.
[333] Blair, 2/19/96 Dep. p. 67.
[334] Blair, 2/19/96 Dep. p. 69.
[335] Blair, 2/19/96 Dep. p. 70.
[336] Blair, 2/19/96 Dep. p. 72.
[337] Blair, 2/19/96 Dep. p. 72.

[338] Blair, 2/19/96 Dep. p. 84.
[339] Blair, 2/19/96 Dep. p. 63.
[340] Blair, 2/19/96 Dep. p. 73.
[341] Blair, 2/19/96 Dep. p. 79.
[342] Redden, 5/30/96 Dep. p. 237.
[343] Williams & Connolly Document DKSN000518.
[344] Williams & Connolly Document DKSN000514.
[345] Jeff Gerth and Stephen Engleberg, "Documents Show Clintons Enjoyed Far Vaster Protection from Whitewater Losses," *New York Times,* July 15 1995, at A18.
[346] Williams & Connolly Document DKSN000515.
[347] Williams & Connolly Document DKSN000515.
[348] Williams & Connolly Document DKSN000518.
[349] Williams & Connolly Document DKSN000519.
[350] Sidley & Austin Document 0000185.
[351] Sidley & Austin Document 0000185.
[352] Redden, 5/30/96 Dep. p. 228.
[353] Redden, 5/30/96 Dep. pp. 230–231.
[354] Jeff Gerth and Stephen Engleberg, "Documents Show Clintons Enjoyed Far Vaster Protection from Whitewater Losses," *New York Times,* July 15, 1995, at A18.
[355] Redden, 5/30/96 Dep. p. 234.
[356] Redden, 5/30/96 Dep. p. 234.
[357] 4/24/95 Pillsbury Report, pp. 130–31.
[358] Norton, 5/15/96 Hrg. pp. 3–4; Norton, 5/6/96 Dep. pp. 83–84.
[359] Norton, 5/6/96 Dep. pp. 92–93, 100–101.
[360] Norton, 5/15/96 Hrg. pp. 8–9.
[361] Norton, 5/15/96 Hrg. pp. 3–4.
[362] Norton, 5/15/96 Hrg. pp. 3–4.
[363] Norton, 5/6/96 Dep. pp. 20 and 83–84.
[364] Norton, 5/15/96 Hrg. pp. 8–9.
[365] Haddon Morgan & Foreman Document LP01547.
[366] Haddon Morgan & Foreman Document LP0663.
[367] Haddon Morgan & Foreman Document LP00672.
[368] Haddon Morgan & Foreman Documents LP00663, LP00672.
[369] RTC Document DKRT800001–20.
[370] Haddon Morgan & Foreman Document LP00682.
[371] Haddon Morgan & Foreman Document 133–00000518–531.
[372] RTC Document DKRT900994.
[373] RTC Document DKRT800044–68.
[374] RTC Document DKRT800053.
[375] RTC Document DKRT800009.
[376] RTC Document DKRT800001–20.
[377] Internal Revenue Code §163(a).
[378] RTC Document DKRT8000533.
[379] RTC Document DKRT11000804–808.
[380] RTC Document DKRT800533.
[381] Haddon Morgan & Foreman Document LP00673–89.
[382] RTC Production DKRT800533.
[383] RTC Document DKRT800533.
[384] RTC Document DKRT800533.
[385] Letter from David Kendall to the Honorable James A. Leach, May 24, 1996, forwarding a report entitled "Review of Clinton Tax Adjustments Proposed by the House Committee on Banking and Financial Services," p.8 (hereinafter the "Kendall Report").
[386] Lyons Document JLM 088.
[387] 4/24/95 Pillsbury Report, p. 31.
[388] Kendall Report, pp. 10–11.
[389] *Bayou Verret Land Co.* v. *Commissioner,* 52 T.C. 971, 985–986 (1969), *affd. on this issue* 450 F.2d 850 (5th Cir. 1971). However, a taxpayer cannot deduct prepaid interest, regardless of her intent.
[390] *Bayou Verret Land Co.* v. *Commissioner,* 52 T.C. 971, 985–986 (1969), *affd. on this issue* 450 F.2d 850 (5th Cir. 1971).
[391] 4/24/95 Pillsbury Report, p. 31.
[392] 4/24/95 Pillsbury Report, p. 31.
[393] RTC Document DKRT900145.
[394] 4/24/95 Pillsbury Report pp. 15–16.
[395] RTC Document DKRT900155.
[396] RTC Document DKRT900155.
[397] RTC Document BCV0004.
[398] RTC Document DKRT900968.
[399] RTC Document DKRT901077.
[400] Internal Revenue Code § 61(a)(12).
[401] *Lash* v. *Commissioner,* T.C. Memo 1956–87 ("amounts expended by Bristol for petitioner's benefit would constitute income to him. . . .").
[402] Internal Revenue Code § 108(e)(4)(A).
[403] Haddon Morgan & Foreman Document LP00106.
[404] Haddon Morgan & Foreman LP00106.
[405] Haddon Morgan & Foreman Documents LP01957–69.
[406] W.Clinton, Interrogatory Answers to RTC, 5/24/95 pp. 12–13.
[407] Smith, 4/23/96 Dep. p. 25.

[408] Williams & Connolly Document DKSN 021879 (Bank of Cherry Valley note, dated 4/13/81); RTC Document (Not Numbered) Bank of Cherry Valley note, dated 12/9/82, with James McDougal as maker, signed only by James McDougal; Bank of Cherry Valley note, dated 6/9/84, with James McDougal as maker, signed only by James McDougal; Bank of Cherry Valley note, dated 12/3/84, with James McDougal as maker, signed only by James McDougal.
[409] Williams & Connolly Document DKSN 021879 (Bank of Cherry Valley note, dated 4/13/81); RTC Production (Not Numbered) Bank of Cherry Valley note, dated 12/9/82, with James McDougal as maker, signed only by James McDougal; Bank of Cherry Valley note, dated 6/9/84, with James McDougal as maker, signed only by James McDougal; Bank of Cherry Valley note, dated 12/3/84, with James McDougal as maker, signed only by James McDougal.
[410] RTC Document DKRT100500.
[411] RTC Document DKRT100500.
[412] RTC Document CBF0280.
[413] Hogan & Hartson Document BL011114.
[414] RTC Document DKRT500067.
[415] RTC Document DKRT500067.
[416] Haddon Morgan & Foreman Document LP02928.
[417] Internal Revenue Code § 61(a)(12)
[418] *Lash* v. *Commissioner,* T.C. Memo 1956–87 ("amounts expended by Bristol for petitioner's benefit would constitute income to him. . . .").
[419] W. Clinton, Interrogatory Answers to RTC, 5/24/95 pp. 23–24.
[420] RTC Document DKRT400989.
[421] RTC Document DKRT800044–68; Haddon Morgan & Foreman Document LP01957–88.
[422] Haddon Morgan & Foreman Document LP01981–2.
[423] Haddon Morgan & Foreman Document LP02018.
[424] Kendall Report, p. 11.
[425] Gerth and Labaton, "Whitewater Papers Cast Doubt on Clinton Account of a Tax Underpayment," *The New York Times,* August 6, 1995, p. 20.
[426] Haddon Morgan & Foreman Document LP00109.
[427] Haddon Morgan & Foreman Document LP00109.
[428] Gerth and Labaton, "Whitewater Papers Cast Doubt on Clinton Account of a Tax Underpayment," *The New York Times,* August 6, 1995, p. 20.
[429] Gerth and Labaton, "Whitewater Papers Cast Doubt on Clinton Account of a Tax Underpayment," *The New York Times,* August 6, 1995, p. 20.
[430] Haddon Morgan & Foreman Document LP00528.
[431] Haddon Morgan & Foreman Document LP00790.
[432] Hogan & Hartson Document BL011121.
[433] Haddon Morgan & Foreman Document LP00858.
[434] Kendall Report, p. 11.
[435] Haddon Morgan & Foreman Document 133–00001008.
[436] Redden, 5/30/96 Dep. pp. 184–187.
[437] RTC Document DKRT101031–35 and DKRT101043–44.
[438] Haddon Morgan & Foreman Document LP00866.
[439] *See DeVere* v. *Commissioner,* 35 T.C.M. 28 (1976); *Anderson* v. *Commissioner,* 33 T.C.M. 234 (1974), *aff'd. per curiam,* 527 F.2d 198 (9th Cir., 1975).
[440] *Cornelia C.F. Horsford* v. *Commissioner,* 2 T.C. 826 (1943); *Estate of Movius,* 22 T.C. 391 (1954); *Steinert* v. *Commissioner,* 33 T.C. 447 (1959).
[441] Kendall Report, pp. 12–13.
[442] Haddon Morgan & Foreman Document LP00861–94.
[443] Haddon Morgan & Foreman Document LP00861—LP00894; Kendall Report, pp. 12–13.
[444] Kendall Report, pp. 11.
[445] RTC Document MG0000759; Williams & Connolly Document DKSN025966; Lyon, 12/14/95 Dep. p. 55.
[446] Herr, 4/24/96 Hrg. pp. 18–19.
[447] RTC Document DKRT800606A.
[448] 4/24/95, Pillsbury Report p. 43.
[449] 4/24/95, Pillsbury Report p. 43.
[450] 4/24/95, Pillsbury Report p. 43.
[451] 4/24/95, Pillsbury Report p. 43.
[452] 4/24/95, Pillsbury Report p. 45.
[453] 4/24/95, Pillsbury Report p. 43.
[454] 4/24/95, Pillsbury Report pp. 44–45.
[455] Clark, 1/30/96 Hrg. p. 9.
[456] Clark, 1/30/96 Hrg. p. 9.
[457] Clark, 1/30/96 Hrg. p. 15.
[458] Hogan & Hartson Document BL010705.
[459] Hogan & Hartson Document BL010705.
[460] Hogan & Hartson Document BL010705.
[461] Hogan & Hartson Document BL010705.
[462] Clark, 1/30/96 Hrg. p. 17.
[463] Clark, 1/30/96 Hrg. p. 18.
[464] Clark, 1/30/96 Hrg. p. 19.
[465] Clark, 1/30/96 Hrg. p. 21.
[466] Denton, 3/18/96 McDougal Trial Testimony p. 1025.
[467] Clark, 1/30/96 Hrg. p. 146.
[468] Clark, 1/30/96 Hrg. p. 155.
[469] Clark, 1/30/96 Hrg. pp. 155–56.
[470] Clark, 1/30/96 Hrg. p. 92.

[471] Clark, 1/30/96 Hrg. p. 10.
[472] Clark, 1/30/96 Hrg. p. 32.
[473] Denton, 3/18/96 McDougal Trial Testimony p. 1125.
[474] Palmer, 3/26/96 McDougal Trial Testimony pp. 2152, 2178, 2193.
[475] Clark, 1/30/96 Hrg. p. 142.
[476] Clark, 1/30/96 Hrg. p. 14.
[477] Clark, 1/30/96 Hrg. p. 15.
[478] O'Melveny & Meyers Document CCBW885–887.
[479] O'Melveny & Meyers, Document CCBW884
[480] O'Melveny & Meyers Document CCBW884.
[481] Bratton, 2/13/96 Hrg. pp. 6, 9.
[482] Bratton, 2/13/96 Hrg. p. 7.
[483] O'Melveny & Meyers Document CCBW885.
[484] Bratton, 2/13/96 Hrg. p. 7.
[485] Wright, 1/26/96 Dep. p. 229.
[486] Wright, 1/26/96 Dep. p. 230.
[487] Clark, 1/30/96 Hrg. p. 115.
[488] Clark, 1/30/96 Hrg. pp. 116–17.
[489] Clark, 1/30/96 Hrg. p. 120.
[490] RTC Document 001395.
[491] RTC Document 001395.
[492] Clark, 1/30/96 Hrg. p. 36.
[493] RTC Document 1403, 7432.
[494] Pulcer, 1/30/96 Hrg. pp. 122–123.
[495] Williams & Connolly Document DKSN013309.
[496] Williams & Connolly Document DKSN013309.
[497] Wright, 1/26/96 Dep. p. 232.
[498] Williams & Connolly Documents DKSN001168–9.
[499] Williams & Connolly Documents DKSN001168–9.
[500] Associated Press, 4/22/94, "Text of First Lady Hillary Rodham Clinton's News Conference in the State Dining Room of the White House."; H. Clinton, Interrogatory Answers to RTC 2/4/94 pp. 36–37; H. Clinton, 2/14/96 FDIC Interview pp. 91–96.
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[894] Thomasson, 2/23/96 Dep. pp. 16–17.
[895] Thomasson, 2/23/96 Dep. pp. 85–87.
[896] Williams & Connolly Document DKSN017642–DKSN017643.
[897] Thomasson, 2/23/96 Dep. p. 88.
[898] Lasater, 2/22/96 Dep. p. 132.
[899] Lasater, 2/22/96 Dep. p. 132.
[900] Drake, 5/1/96 Hrg. p. 16.
[901] Lasater, 5/1/96, Hrg. p. 19.
[902] Judgement and Probation/Commitment Order LR–CR–86158(1), 12/18/86.
[903] Id.
[904] Lasater, 5/1/96 Hrg. p. 5.
[905] Arkansas Gazette, "Judge sees 'clear pattern of fraud' by Locke." January 1985.
[906] Arkansas Gazette, "Judge sees 'clear pattern of fraud' by Locke." January 1985.
[907] Arkansas Gazette, "Judge sees 'clear pattern of fraud' by Locke." January 1985.
[908] Lasater, 5/1/96 Hrg. pp. 21–23.
[909] Lasater, 5/1/96 Hrg. pp. 24–25.
[910] Lasater, 2/22/96 Dep. 83; Thomasson, 2/23/96 Dep. pp. 55–58
[911] Lasater, 2/22/96 Dep. pp. 86–87.
[912] Lasater, 2/22/96 Dep. pp. 144–145.
[913] Lasater, 2/22/96 Dep. p. 144.
[914] FDIC OIG Report of Investigation, Vol. 3, Exhibit 51.
[915] FDIC OIG Report of Investigation, Vol. 3, Exhibit 51.
[916] Lasater, 2/22/96 Dep. p. 114; Wright, 2/27/96 Dep. p. 112.
[917] Lasater, 2/22/96 Dep. pp. 112–113.

[918] Lasater, 2/22/96 Dep. p. 106.
[919] Spivey, 8/9/95 Civil Dep. p. 6.
[920] Spivey, 8/9/95 Civil Dep. p. 24.
[921] Spivey, 8/9/95 Civil Dep. p. 23.
[922] Spivey, 8/9/95 Civil Dep. pp. 25–26.
[923] Spivey, 8/9/95 Civil Dep. p. 24.
[924] Spivey, 8/9/95 Civil Dep. p. 24.
[925] Lasater, 2/22/96 Dep. pp. 103–104.
[926] Lasater, 5/1/96 Hrg. p. 8.
[927] Williams & Connolly Document DKSN026466.
[928] Williams & Connolly Document DKSN026466.
[929] Williams & Connolly Document DKSN027456–7, DKSN026479, DKSN027455, DKSN027455–57, DKSN027573–74.
[930] Williams & Connolly Document DKSN27574.
[931] Lasater, 5/1/96 Hrg. p. 26–7.
[932] Williams & Connolly Document DKSN027573.
[933] Williams & Connolly Document DKSN027573–DKSN027574.
[934] Williams & Connolly Document DKSN027472.
[935] Williams & Connolly Document DKSN027472, DKSN027490.
[936] Williams & Connolly Document DKSN027473.
[937] Stout, 5/1/96 Hrg. p. 186; Chandler, 5/1/96 Hrg. p. 190; Williams & Connolly Document DKSN026171–26172.
[938] ADFA Document 2/17/83 (Not Numbered) (Minutes from February 17, 1983 Arkansas Housing Development Agency Board of Directors Meeting).
[939] Stout, 4/30/96 Dep. p. 13.
[940] Stout, 4/30/96 Dep. pp. 13–14.
[941] Stout, 4/30/96 Dep. p. 17.
[942] Stout, 5/1/96 Hrg. p. 186.
[943] Chandler, 5/1/96 Hrg. p. 191.
[944] Stout, 4/30/96 Dep. p. 22.
[945] Stout, 4/30/96 Dep. p. 23.
[946] Stout, 5/1/96 Hrg. p. 184.
[947] Stout, 4/30/96 Dep. pp. 43–44.
[948] Stout, 4/30/96 Dep. p. 80.
[949] Stout, 4/30/96 Dep. 15–16.
[950] Hardwicke, 2/15/96 Dep. p. 44.
[951] Hardwicke, 5/1/96 Hrg. p. 209.
[952] Stout, 4/30/96 Dep. pp. 24–25.
[953] Stout, 4/30/96 Dep. p. 20.
[954] ADFA Document 2/17/83 (Not numbered) (Minutes of February 17, 1983 Arkansas Housing Development Agency Board of Directors Meeting.)
[955] Stout, 4/30/96 Dep. pp. 13–14.
[956] Stout, 4/30/96 p. 14.
[957] Williams & Connolly Document DKSN027286.
[958] ADFA Document 4/12/83 (Not Numbered) (Minutes of Arkansas Housing Development Agency Executive Board's April 12, 1983 Meeting).
[959] ADFA Document 4/19/83 (Not numbered) (Minutes from April 19, 1983 Arkansas Housing Development Agency Special Executive Board meeting).
[960] Chandler, 5/1/96 Hrg. pp. 200–201.
[961] Chandler, 5/1/96 Hrg. pp. 201–202.
[962] Chandler, 5/1/96 Hrg. p. 202.
[963] Chandler, 5/1/96 Hrg. pp. 203–204.
[964] Chandler, 5/1/96 Hrg. p. 204.
[965] Nash, 4/30/96 Hrg. p. 121.
[966] Goodwin, 2/26/96 Dep. pp. 9–10.
[967] Goodwin, 2/26/96 Dep. p. 13.
[968] Goodwin, 2/26/96 Dep. pp. 9–10.
[969] Goodwin, 2/26/96 Dep. 10.
[970] Williams & Connolly Document DKSN018193–DKSN018199.
[971] FDIC Report of Investigation Vol. Exhibit XXX.
[972] Williams & Connolly Document DKSN027189–027191.
[973] TJ Raney Document 1.
[974] Snider, 2/7/96 Dep. pp. 70–71, 75, 80.
[975] Williams & Connolly Document DKSN027162.
[976] Arkansas State Police Document 4/25/96 (Not Numbered).
[977] Arkansas State Police Document 4/25/96 (Not Numbered).
[978] Drake, 1/24/96 Dep. p. 85.
[979] Snider, 2/7/96 Dep. pp. 70–71.
[980] Snider, 2/7/96 Dep. p. 76.
[981] Drake, 1/24/96 Dep. p. 86.
[982] Snider, 2/7/96 Dep. p. 159.
[983] Drake, 1/24/96 Dep. pp. 87–88.
[984] Drake, 1/24/96 p. 88.
[985] Wright, 4/25/96 Hrg. pp. 203–204.
[986] Wright, 4/25/96 Hrg. pp. 202–203.
[987] TJ Raney Document 74, 81, 83, & 84.
[988] Williams & Connolly Document DKSN027566.
[989] Young, 4/30/96 Hrg. p. 25.

[990] In connection with the underwriting contract for the police radio financing, the ASP originally received proposals from eight financial firms, and this field was reduced to four finalists during an ASP Financial Screening Committee meeting that occurred on May 3, 1985. The four finalists were Dabbs Sullivan, Stephens, Inc., First Capital Resources ("First Capital") and the Lasater syndicate. Williams & Connolly Production DKSN027166.
[991] Williams & Connolly Document DKSN027190.
[992] Williams & Connolly Document DKSN027214.
[993] Mitchum, 2/9/96 Dep. p. 72.
[994] Arkansas State Police Document 4/25/96 (Not Numbered).
[995] Mitchum, 2/9/96 Dep. p. 87.
[996] Mitchum, 2/9/96 Dep. p. 72.
[997] Arkansas State Police Document 4/25/96 (Not Numbered).
[998] Mitchum, 2/9/96 Dep. p. 87.
[999] Williams & Connolly Document DKSN027162.
[1000] Williams & Connolly Document DKSN027162.
[1001] Williams & Connolly Document DKSN027162 (emphasis in original).
[1002] Williams & Connolly Document DKSN018182.
[1003] Williams & Connolly DKSN018182.
[1004] Wright, 2/27/96 Dep. p. 132.
[1005] Williams & Connolly Document DKSN018184.
[1006] Williams & Connolly Document DKSN018184.
[1007] Williams & Connolly Document DKSN017636.
[1008] Williams & Connolly Document DKSN017635.
[1009] Goodwin, 4/30/96 Hrg. p. 21–22.
[1010] Goodwin, 4/30/96 Hrg. p. 21.
[1011] Goodwin, 2/26/96 Dep. p. 31.
[1012] Goodwin, 4/30/96 Hrg. p. 14.
[1013] Goodwin, 4/30/96 Hrg. p. 13.
[1014] Goodwin, 4/30/96 Hrg. p. 14.
[1015] Goodwin, 4/30/96 Hrg. p. 14.
[1016] Goodwin, 4/30/96 Hrg. pp. 14–15.
[1017] Goodwin, 2/26/96 Dep. p. 32.
[1018] Wright, 2/27/96 Dep. p. 151.
[1019] Williams & Connolly Document DKSN027455–DKSN027457
[1020] Williams & Connolly Document DKSN027455.
[1021] Garner, 6/13/96, Dep. p. 8.
[1022] Williams & Connolly Document DKSN027455.
[1023] Garner, 6/13/96, Dep. p. 18.
[1024] Garner, 6/13/96, Dep. pp. 22–23.
[1025] Garner, 6/13/96, Dep. p. 25.
[1026] Garner, 6/13/96, Dep. p. 26.
[1027] Garner, 6/13/96, Dep. pp. 26–27.
[1028] 12/4/95, Letter from the Office of Independent Counsel to Robert J. Giuffra, Jr. and Neal E. Kravitz.
[1029] 12/4/95, Letter from the Office of Independent Counsel to Robert J. Giuffra, Jr. and Neal E. Kravitz.
[1030] 5/17/96, Letter from Robert J. Giuffra, Jr. to Theodore B. Olson.
[1031] 5/23/96, Letter from Theodore B. Olson to Michael Chertoff and Richard Ben-Veniste.
[1032] 5/23/96, Letter from Theodore B. Olson to Michael Chertoff and Richard Ben-Veniste.
[1033] 5/23/96, Letter from Theodore B. Olson to Michael Chertoff and Richard Ben-Veniste.
[1034] 6/6/96, Letter from John A. Mintz to Senator D'Amato and Paul Sarbanes.
[1035] 6/6/96, Letter from John A. Mintz to Senator D'Amato and Paul Sarbanes.
[1036] Hale, 4/1/96 McDougal Trial Transcript p. 3052.
[1037] Hale, 4/1/96 McDougal Trial Transcript, p. 3054, 3058.
[1038] Hale, 4/1/96 McDougal Trial Transcript p. 3061.
[1039] Hale, 4/1/96 McDougal Trial Transcript p. 3069.
[1040] Hale, 4/1/96 McDougal Trial Transcript p. 3069.
[1041] Hale, 4/1/96 McDougal Trial Transcript p. 3083.
[1042] Hale, 4/1/96 McDougal Trial Transcript p. 3084.
[1043] Hale, 4/1/96 McDougal Trial Transcript p. 3098.
[1044] Hale, 4/1/96 McDougal Trial Transcript p. 3106.
[1045] Hale, 4/1/96 McDougal Trial Transcript p. 3102.
[1046] Hale, 4/1/96 McDougal Trial Transcript p. 3102.
[1047] Hale, 4/1/96 McDougal Trial Transcript p. 3102.
[1048] Hale, 4/1/96 McDougal Trial Transcript p. 3102.
[1049] Hale, 4/1/96 McDougal Trial Transcript p. 3102.
[1050] Hale, 4/1/96 McDougal Trial Transcript p. 3102.
[1051] Hale, 4/1/96 McDougal Trial Transcript p. 3123.
[1052] Hale, 4/2/96 McDougal Trial Transcript p. 3221.
[1053] Hale, 4/2/96 McDougal Trial Transcript p. 3222.
[1054] Hale, 4/2/96 McDougal Trial Transcript p. 3223.
[1055] Hale, 4/2/96 McDougal Trial Transcript p. 3223.
[1056] Hale, 4/2/96 McDougal Trial Transcript p. 3223.
[1057] Hale, 4/2/96 McDougal Trial Transcript p. 3224.
[1058] Hale, 4/2/96 McDougal Trial Transcript pp. 3293–99.
[1059] Hale, 4/2/96 McDougal Trial Transcript p. 3294.
[1060] Hale, 4/2/96 McDougal Trial Transcript p. 3305.
[1061] Hale, 4/2/96 McDougal Trial Transcript p. 3314.

[1062] Hale, 4/2/96 McDougal Trial Transcript p. 3314.
[1063] Hale, 4/2/96 McDougal Trial Transcript p. 3308.
[1064] Hale, 4/3/96 McDougal Trial Transcript p. 3375.
[1065] Hale, 4/3/96 McDougal Trial Transcript p. 3375.
[1066] Hale, 4/3/96 McDougal Trial Transcript p. 3378.
[1067] Hale, 4/3/96 McDougal Trial Transcript pp. 3378–3380.
[1068] White House Document S12532.
[1069] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1070] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1071] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1072] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1073] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1074] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1075] Watt, 3/27/96 McDougal Trial Transcript p. 2475.
[1076] Palmer, 3/26/96 McDougal Trial Transcript p. 2178.
[1077] Palmer, 3/26/96 McDougal Trial Transcript p. 2178.
[1078] Palmer, 3/26/96 McDougal Trial Transcript p. 2178.
[1079] Palmer, 3/26/96 McDougal Trial Transcript p. 2179.
[1080] Palmer, 3/26/96 McDougal Trial Transcript p. 2178.
[1081] Palmer, 3/26/96 McDougal Trial Transcript p. 2179.
[1082] Palmer, 3/26/96 McDougal Trial Transcript p. 2179.
[1083] Palmer, 3/26/96 McDougal Trial Transcript p. 6775.
[1084] Patkus, 5/3/96 McDougal Trial Transcript p. 6781.
[1085] Patkus, 5/3/96 McDougal Trial Transcript p. 6781.
[1086] Patkus, 5/3/96 McDougal Trial Transcript p. 6781.
[1087] Patkus, 5/3/96 McDougal Trial Transcript p. 6781.
[1088] W. Clinton, 4/28/96 McDougal Trial Testimony p. 22.
[1089] W. Clinton, 4/28/96 McDougal Trial Testimony p. 23.
[1090] W. Clinton, 4/28/96 McDougal Trial Testimony p. 23.
[1091] W. Clinton, 4/28/96 McDougal Trial Testimony p. 24.
[1092] W. Clinton, 4/28/96 McDougal Trial Testimony p. 37.
[1093] James McDougal, 5/8/96 McDougal-Tucker Trial Testimony p. 7327.
[1094] McDougal, 5/8/96 McDougal Trial Testimony p. 7327.
[1095] James McDougal, 5/8/96 McDougal-Tucker Trial Testimony p. 7328.

ADDITIONAL VIEWS OF SENATOR FAIRCLOTH (R–N.C.)

The Senate began its Whitewater hearings nearly eleven months ago, but many Americans are still wondering what Whitewater is all about.

To answer that question, first, it is important to remember that the Whitewater scandal is an outgrowth of the savings and loan scandal that cost the American taxpayers $150 billion. That monumental cost created ballooning deficits and a sluggish economy that allowed candidate Bill Clinton to run a campaign based on "It's the economy, stupid."

It is somewhat ironic then, that the First Couple, had a role, albeit relatively small, in that scandal; and may explain to some extent the extraordinary lengths to which they have gone to cover-up this story. After all, during Bill Clinton's tenure as Governor of Arkansas, 80% of the state-chartered savings and loans failed.

The guilty verdicts in Arkansas are a reminder that the American people have not forgotten that fraudulently run savings and loans like Madison Guaranty left them holding the tab. It was a system of heads I win; tails, the taxpayers lose. In the case of Madison, the taxpayers lost $68 million. With the Whitewater venture in particular, the taxpayers lost $88,000—more than the Clintons.

If Whitewater was about anything, it was exposing this microcosm of the savings and loan scandal—and letting the American people know that they too were on the losing end of the Clintons' no money down land deal.

The Clintons' association with the savings and loan crisis did not end with Whitewater. There is the question of Mrs. Clinton's work for Madison Guaranty and her role in the Castle Grande land deal. This aspect may yet prove to be the most serious charge.

Castle Grande was typical of many of the fraudulent schemes from that era. The law prevented the S&L from directly investing a large sum of money in a raw land deal. In order to evade the law, Jim McDougal merely found a "straw man" to act as a borrower. That borrower was Webster Hubbel's father-in-law, Seth Ward. Mrs. Clinton drafted the option that allowed the S&L to buy back the land. Thus, she finds herself at the center of the sham deal. This sham deal cost the American taxpayers over $3 million. It is not surprising that the Committee learned as late as Friday, June 14, 1996, the additional evidence that the First Lady was well aware, from a Madison insider, of the role she was playing in the scheme.

This may be the most plausible explanation yet of why the billing records, which detail work on the Castle Grande project, remained hidden for two years in the White House.

It has also been overlooked that Vince Foster was reminded that this remained a problem well into 1993, when Seth ward's letter

regarding his lawsuit against the RTC was forwarded to Foster at the White House.

Again, under the umbrella of what Whitewater is about, it should not be forgotten that the Clintons sought out these business associations with the likes of Jim McDougal, David Hale and Dan Lasater. Madison, for example, was a client because the Clintons wanted Madison to be a client. They were not a client, because of the efforts of an eager first year associate at the Rose Law Firm, the Committee's testimony on that point is very clear.

One aspect of the Rose Law Firm's work in the savings and loan field is worth mentioning, because it was not probed extensively by the Committee. This is the strange episode of Vince Foster and Mrs. Clinton, representing the federal government against Dan Lasater, in the failure of two savings and loans in Illinois. Mrs. Clinton played a role in reviewing the settlement agreement that allowed Dan Lasater to avoid repaying over $2 million to the taxpayers. Mr. Lasater was a convicted cocaine dealer, friend and contributor to Bill Clinton, benefactor of state bond contracts, and Roger Clinton's employer.

Again, in a word—this is Whitewater.

Whitewater became a national story because of the nearly obsessive manner in which the Clintons and their political appointees, spread throughout the federal government, from the RTC to the Small Business Administration, handled the story. Recall that the SBA tipped off the White House about the pending investigation of David Hale in May 1993. Further, recall the White House was aware in March 1993 of the first RTC criminal referral involving Madison, thanks to Roger Altman's immediate faxes to Bernie Nussbaum. The White House became aware of the second batch of criminal referrals before they were even sent to the Justice Department.

The White House also closely monitored the RTC civil investigation against the Clintons. White House aides got an inside briefing on the status, courtesy of Roger Altman. They then berated him for recusing himself from decision making. Of course, Maggie Williams, the First Lady's Chief of Staff, told the Committee that she never reported any information from the briefing to the First Lady. This was the first of a number of items that Ms. Williams remarkably never discussed with her superior. This either makes her a poor staff aide, or perhaps, a poor liar.

Further, when the Office of Government Ethics (OGE) reviewed the handling of White House, RTC, and Treasury contacts, the Whitewater Committee demonstrated that the OGE report was procedurally flawed. Even that report could not be conducted without White House interference. A significant, but overlooked point, was that the OGE never judged White House ethical behavior, even though the Committee was lead to believe that they did.

The Whitewater scandal was further defined by the way in which the White House handled the death of Mr. Foster. On this issue, in discerning the truth, perhaps it is best to look at the testimony of those that did not have a vested interest in maintaining the cover-up. Henry O'Neil, a veteran, uniformed Secret Service agent, testified that on the night of Mr. Foster's death, he saw Ms. Williams exiting Vincent Foster's office with a stack of documents. For

what reason would Mr. O'Neil fabricate such a story and remember incorrectly events on the night of the death of a high ranking White House official? Can we really believe that Maggie Williams would have a phone conversation with the First Lady after returning from the White House that evening—and not tell Mrs. Clinton she had been to Mr. Foster's office?

Are we not to believe the testimony of Stephen Neuwirth, associate attorney in the White House when he learned that certain people were concerned about "unfettered access" to Vince Foster's office? This coupled with the eight phone calls to the White House—before noon—made by Susan Thomasses on the day Mr. Foster's office was being searched by the FBI, Park Police and Justice Department. The phone calls had a clear pattern: Mrs. Clinton to Susan Thomasses to Bernie Nussbaum.

Ms. Thomasses' posture before the Committee epitomized many of the witnesses closely associated with the Clintons. Ms. Thomasses had been described in news accounts as Mrs. Clinton's "blunt instrument of enforcement," yet, when she appeared before our Committee, she seemed to be the "little lost lamb," simply making condolence calls to everyone.

Regrettably, the Committee never heard any testimony from key figures in this episode, such as Jim McDougal, Susan McDougal, David Hale, Chris Wade, and of course, the Clintons themselves. While at one time I believed that Mrs. Clinton should have testified before our Committee, I now think the veracity of both the President and the First Lady is best left to the judgement of the Independent Counsel and the voters.

This report brings to a close the Congressional investigation of Whitewater. Many looked for the silver bullet in this scandal. Whitewater is larger than just one defining incident. Whitewater was part wrongdoing, part scandal, and part cover-up. Individually, each may not have been devastating, but as it came together, as a story it offers great volumes about the savings and loan scandal, the Clintons' political appointees, their business associates, and the character of the Clintons themselves.

Perhaps this is why that Mrs. Clinton did not want anyone probing into "twenty years of public life in Arkansas."

LAUCH FAIRCLOTH.

MINORITY VIEWS TO THE FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS OF SENATORS SARBANES, DODD, KERRY, BRYAN, BOXER, MOSELEY-BRAUN, MURRAY, AND SIMON

SUMMARY OF CONCLUSIONS

I. PREFACE

The central question that faced the Special Committee is: Did Bill Clinton misuse the powers of the Presidency? The answer is a clear and unequivocal "no."

A secondary question is whether, prior to his election as President, Mr. Clinton used his official position in the State of Arkansas improperly to provide favored treatment to business associates or others. In its exhaustive review of various allegations extending back to the 1970s in some instances, the Committee examined in excruciating detail a number of matters in Arkansas ranging from the handling of water and sewer legislation to state regulation of the sale of alcoholic beverages. Again, the clear conclusion is that then-Governor Clinton did not abuse his office.

Having failed to tarnish the President, the Majority turned its attention to Mrs. Clinton's private law practice in Arkansas more than ten years ago. The Majority launched a massive hunt for some way in which to contradict statements made by Mrs. Clinton during the last four years. Again, no credible evidence has been put forward to show that Mrs. Clinton engaged in any improper, much less illegal, conduct.

The public deserves an objective report that separates the facts developed in the Senate Whitewater inquiry from the superheated and untenable conclusions that pervade the Majority's report. Unfortunately, the extension of these hearings directly into the presidential campaign season has provoked a high degree of partisanship, which has undermined the objectivity of this investigation. Partisanship has colored the Majority's decisions in conducting the inquiry and in reaching conclusions that clearly are intended for political impact. It is now evident that this Committee's business easily could have been concluded within the original February 29, 1996 deadline. When a parallel situation presented itself as the Iran-Contra hearings threatened to spill over into the political season, Democrats concurred in bringing the hearings to a prompt close. That was the right decision and one that future Senate committees should follow as a more worthy precedent than the Whitewater example.

The Majority's pattern throughout these hearings has been to construct conclusions first and then to discard the facts as they become inconvenient. One after another, the partisan conspiracy theories about Whitewater—from the alleged shredding of docu-

ments at the Rose Law Firm, to the so-called "mystery phone call," to the "all-important" White House e-mails—have turned into dry holes.

Lacking any credible case against the President, the Majority is now engaging in a blatantly political game of "tag" by tarring several witnesses with unsupportable suggestions of perjury in a bid to grab media attention. The political grandstanding of these "perjury referrals" is a tactic also used after the 1994 hearings. Margaret Williams, for instance—a favorite target of the Majority—has passed two lie detector tests, which corroborate her testimony that she did not remove documents from Foster's office on the night of his death. Yet, the Majority seeks to discount Williams's lie detector tests—performed first by a retired FBI polygraph instructor and confirmed by a present FBI expert under the supervision of the Independent Counsel. In the bargain, the Majority report takes on the reliability of polygraph testing, which the FBI has depended on for decades in investigations involving the highest levels of national security.

Taken as a whole, the Majority's approach to its report has been to hammer evidence—no matter how ill-fitting—into the precast mold of its conclusions. A perfect example of this refusal to modify its preordained conclusion by reference to the facts is revealed by the Majority's treatment of the April 5, 1985 fundraiser hosted by James McDougal for Governor Clinton at Madison Guaranty Savings and Loan. The Majority began the inquiry with the conclusion that there was a quid pro quo involving the fundraiser and the decision of an Arkansas state agency—ADFA—to lease office space from Madison Guaranty. To a fair-minded investigator, two obstacles to reading such a conclusion would be presented: (1) the fact that the lease for office space was entered into more than a full year before McDougal's fundraiser, and (2) the evidence showed that Governor Clinton played no role in selecting the office site or negotiating the terms of the lease. When the evidence at the public hearing demonstrated the circumstances under which the Madison space was chosen, a Member of the Majority registered his consternation at this departure from the Republican game plan:

> Mr. Chairman, isn't the point here simply to draw a conclusion that [then-Governor Clinton] played a major role in the selection of this building?

Inconveniently, the evidence once again rebutted the preconceived conclusion, yet that conclusion is the one relied upon by the Majority in its final report.

More than finding no abuse of office by Bill Clinton, the evidence gathered by the Committee shows that then-Governor Clinton demonstrated independence from political supporters doing business with State government. Three examples from the Committee's exhaustive review of Governor Clinton's twelve-year tenure as governor of Arkansas are representative of our findings in this area. In 1983, Marlin Jackson, the Arkansas State Banking Commissioner, informed Governor Clinton of bank regulatory problems at the Bank of Kingston, a small bank in northern Arkansas that James McDougal purchased after leaving a senior post in Governor Clinton's first administration. Jackson testified that he mentioned

the Bank of Kingston problem as a "litmus test" to see if the young governor would seek to influence Jackson and obtain favorable treatment for a political supporter. Clinton passed Jackson's test: Jackson testified that Governor Clinton told him:

> You do whatever you need to do to be a good, no, to be a great Bank Commissioner and don't worry about the political consequences. It doesn't matter who is involved. I'll take the political heat. You just do whatever you need to do to be a great Bank Commissioner.

Four years later, in another situation involving James McDougal, Governor Clinton showed the same good judgment and respect for the independence of state regulatory officials. McDougal requested a meeting with Governor Clinton and State Health Department officials to present a grievance about unfair treatment by state sanitarians inspecting sewage disposal systems at one of the Madison Guaranty real estate developments. McDougal behaved badly at the meeting, attacking the Health Department officials and accusing them of misconduct. Governor Clinton supported the state officials at the meeting. He reprimanded McDougal for his conduct in front of Health Department officials. Most important, after the meeting, Governor Clinton pulled aside Tom Butler, the Deputy Director of the State Health Department, and told him to "do what you have to do, and you will not hear another word from me." Once again, Governor Clinton made it perfectly clear to a state regulator that James McDougal should not receive any special treatment.

One final example of Governor Clinton's actions in Arkansas is worth noting. About 1984, Dan Lasater, a strong political supporter of Governor Clinton who had helped Clinton regain the Governor's office in 1982 after an upset loss in 1980, requested a meeting to complain to the Governor that his investment firm was not getting its fair share of the state bond business. Governor Clinton met with Lasater, listened to his complaint, then told him that he should make his case to the appropriate State officials. Although it would have been easy for him to do so, Governor Clinton did not tell Lasater that he would intervene in the matter. Lasater left the meeting "disappointed" that he had not obtained the result he had hoped to obtain. Again, Governor Clinton did not intervene on behalf of a political supporter.

These examples lead a fair-minded reader to the same conclusion that will follow from a review of the entire, lengthy report: Governor Clinton did not misuse his office, as Governor of Arkansas, or as President.

These examples also underscore another important point. Governor Clinton, of course, was an elected public official when these events took place. As an elected official he was answerable to his constituents, and it was his responsibility to listen to their complaints. All elected public officials, at the state, local, and even the national level, must do this—it is part of the job. To do this job properly, however, a public official must exercise good judgment, so as to be responsive to constituents without going too far and interfering with the actions of career government officials who also are discharging their responsibilities. Governor Clinton's actions some

ten years ago in Arkansas, as illustrated, met the test then of proper conduct by an elected official, and they meet that test now.

The venom with which the Majority focuses its attack on Hillary Rodham Clinton is surprising, even in the context of the investigation. No attempt is made to place into perspective the relative importance to the American people of whether Mrs. Clinton has a specific recollection today of every memorandum, phone call, and detail of every case she handled in her private law practice in Little Rock over a decade ago.

Every act is portrayed in its most sinister light, every failure of recollection is treated as though the standard for human experience is total recall and photographic memory.

Perhaps the most sensationalized conclusions of the Majority involved the handling of Vincent Foster's papers. The crux of the disagreement between White House Counsel Bernard Nussbaum and Deputy Attorney General Philip Heymann was whether Nussbaum's insistence on being the one to review Foster's files in the presence of Justice Department lawyers and law enforcement officials would create an unfortunate appearance problem for the White House. Heymann agreed that, legally, the Park Police investigators had no right to enter the office and search the files, nor could Justice Department lawyers obtain a search warrant or subpoena. While Heymann was clearly prescient about the public and political fallout from Nussbaum's decision, who is to say that Nussbaum wasn't right also in believing that even if the Justice Department lawyers had taken part in the search, critics of the Administration would simply charge a broader conspiracy?

Irresponsible claims of possible obstruction of justice simply ignore the testimony of law enforcement officials who came before the Committee: that the investigation into Vincent Foster's death—the only investigation involving the review of the office files—was not obstructed; that the investigators were provided every document or file they requested; that the investigators had absolutely no interest in reviewing financial records or files involving personal investments of the Clintons such as Whitewater; and that the investigators' interest was limited to reviewing a suicide note or other information bearing on the cause for Foster's suicide.

The Majority's pursuit of White House officials involved in searching for a suicide note in the aftermath of Foster's death is equally irresponsible. Senator Dodd captured the spirit of the Majority's onslaught during a hearing in November, 1995:

> Senator DODD. Mr. Chairman, just on this point, and I think it is very important, this gets to the reality. But what I was getting at earlier and what we're doing here in a sense is there are sort of three fact situations. You get a witness that says well, I don't recall. The immediate accusation is you're being disingenuous.
>
> If you have witnesses with conflicting testimony, the allegation is someone's lying. And if you have witnesses that have consistent statements, it's a conspiracy.
>
> This is getting ridiculous. So you're trapped no matter what you say * * * You're either disingenuous, lying or conspiring, and that's just foolishness.

The game of leaking information has marred the Committee's credibility throughout these proceedings. Often, distorted or even baseless charges have been disseminated through faceless leaks. The recent, well-orchestrated leak of the Majority report is but part of a pattern.

The supposed short-term benefits of leaking will be offset by the longer-term diminution of credibility that the Majority must suffer for these blatantly political and unfair tactics.

The Minority report was not leaked. It was released according to the rules. In it, the subjects set forth in Senate Resolution 120 are analyzed according to the testimony and documents presented. We look forward to the opportunity to present the facts to the American public in contrast to the overheated assertions by the Majority, which have characterized its approach to this investigation.

Not including the Senate Banking Committee's hearings in 1994, the Senate Whitewater Committee in 1995 and 1996 met for more than 300 hours in open sessions, taking 10,729 pages of hearing testimony in 51 hearings and 8 public meetings. The Committee received hearing testimony from 159 witnesses and took more than 35,000 pages of deposition testimony from 245 persons. Hundreds of thousands of pages of documents have been provided to the Committee by various government departments, agencies, and individuals.

The White House has produced more than 15,000 pages of documents, and the Clintons' attorney has produced nearly 30,000 pages more.

Direct costs of the various Whitewater inquiries now exceed $31,849,795 (as of May, 1996), including: $400,000 from the Senate Banking Committee's 1994 hearings (Senate Resolution 229), $950,000 through the initial charter of the D'Amato hearings (Senate Resolution 120), approved May 17, 1995), and another $450,000 for an extension this year approved by the Senate (Senate Resolution 246, approved April 17, 1996); $3,800,000 for the Resolution Trust Corporation's contract with the Pillsbury, Madison & Sutro law firm, for the production of its report; and $26,249,795 by the Office of the Independent Counsel (through May, 1996). Costs of the various Whitewater inquiries in the House of Representatives and agency work to comply with inquiries while not separately accounted for amount to significant additional sums.

This has been the longest-running congressional investigation of any sitting president, far longer than Watergate or Iran-Contra—both of which involved actual abuse of government power. The facts gathered by the Committee are more than enough to close this chapter. The American people deserve to know, and now can take comfort in knowing, that this year-long investigation shows no misconduct or abuse of power by their President or First Lady.

SUMMARY OF CONCLUSIONS: WASHINGTON MATTERS

A. Jean Lewis's 1992 RTC criminal referral

On September 2, 1992, two months before the presidential election, an investigator in the Kansas City field office of the Resolution Trust Corporation submitted a criminal referral to the Department of Justice relating to the failure of Madison Guaranty Sav-

ings and Loan Association. The handling of the referral, which named the Clintons as possible witnesses to an alleged check kiting scheme at Madison Guaranty, was the subject of extensive investigation and public hearings by the Special Committee.

The evidence showed that the 1992 referral was prepared by a politically motivated investigator who pressed the investigation with the hope of damaging Bill Clinton's chances in the 1992 presidential election. The referral failed to allege any evidence of a crime and gratuitously named the Clintons as witnesses despite the absence of any reasonable basis to believe that the Clintons knew about the matters alleged in the referral.

The allegations contained in the 1992 referral have been repeatedly rejected by federal prosecutors and other investigators. Career officials of the Federal Bureau of Investigation, the Department of Justice, and the United States Attorney's Office for the Eastern District of Arkansas all reviewed the allegations and properly rejected the 1992 referral as a basis for prosecution. The Office of the Independent Counsel, which subsequently assumed responsibility for the investigation of the 1992 referral, has brought no criminal charges arising from the referral's allegations. The law firm of Pillsbury, Madison & Sutro, which the RTC retained to investigate civil claims arising from the failure of Madison, found no evidence to support the allegations contained in the 1992 referral and concluded that those allegations were insufficient to support even a civil cause of action based on fraud.

The evidence showed that the Clinton Administration made no effort to interfere with the proper handling of the 1992 referral following its submission. If anything, the evidence indicated that it was senior officials of the Bush Administration—at both the White House and the Department of Justice—who exhibited an unusually high level of interest in the referral prior to the 1992 presidential election. The United States Attorney in Little Rock, however, steadfastly refused to respond to political pressures and properly declined to take any action on the referral until after the election.

B. The investigations of David Hale

The Special Committee conducted an extensive review of the federal government's handling of its various investigations of David Hale's fraudulent operation of Capital Management Services, Inc., Hale's small business investment company. The Committee viewed those federal investigations as particularly sensitive because once Hale came under criminal investigation he alleged publicly that as Governor of Arkansas, Bill Clinton participated in discussions relating to an illegal loan Hale made to Susan McDougal back in 1986. The Committee considered allegations that the Clinton Administration sought to silence Hale by interfering in the federal investigations of Hale's criminal activities.

The Special Committee's investigation and public hearings established that the Clinton Administration made no effort to delay or obstruct the investigations and prosecution of Hale by the Small Business Administration and the Department of Justice. To the contrary, the evidence showed that the Small Business Administration promptly submitted a criminal referral describing Hale's fraudulent conduct and that the United States Attorney's Office in

Little Rock quickly obtained a federal grand jury indictment against Hale. The evidence showed further that despite his extraordinary efforts to manipulate the criminal justice system in his favor, Hale received no preferential treatment from any federal government official.

In late 1993, White House officials obtained from the Small Business Administration a report that the agency had provided to an oversight committee of the House of Representatives. The evidence established that no sensitive information was contained in this report or any of its attachments and that the motives of the White House officials who obtained the report were totally innocent. More important, the evidence established that White House officials made no efforts to affect the way the federal investigations of Hale were handled.

C. The RTC's handling of the 1993 criminal referrals

Jean Lewis submitted nine additional criminal referrals relating to Madison Guaranty in October 1993. The Special Committee held several days of public hearings on allegations by Lewis that senior officials at the RTC interfered with her investigation. Lewis's principal allegation concerned a "legal review" of the referrals conducted by lawyers in the Kansas City field office of the RTC prior to the referrals' submission to the Department of Justice. Lewis claimed that the review was "unprecedented" and that it was a blatant attempt to derail her referrals.

The evidence established that the legal review was mandated by a nationwide RTC policy that had been instituted four months earlier without regard to Madison Guaranty. Contrary to Lewis's claim of interference, the legal review was conducted by career government lawyers and was intended simply to improve the quality of the referrals by making sure that allegations of possible criminal wrongdoing contained therein were supported by documents and other evidence.

Lewis also claimed that in early 1994, as the RTC was conducting a follow-up civil investigation of Madison Guaranty, senior RTC officials in Washington sent RTC attorney April Breslaw to Kansas City in an attempt to influence the outcome of the investigation so as to avoid the filing of any civil lawsuits against the Clintons. This claim, like all of Lewis' claims of interference, was shown by the Committee's investigation to be without any evidentiary basis. The Special Committee's hearings showed that Lewis provided misleading testimony about her surreptitiously tape-recorded conversation with Breslaw. The Committee heard no credible evidence that any senior RTC official interfered with any RTC investigation of Madison Guaranty.

D. The Justice Department's handling of the criminal referrals

The Special Committee also considered the Department of Justice's handling of the RTC criminal referrals. Prior to the Special Committee's creation, there had been rampant speculation that Associate Attorney General Webster Hubbell had interfered with the Justice Department's investigation of the referrals and had acted to block their use as bases for criminal prosecutions. This speculation found no evidentiary support.

The Special Committee conducted an exhaustive inquiry into the Justice Department's handling of the RTC criminal referrals and came up with nothing to suggest that Hubbell or anyone else at the Justice Department interfered with the proper handling of the referrals. To the contrary, the evidence established that Hubbell, who had no supervisory authority over the Justice Department's criminal division, never made any effort to affect the handling of the referrals and did not even know about their existence until many months after their submission.

The evidence also showed that Paula Casey, the United States Attorney in Little Rock, properly handled her office's plea negotiations with Hale and later properly recused herself from further consideration of criminal referrals concerning Madison Guaranty and Capital Management Services, Inc. Hale sought immunity from prosecution from Casey in exchange for what he claimed was incriminating information about high-ranking Arkansas politicians, but he refused to provide any factual details. As required by Justice Department practice, Casey invited Hale to proffer his information to the government but declined to reach a plea bargain with him unless he first provided his information. The Office of the Independent Counsel later followed the same approach.

E. White House discussions of Beverly Bassett Schaffer in 1993–94

It was alleged during the 1992 presidential campaign that Hillary Rodham Clinton obtained favored treatment for Madison Guaranty from the Arkansas Securities Department back in 1985 in a legal matter concerning a contemplated offering of preferred stock. When the allegation arose in 1992, Beverly Bassett Schaffer, the Securities Commissioner in 1985, publicly refuted it. Schaffer stated that Mrs. Clinton had neither sought nor received favored treatment for her client and that, contrary to the accusation, there was nothing either inappropriate or unique about Mrs. Clinton's inquiry into whether it was permissible for a state-chartered savings and loan institution to issue preferred stock for the purpose of increasing its capitalization.

When allegations concerning the preferred stock issue surfaced again in late December 1993 and early January 1994, several White House officials recalled Schaffer's credible statements during the campaign. White House officials thought it was important to determine whether Schaffer had made a correct legal judgment back in 1985 and, if so, whether she would be willing to speak out publicly again. Although they correctly determined that it would not be at all improper for the White House to contact Schaffer for this purpose, White House officials chose not to contact her because of concerns that any such contacts would be mischaracterized as attempts to influence Schaffer's views on the propriety of Mrs. Clinton's 1985 conduct.

The Special Committee held several days of public hearings on the activities of the so-called Whitewater Response Team at the White House in late 1993 and early 1994. The Committee's hearings were full of testy exchanges and colorful language. But at their conclusion, the hearings established that no White House official made any effort to influence the substance of Schaffer's statements about the preferred stock issue. The evidence showed that

the White House properly determined that Schaffer had made a correct legal judgment back in 1985 and then encouraged Schaffer to speak out publicly, as she had in 1992, to refute the false allegations of favoritism.

F. Use by the White House of materials related to the Office of Government Ethics' July 1994 report on White House-Treasury contacts

The Special Committee held several days of public hearings to determine whether the White House Counsel's Office improperly received investigative materials underlying the Office of Government Ethics' July 1994 report on White House-Treasury contacts and, if so, whether the White House made any improper use of the materials in preparation for Congressional hearings. The evidence showed that no improprieties occurred.

The White House made no effort to interfere in any way with the investigation conducted by the Office of Government Ethics and the Inspectors General of the RTC and the FDIC. That investigation was thorough and complete and resulted in a fully independent determination on the merits.

The evidence showed that the White House Counsel had two entirely proper purposes in obtaining investigative materials—to conduct a thorough internal White House review of the White House-Treasury contacts, and to prepare complete and accurate testimony to be provided to Congress. The evidence established that the White House obtained no sensitive RTC information and that none of the deposition transcripts received were used improperly to affect the Congressional testimony of any White House witness. The transmission of investigative materials to the White House had no effect whatsoever on any of the investigations conducted by the Office of Government Ethics, the Congress or the Independent Counsel.

SUMMARY OF CONCLUSIONS: ARKANSAS MATTERS

The Special Committee devoted enormous resources to investigating a variety of allegations concerning matters taking place in Arkansas since 1978. The allegations fell into three broad categories: (1) allegations concerning the Clintons' personal finances; (2) allegations concerning Governor Clinton's conduct as Governor of Arkansas; and (3) allegations concerning Mrs. Clinton's work as a Rose Law Firm attorney. After months of exhaustive investigation into Arkansas-related matters—including more than 100 sworn depositions and 20 days of public hearings—the allegations of improprieties remain unsupported by the evidence. On the contrary, the evidence shows that neither the President nor Mrs. Clinton engaged in any improper, much less illegal, conduct in connection with any of the events in Arkansas that were examined in minute detail by the Special Committee over the past thirteen months.

A. Whitewater

1. The initial investment

On August 2, 1978, the McDougals and the Clintons purchased approximately 230 acres of undeveloped land in Flippin, Arkansas from a group of local investors known as the 101 River Development Corporation. The property was bounded on one side by Arkansas Route 101 and on the other side by the White River. Because the White River area was popular with sportsmen, James McDougal envisioned the property as a retirement and vacation development. He named it Whitewater Estates.

The McDougals and the Clintons paid $202,611 for the Whitewater property, slightly less than $900 per acre. They financed this purchase with two bank loans. The Special Committee investigated whether the McDougals and the Clintons received special treatment from the banks in obtaining these loans because Mr. Clinton was Arkansas Attorney General and a candidate for Governor when the loans were made. The evidence, however, demonstrated that the McDougals and the Clintons did not receive any special treatment in connection with the making of the loans. The loans were made on the same terms and at the same interest rates as similiar loans to other borrowers. The bank that provided the first mortgage loan financed other real estate developments in the same area. In addition, the testimony of the bank officials who made the Whitewater loans demonstrated that the Clintons were passive investors in the Whitewater project. The banking officials who made the loans were pleased to have the opportunity to make a loan to the McDougals and the Clintons, and one bank official actively solicited the loan business from Mr. Clinton. Overall, the testimony of the bank officials who authorized and managed the loans established that the Clintons had little, if any, involvement in the financing of the investment.

2. Management of the Whitewater investment

From 1978 until 1986 the business affairs of the Whitewater development were managed by James and Susan McDougal, assisted by Charles James, the accountant who kept the books for Whitewater and other real estate developments managed by the McDougals. The Special Committee's investigation of the Whitewater investment has confirmed what other investigations of Whitewater have found: Records for the Whitewater investment were not properly maintained by the McDougals during the years that they managed the investment, and the Clintons did not receive regular and complete information about the investment from the McDougals.

In 1986, after the McDougals left Arkansas and stopped attending to the affairs of Whitewater, Mrs. Clinton attempted to obtain information about the investment. She contacted James to obtain corporate records, and she asked Yoly Redden, who then was the Clintons' personal tax preparer, to review the records and try to determine how much money the Clintons had put into Whitewater and what was the financial condition of the enterprise at that time. The testimony that Redden and James provided to the Special

Committee confirms that the Clintons were never well-informed about Whitewater.

3. The renewals of the Whitewater loans

After the Clintons and McDougals incorporated Whitewater Development Company, Inc. in 1979, they transferred the land to the corporation, subject to the bank loan that was secured by the property, which was not assumed by corporation. That loan was subsequently renewed or extended nine times before it was paid off on May 12, 1992. The Committee devoted considerable attention to those loan renewals. In particular, the Committee explored: (1) whether the loan received special treatment; and (2) whether the loan renewals were connected in any way to banking legislation enacted by the State of Arkansas in 1987 and 1988 that may have benefitted the bank that made the Whitewater loan.

The evidence collected by the Special Committee demonstrated conclusively that the Whitewater loan renewal requests did not receive any special treatment. The loan was fully collateralized and was personally guaranteed by the Clintons and the McDougals. In addition, beginning in 1985, the bank received all income from lot sales. Also, although two loan renewals (out of the total of nine renewals) coincidentally occurred at about the same time as the approval of state bank legislation, the evidence demonstrated that there was no connection between the loan renewal and the banking legislation. The only connection between the Whitewater loan renewals and the branch banking legislation was a coincidence of timing.

4. The Whitewater lot 13 transaction

The Committee also reviewed a loan to Mrs. Clinton from Madison Bank & Trust Company (previously known as the Bank of Kingston and not to be confused with Madison Guaranty Savings & Loan Association). Mrs. Clinton borrowed $30,000 from that bank to finance a model home on Whitewater Estates lot 13. The Committee looked into allegations that this loan violated banking regulations restricting loans outside a bank's designated loan territory. The Committee found no evidence of any improprieties involving the Clintons with respect to this loan.

5. Whitewater tax issues

The Special Committee conducted a limited review of matters pertaining to the Clintons' treatment of the Whitewater investment on their personal income tax returns and to the corporate tax filings of Whitewater Development Company, Inc. The Committee's review of these matters, while not exhaustive, was sufficient to establish that (1) the Clintons' tax treatment of the Whitewater investment on their personal tax returns was appropriate based upon the limited information about the investment that they received and (2) the information about the investment they received was, in many instances, incomplete or incorrect, which resulted in some unintentional errors in the Clintons' personal tax returns. These conclusions are consistent with the findings of other investigations of the Whitewater investment, particularly the Pillsbury Madison & Sutro 1994–96 investigation and the review of Whitewater ac-

counting and tax matters conducted for the Clintons by Denver attorney James M. Lyons in March 1992.

The evidence collected by the Special Committee shows that unlike many real estate investors during the time period of the Whitewater investment, the Clintons did not claim personal tax deductions for corporate losses incurred by Whitewater. The Clintons' tax treatment of the Whitewater investment was conservative and reflected the economic substance of the transaction—they only claimed tax deductions when they made legally deductible payments with their own funds. The Special Committee found no evidence that the Clintons ever sought to obtain any improper tax benefits from their investment in Whitewater.

As noted above, the Special Committee also found that records for the Whitewater investment were not properly maintained by the McDougals during the years they managed the investment, and the Clintons did not receive regular and complete information about the investment from the McDougals. This poor recordkeeping and reporting resulted in some unintentional errors on the Clintons' personal tax filings. Where the existence of an error has been established, the Clintons have, at their own initiative, paid additional taxes and interest to correct the errors.

The Special Committee also reviewed whether or not the Clintons received actual or imputed income from the Whitewater investment that they had a legal obligation to report on their personal income tax returns. As has been the case with all other investigations of Whitewater, the Special Committee found that the Clintons received no return on their Whitewater investment. Although some esoteric tax theories have been advanced for the proposition that the Clintons should have recognized income on their personal tax returns in connection with payments on the land acquisition loans that were made with Whitewater corporate funds or funds contributed by the McDougals, those theories are not supported by the evidence obtained by the Special Committee. All of the witnesses examined by the Special Committee rejected these theories. The Special Committee confirmed that the Clintons put money into Whitewater, but never took any money out of the investment. Moreover, the proceeds of the Whitewater land acquisition loans were invested in the business, through the land purchase, and the Clintons did not use any portion of the proceeds of those loans for their personal benefit. Both logic and legal analysis support the conclusion that the Whitewater investment did not result in any taxable income to the Clintons.

In short, the Special Committee found no evidence that the Clintons entered into the Whitewater investment as a tax shelter or ever sought to use the investment as a means to avoid paying their personal income taxes, even when they legally might have done so.

B. Arkansas regulators' oversight of the McDougals

The McDougals operated several business enterprises in Arkansas during the 1980s, including Madison Guaranty, Madison Bank & Trust Company, and various real estate developments. The activities of these businesses were subject to regulation by various Arkansas government agencies.

The Majority has asserted that the McDougals and their business enterprises obtained favored treatment from state regulators due to the McDougals' relationship with Governor Clinton. In particular, it has been alleged that Governor Clinton influenced government actions to benefit the McDougals. It also has been suggested that the McDougals provided financial benefits to the Clintons in return for the allegedly favorable treatment. The record developed by the Special Committee, however, is at odds with these allegations.

The evidence collected by the Special Committee demonstrated that the McDougals did not receive favored treatment from state agencies and that Arkansas state officials treated the McDougals and their business enterprises properly and appropriately. The evidence further demonstrated that Governor Clinton did not intervene with state officials or take any improper action in the McDougals' behalf. Finally, the record simply does not support the allegation that the McDougals provided improper financial benefits to the Clintons.

a. The Arkansas State Agency leases of offices from Madison Guaranty were proper, appropriate and in the normal course of business

The Special Committee investigated whether certain leases were awarded to Madison Guaranty because of Governor Clinton's relationship with James McDougal. In particular, the Committee reviewed whether the leases were related to a fundraiser that McDougal held for Governor Clinton at Madison Guaranty on April 5, 1985. The evidence collected by the Committee establishes that the leases were entirely proper and appropriate, and were entered into in the normal course of business. There is no evidence that Governor Clinton or anyone acting on his behalf caused or directed the leases to be signed, or that Madison Guaranty received any special consideration. Moreover, the State first leased space at Madison Guaranty at least a year before the fundraiser took place. Thus, there is no basis to connect the fundraiser with the leases, and no reason to believe that the leases entailed a quid pro quo of any kind.

b. McDougal received no special treatment from the Arkansas Alcoholic Beverage Commission

The Committee reviewed whether Governor Clinton took any action to influence the Arkansas Alcoholic Beverage Control Division ("ABC") to provide favored treatment to James McDougal. The Special Committee investigated whether Governor Clinton interceded with the ABC in support of McDougal's efforts to develop a microbrewery and brew pub on the IDC property. The Committee also investigated whether Governor Clinton caused the ABC to promulgate a regulation permitting breweries to operate "tasting rooms." The evidence, however, demonstrated that Governor Clinton never contacted the ABC with respect to the IDC brewery proposal. The evidence further demonstrated that Governor Clinton played no part in the approval of the tasting room regulation.

c. The sewer legislation

In 1987 Governor Clinton signed legislation to deregulate small sewer and water utilities. The Majority has alleged that the legislation was designed to provide special treatment to the Castle Sewer and Water Company and to protect the Rose Law Firm from exposure to civil liability. The Committee found that the Arkansas Public Service Commission and the entire Arkansas legislature supported the legislation. Furthermore, passage of the legislation was fully justified on the merits.

d. McDougal's Maple Creek Farms development and the reassignment of the Arkansas Health Department Sanitarians

The Special Committee reviewed whether Governor Clinton interfered with the regulation of the Maple Creek Farms project by Arkansas Health Department officials. In March 1986 Governor Clinton arranged a meeting at which McDougal could communicate to Health Department officials the concerns he had about unfair treatment at the Maple Creek project. Beyond arranging the meeting, which was appropriate, Governor Clinton did not take any action on McDougal's behalf, either at the meeting or thereafter. To the contrary, Governor Clinton reprimanded McDougal (who behaved badly at the meeting) for his behavior, defended the Health Department's professional staff, and told McDougal to work with the Health Department to resolve the problems. Most important, immediately after the meeting Governor Clinton made a special effort to let the Health Department know that McDougal was not to receive any special treatment and that Clinton would support whatever action the Health Department decided to take.

e. Regulation of Madison Bank and Trust by the Arkansas State Banking Department

The Special Committee reviewed the regulation of a small Madison Bank & Trust Company, that James McDougal operated after he left a position on Governor Clinton's staff in 1980. In October 1980 McDougal and a group of investors purchased a controlling interest in the Bank of Kingston, a small bank in Kingston, Arkansas. McDougal then changed the bank's name to Madison Bank & Trust Company. As a state chartered institution, Madison Bank was regulated by both the Arkansas State Banking Department and the Federal Deposit Insurance Corporation. In 1983 Marlin Jackson was the State Bank Commissioner.

In 1983 Jackson informed Governor Clinton of regulatory problems at Madison Bank. Jackson testified that he told the Governor about Madison Bank's problems as "a litmus test" to see if Governor Clinton would seek to influence Jackson and obtain favorable treatment for a political supporter. (Jackson was aware that McDougal had been a member of Governor Clinton's staff during Clinton's first term in office, 1979-80.) Governor Clinton passed Jackson's litmus test. Jackson testified that Governor Clinton responded:

> You do whatever you need to do to be a good * * * no, to be a great Bank Commissioner and don't worry about

> the political consequences. It doesn't matter who is involved. I'll take the political heat. You just do whatever you need to be a great Bank Commissioner.

The evidence collected by the Special Committee confirms that Governor Clinton never interfered with Jackson or the State Banking Commission in their regulation of Madison Bank. After his discussion with Governor Clinton, Jackson and the State Banking Commission joined with the Federal Deposit Insurance Corporation in a cease-and-desist order against Madison Bank that curtailed the bank's ability to make out-of-territory loans and, among other things, required the bank to increase its operating capital. Governor Clinton never attempted to intercede on James McDougal's behalf. In fact, other than the one conversation described above—which was initiated by Jackson—Governor Clinton never discussed Madison Bank or James McDougal with Jackson.

C. Lasater & Company

The Special Committee reviewed State bond underwriting contracts awarded to Lasater & Company. The Committee's inquiry focused on allegations that Lasater & Company's selection as bond underwriter for State agencies resulted from improper political pressure. The extensive evidentiary record developed by the Committee does not support the charge that Governor Clinton improperly steered state bond business to Lasater & Company. The record shows that in 1983 Governor Clinton put in place a new policy of spreading state bond business among qualified firms (his Republican predecessor had given all the business to two local firms) and that Lasater & Company was only one of the firms that benefitted from this new policy.

Witnesses from the State agencies that awarded underwriting business to Lasater & Company, from Governor Clinton's office, and from the Lasater firm uniformly testified that no political pressure was applied to include Lasater & Company in State bond underwritings. Instead, under the new policy, all Arkansas underwriting firms participated in State business regardless of their political identification. All local underwriting firms participated equally, sharing the portion of the bond issues that was not allocated to one of several large national underwriters. The Lasater firm received only a small share of State bond underwriting business, and received a share similar to that of other local firms. The participation of the Lasater firm was supported by both Democratic and Republican State officials. Thus, the allegation that Lasater & Co.'s participation in State bond issues was due to political favoritism is not supported.

1. Clinton Administration expands number of underwriters participating in State bond business

Under Governor Clinton, the number of firms doing underwriting business with the State of Arkansas expanded. From 1980–82, under Republican Governor Frank White, Arkansas State bond underwriting business had been the preserve of a small number of firms. During that time, State agencies used underwriters E.F. Hutton, Stephens, Inc. and T.J. Raney almost exclusively. After 1983, the Clinton Administration promoted participation in State

bond underwriting by all qualified Arkansas firms, regardless of which political candidates they supported. Betsey Wright, former Chief of Staff to Governor Clinton, added that Governor Clinton's goal was to make the State bond underwriting business "as open and available to all companies in the State as possible."

2. Lasater & Company's participation in bond underwriting for AHDA/ADFA

These policies were adopted by the Arkansas Housing Development Agency, a State agency that issued bonds to provide home mortgages to Arkansas residents. In keeping with the views of Governor Clinton and the AHDA Board Members, the agency used a greater number of underwriters after 1983. Pursuant to these policies, Lasater & Company began underwriting AHDA single family bonds in 1983. That year the Lasater firm received a 13.33 percent share of the bond issue—smaller than one local firm and equal to the share of two other local firms. Two of the three AHDA Subcommittee Members who voted to include Lasater & Company were appointed by Governor Frank White; the third was appointed by Governor Bill Clinton. Lasater & Company received an even smaller share of AHDA's next bond offering. All local firms, including the Lasater firm, received the same share of the bond issue—10 percent.

The Lasater firm was treated the same as other local firms. The Lasater firm always was part of a team of underwriters, including other local firms, that underwrote bond issues for AHDA and its successor agency, ADFA. The Lasater firm never served as the sole underwriter of an AHDA/ADFA bond issue. Other local firms underwrote as many state bonds as did the Lasater firm.

It has been alleged that Governor Clinton directed AHDA and ADFA to award bond underwriting business to Lasater & Company. The evidence, however, did not demonstrate that Governor Clinton pressured anyone to include the Lasater firm in bond underwritings. Members of the Governor's staff have said it did not happen, members of the AHDA Board have said it did not happen, members of the AHDA staff have said it did not happen, and employees of both Lasater & Company and a competitor have said it did not happen.

One witness recalled that a member of the staff of the Governor's Office suggested that the Lasater firm be included as an AHDA underwriter. Charles Stout, an appointee of Republican Governor Frank White who was serving out his term as Chairman of the AHDA Board in 1983, recalled receiving a telephone call from Bob Nash, an assistant to Governor Clinton for economic development matters. According to Stout, Nash 'called [him] and recommended that we [AHDA] start using the Lasater firm.'

No other witness recalled this incident. Nash testified that while he may have spoken with Stout regarding bond underwriting contracts, he never instructed Stout to include the Lasater firm in AHDA bond issues. Even if this telephone conversation occurred—which is hardly clear—it is likely that other witnesses do not recall it because it was innocuous in nature. Stout himself characterized the conversation as a suggestion from Nash, rather than a directive.

3. Lasater & Company's Bond Underwriting for the Arkansas State Police

The Committee also examined a 1985 bond issue for the Arkansas State Police shared by T.J. Raney & Sons, E.F. Hutton & Company and Lasater & Company. It has been alleged that Governor Clinton influenced the underwriter selection process to benefit Lasater. The evidence, however, does not establish that Governor Clinton or his staff pressured the Arkansas State Police to include the Lasater firm in the bond underwriting or to award the contract to the group including the Lasater firm.

On April 4, 1985, Governor Clinton signed legislation authorizing the State Police Commission to acquire a new communications system, financed by bonds. That same day, the State Police Commission began a competitive process to select the bond underwriters. The State Police solicited proposals from all interested financial firms.

Police Commissioner Johnny Mitchum, an appointee of Republican Governor Frank White, was a certified public accountant and the only member of the Police Commission with a background in finance. Mitchum reviewed the underwriting proposals and concluded that a proposal submitted jointly by investment firms T.J. Raney, E.F. Hutton & Company, and Lasater & Company was the most attractive for the State. An actuary hired by Mitchum concurred at the time that the Raney/Hutton/Lasater bid was the best for the State of Arkansas. After the Police Commission heard oral presentations from the four finalists, the Raney/Hutton/Lasater team was awarded the contract by a vote of 4 to 2.

The record does not establish that the Raney/Hutton/Lasater group won the bond underwriting for the Arkansas State Police as a result of special treatment, rather than submitting the best proposal. Members of the Governor's staff testified that no influence was exerted. Lasater and his employees testified that no influence was exerted on his behalf. Finally, the State Police witnesses themselves testified that they acted unilaterally and without influence from the Governor's office.

The breakdown of the vote by the State Police Commission to award the contract to the Raney/Hutton/Lasater team demonstrates that it was not a politically motivated decision. Both Republican appointees to the Police Commission voted in favor of awarding the contract to the Lasater team; the two members who voted against the Raney/Hutton/Lasater team were both Clinton appointees.

The Majority argues that it was improper for the State Police Commission to award this contract to a group including Lasater & Company because of rumors at the time that Lasater used cocaine. In fact, it is clear that the Clinton Administration was concerned about awarding State bond business to anyone under investigation for drug offenses. The Governor and members of his staff raised the issue with law enforcement authorities, who reported that no investigations of Lasater were underway at that time.

D. The Rose Law Firm's Representation of Madison Guaranty

1. Background

In April 1985 Madison Guaranty retained the Rose Law Firm to provide legal advice on a securities law matter, a proposed sale of preferred stock. The following year, on July 14, 1986, the firm ceased its representation of Madison Guaranty so the firm could qualify to represent federal regulatory agencies in litigation involving failed savings and loan associations. The Rose Law Firm was paid approximately $21,000 for its work in 1985 and 1986 on behalf of Madison Guaranty.

The Committee devoted considerable attention to the circumstances of the Rose Law Firm's retention by Madison Guaranty. In particular, the Committee examined allegations that James McDougal directed a portion of Madison Guaranty's legal business to Mrs. Clinton for improper reasons. The evidence, however, demonstrated that nothing improper occurred in connection with Madison Guaranty's retention of the Rose Law Firm.

The Committee also examined the substance of the work the Rose Law Firm and Mrs. Clinton performed for Madison Guaranty. The evidence demonstrated that the Rose Law Firm's work for Madison Guaranty was legitimate, well-documented, and appropriately billed. There is no credible evidence that any of the legal services provided by Mrs. Clinton and the Rose Law Firm were improper or contributed to the failure of the institution.

Finally, the Committee reviewed Mrs. Clinton's prior statements concerning the Rose Law Firm's retention by and work for Madison Guaranty. In this regard, the Committee carefully examined the documentary evidence, including the Rose Law Firm's billing records for the Madison Guaranty engagement, and took testimony from Rose Law Firm lawyers who participated in the representation. The Committee also examined the documents prepared by the Rose Law Firm for Madison Guaranty. This evidence demonstrated that Mrs. Clinton has accurately characterized her representation of Madison Guaranty as limited and insubstantial.

2. The retention of the Rose Law Firm by Madison Guaranty

On February 25, 1996, Pillsbury, Madison & Sutro, the law firm retained by the Resolution Trust Corporation to investigate possible civil claims relating to Madison Guaranty, concluded that a "finder of fact is highly unlikely to find that there was anything untoward, let alone fraudulent or intentionally wrongful, in the circumstances of the Rose Law Firm's retention by Madison Guaranty." The Special Committee's investigation has confirmed that conclusion.

The Special Committee devoted a great deal of attention to investigating how the Rose Law Firm came to be retained by Madison Guaranty and the role Mrs. Clinton played in the retention. Although it is impossible now, over eleven years later, to reconstruct exactly how the Rose Law Firm was retained, it appears that Rick Massey or Vincent Foster may have spoken with Mrs. Clinton about the possible retention of the firm and a prior billing problem with James McDougal. Mrs. Clinton then spoke with McDougal. She recalls that she told McDougal the Rose Law Firm would do

the work if Madison Guaranty would enter into a retainer agreement which would ensure that the Rose Law Firm was paid for its work. Mrs. Clinton remembers that McDougal agreed to a $2,000 monthly retainer payment.

Mrs. Clinton did nothing improper in connection with the retainer agreement, and there is no evidence that there was any illicit motive underlying the retention. Madison Guaranty needed legal counsel after legal issues arose out of McDougal's plan to sell preferred stock. The Rose Law Firm, because of the firm's expertise in securities law, was a logical choice to provide that counsel. The Special Committee found no evidence that Madison Guaranty's retention of the Rose Law Firm was a scheme for McDougal to confer a financial benefit on the Clintons.

3. Regulation of Madison Guaranty by the Arkansas Securities Department

As discussed above, the Special Committee's investigation confirmed that Mrs. Clinton's role in the representation of Madison Guaranty in the preferred stock matter was very limited. A related issue is whether, notwithstanding the limited nature of her work on the securities matters, Mrs. Clinton sought to use her position as the Governor's wife to seek special treatment for Madison Guaranty. The Special Committee's investigation has established that there was no effort to obtain preferential treatment, and that, in fact, no preferential treatment was given. To the contrary, the Arkansas Securities Department under the direction of Beverly Bassett Schaffer performed its duties in an entirely appropriate manner and took no action that either improperly benefitted Madison Guaranty or that was in any way inconsistent with the public interest.

Mrs. Clinton had one brief telephone discussion with Schaffer at the outset of the representation. Schaffer testified that she did not attach any particular significance to her one telephone conversation with Mrs. Clinton. Nor did anyone in the Governor's office put any political pressure on Schaffer or her staff to give Madison Guaranty special treatment. The record demonstrates that Schaffer behaved exactly as an appointed regulatory official should in relying upon the expertise of her professional staff to identify applicable regulatory requirements and then insisting that all such requirements be met before her department approved Madison Guaranty's proposals. Because those requirements were never satisfied, the proposals were never approved.

The Special Committee found that ultimately it was Schaffer who recommended in 1987 that Madison Guaranty be closed by the federal regulators. The federal regulators did not close Madison Guaranty until 1989. This delay was the result of the failure of the federal authorities to act on Schaffer's December 1987 recommendation and was in no way caused by Schaffer or other Arkansas officials. Although the Special Committee did not investigate the effect this delay had on the losses associated with Madison Guaranty, it is likely that those losses would have been reduced if the federal authorities had heeded Schaffer's recommendation and closed the institution in 1987.

4. The IDC real estate transactions

In the late summer and fall of 1985, the Rose Law Firm provided some legal services to Madison Guaranty in connection with the purchase of a large tract of land south of Little Rock from the Industrial Development Corporation or "IDC." The work done by the Rose Law Firm, and especially Mrs. Clinton, on IDC matters was the subject of considerable attention by the Special Committee. The focus of that attention has been on whether Mrs. Clinton or other Rose Law Firm lawyers had any involvement in aspects of the IDC transaction that may have been unlawful. In particular, the Committee reviewed the initial purchase of a portion of the IDC property by Seth Ward, a transaction that has been characterized as a sham, "straw man" purchase (although Ward vehemently denies that charge), and the subsequent resales of parcels of that property to Madison Guaranty insiders. The Special Committee's investigation confirmed the conclusion of Pillsbury Madison & Sutro that the evidence does not support the assertion that the Rose Law Firm or Mrs. Clinton was aware of any unlawful conduct involving the IDC property.

Although the Rose Law Firm did not do any legal work on the aspects of the IDC transaction that raised bank regulatory issues, the firm did provide legal services to Madison Guaranty on other matters relating to the development of the IDC property, and the Rose Law Firm provided that service. The bulk of that work, which was supervised by Mrs. Clinton, involved analysis of issues relating to utility regulations and laws regulating the sale of alcoholic beverages. The evidence collected by the Special Committee indicates that Madison Guaranty needed legal counsel on these two relatively routine legal issues that related to the development of the IDC property. Mrs. Clinton, recalls that she "conducted research and explored possible issues pertaining to [the brewery and utility matters], both on my own and in partnership with Mr. Donovan [the Rose Law Firm associate who assisted her]." The Rose Law Firm billing records confirm Mrs. Clinton's recollection of her involvement in these matters.

Another matter relating to the IDC transaction that was reviewed by the Special Committee involved Mrs. Clinton's prior public statements that she did not work on the "Castle Grande" matter for Madison Guaranty. The Committee's review demonstrated that confusion has arisen as to whether the entire property purchased from IDC was known as "Castle Grande" at the time Mrs. Clinton performed the legal work described above. The documents and testimony provided to the Special Committee clearly indicate that within the Rose Law Firm, the work was known as the IDC matter. Although with the passage of time the entire property has sometimes been referred to as Castle Grande, the evidence collected by the Special Committee established that during the relevant time period—in 1985 and 1986 when the Rose Law Firm was providing legal services to Madison Guaranty—only the portion of the IDC property south of 145th Street was called Castle Grande. That was the name James McDougal gave to the residential development he started on that portion of the IDC property. John Latham testified that the residential area which was named Castle Grande was "really a small part of" the IDC property. The projects

Mrs. Clinton worked on were related to the other, commercial, portions of the IDC tract, and did not involve the Castle Grande residential development. Thus Mrs. Clinton's prior statement that she did not work on Castle Grande is consistent with the evidence obtained by the Special Committee.

E. David Hale

David Hale is the only witness who has claimed that Governor Clinton participated in discussions of financial transactions concerning Madison Guaranty and Capital Management Services, Inc. Hale, a twice convicted felon and an admitted liar and perjurer, has claimed that on three occasions in late 1985 and early 1986 Governor Clinton spoke with him about an illegal $300,000 loan Hale was considering making to Susan McDougal. President Clinton has denied ever speaking with Hale about a loan to Susan McDougal. No document or witness brought before the Special Committee has corroborated Hale's assertion in any way.

The jurors in the Tucker/McDougal trial, at which Hale and President Clinton both testified, made clear after the trial that they rejected Hale's unsubstantiated claim about Governor Clinton. One juror, Colin Capp, stated that the jurors considered Hale "an unmitigated liar * * * [who] perjured himself. * * * David Hale invoked the President's name for one reason: to save his butt. We all thought that way." Another juror, Earnest Williams, agreed, adding, "I didn't believe a thing Hale said."

In stark contrast, the jurors stated after the trial that they believed President Clinton when he denied having spoken with Hale about the loan to Susan McDougal. Sandra Wood, the jury foreperson, told the press, "The President's credibility was never an issue. I just felt like he was telling us to the best of his knowledge what he knew." Juror Tracy Pleasants added, "I just felt as though he [President Clinton] was telling the truth, and I wasn't so sure about David Hale."

Even Ray Jahn, the lead prosecutor who presented Hale's plea-bargained testimony at the trial on behalf of the Office of the Independent Counsel, backed away from Hale's unsupported assertion about Governor Clinton. In his closing argument, Jahn told the jury that no one, including Hale, had alleged wrongdoing by Governor Clinton. The lead prosecutor told the jury what anyone who had taken the trouble to review the actual testimony (rather than the hype) already knew—that there was no evidence presented at the trial, including Hale's testimony, that anyone pressured Hale to make the loan to Susan McDougal or her company, Master Marketing.

The Special Committee has in its record an abundance of evidence, including 1,600 pages of official transcripts reporting nine days of Hale's testimony at the Tucker/McDougal trial, that sheds considerable light on Hale's veracity. Consistent with the view expressed by the jurors in the Tucker/McDougal trial, the evidence in the Committee's record compels the conclusion that Hale's unsupported allegation regarding Governor Clinton is false.

SUMMARY OF CONCLUSIONS: FOSTER PAPER MATTERS

The Special Committee conducted an exhaustive investigation into the handling of documents in the office of Vincent Foster following his death. The investigation focused on the brief entry of Foster's office by three senior White House officials on the night of Foster's death for the purpose of looking for a suicide note, on the review of the contents of Foster's office conducted two days later by White House Counsel Bernard Nussbaum in the presence of law enforcement officials, and on the subsequent disposition of those contents, including personal and financial papers belonging to President and Mrs. Clinton.

Although some voiced the opinion that the White House exercised questionable political judgment, particularly with regard to method used during the July 22, 1993 search of Foster's office in the presence of law enforcement officials, the evidence did not establish any unethical or unlawful conduct by any White House official.

A. The night of July 20, 1993

The evidence showed that Nussbaum, Margaret Williams and Patsy Thomasson entered Foster's office on the night of Foster's death to look for a suicide note and to grieve for their friend and colleague. All three testified that they were in Foster's office only briefly, that they reviewed no documents, and that they removed nothing.

Officer Henry O'Neill testified that he observed Williams remove materials from Foster's office on the night of July 20, 1993. O'Neill's testimony, however, was confused and inconsistent as to what it was he remembered Williams carrying. Williams, by contrast, was quite clear in her testimony that she did not remove anything from Foster's office that night. Williams' testimony was corroborated by the results of two polygraph examinations, including one conducted by the Office of the Independent Counsel.

B. The review of the contents of Foster's office

The unanimous opinion of the law enforcement witnesses who appeared before the Committee was that neither the Park Police nor the Justice Department had the authority to enter or review documents in Foster's office. Deputy Attorney General Philip Heymann testified that the Justice Department could not have obtained a search warrant or a subpoena for items in Foster's office because no crime had been committed. Consistent with their limited authority, the Park Police never expressed a desire to review all of the documents in Foster's office. To the contrary, their focus was much narrower—the Park Police sought to examine Foster's office only for a suicide note or other personal documents capable of shedding light on Foster's state of mind.

The Committee heard divergent testimony about whether Nussbaum and Heymann reached an agreement on July 21, 1993 concerning the procedures for the review of the documents in Foster's office. Department of Justice officials testified that Nussbaum agreed on July 21 that they, too, would be permitted to review Fos-

ter's documents. Nussbaum and other White House lawyers testified that there was no such agreement.

The Majority has concluded that Nussbaum reneged on an agreement with Heymann under instructions from Mrs. Clinton passed through Williams and Susan Thomases. The Majority bases its conclusion on telephone records indicating that certain telephone calls were made on the morning of July 22.

The Majority's conclusion is inconsistent with the testimony the Committee received. Nussbaum, Williams and Thomases all testified that they did not speak with Mrs. Clinton about the review of Foster's office, and Nussbaum and Thomases testified that Thomases did not act as an intermediary between Mrs. Clinton and Nussbaum.

Most important, the Department of Justice attorneys told the Committee that although they thought Nussbaum's decision not to allow them to review the materials in Foster's office was a mistake politically—because Nussbaum's decision could create an appearance of a lack of impartiality—they made clear that Nussbaum's actions constituted no violation of any law or ethics rule. Indeed, Heymann testified that Nussbaum went "beyond what could be legally required of the White House Counsel" by permitting law enforcement officials to be present during the search.

Nussbaum went through the documents in Foster's office in the presence of investigators from the Park Police and career attorneys from the Justice Department. Nussbaum described the documents as he went through them, and he put to one side all of the documents the law enforcement officials expressed an interest in seeing. The White House promptly made all of these documents available to law enforcement for copying and review. No Park Police or Justice Department official ever asked permission to review any of the Clintons' personal financial files in Foster's office. As one of the senior Justice Department officials present during the search testified, "things like tax returns and personal financial information of the Clintons * * * didn't have much to do with a suicide investigation."

C. The disposition of the Clintons' personal files in Foster's office

Following the review of documents in Foster's office on July 22, 1993, Nussbaum decided to give the Clintons' personal files to their personal attorneys, Williams & Connolly. Neither the Justice Department attorneys nor the Park Police investigators present during the document review objected to Nussbaum's stated intention to send the Clintons' personal files to their private attorneys.

Nussbaum asked Williams to deliver certain personal documents of the Clintons' from Foster's office to the Clintons' personal attorneys. Williams testified that later that afternoon, having attended to other matters in the meantime, she decided not to deliver the files to the Clintons' lawyer that day. Rather than leave the files in Foster's office or in her own office, Williams decided to put them in the White House residence.

Bob Barnett, the Clintons' personal lawyer at Williams & Connolly, retrieved the personal files on July 27, 1993. Barnett does not recall seeing or speaking with Mrs. Clinton that day. He

was certain that Mrs. Clinton was not present while he reviewed the contents of the box.

There is no evidence that any of the personal files were removed or tampered with before they were transferred to Williams & Connolly. Nor is there any credible evidence that any document that was in Foster's office at the time of Foster's death has been withheld from the Committee.

D. The discovery of Foster's torn-up note

White House officials discovered a torn-up note in Foster's briefcase on July 26, 1993. The White House provided the note to law enforcement officials as soon as they were able to notify Mrs. Foster and the President. Law enforcement officials testified that their investigations were not affected by the timing of the discovery and production of the note.

ROSE LAW FIRM BILLING RECORDS

In January 1996, Carolyn Huber had some furniture removed from her White House East Wing office. She used the occasion to review the contents of a box of photographs and other materials to be catalogued that had been under a table, and discovered the Rose Law Firm billing records. Ms. Huber believed that these records had been requested by investigating authorities, and she immediately called David Kendall, the personal attorney for President and Mrs. Clinton. Later that afternoon, Kendall, Huber, Special Counsel to the President Jane Sherburne and Huber's personal attorney reviewed the documents together. At the end of this review, the lawyers concluded that the billing records were called for by various requests for documents from government agencies. They copied the documents that night and produced to them the next day to the Independent Counsel, the Special Committee, the House Banking Committee, and the FDIC.

The documents found by Huber are copies of Rose Law Firm billing records for the firm's representation of Madison Guaranty in the mid-1980's. While these records provide more detail than was previously available, they do not contradict what Mrs. Clinton and Rose Law Firm lawyers have said about the representation of Madison Guaranty. The Rose Law Firm was not Madison Guaranty's regular outside counsel, and it handled only certain discrete assignments for the institution. Within the firm, Mrs. Clinton's work for Madison Guaranty was limited in time and scope. Work performed for Madison Guaranty comprised only a small fraction of the firm's total billings and of Mrs. Clinton's total billings.

The Special Committee sought to establish the chain of custody of the Rose Law Firm billing records prior to their discovery by Huber in January 1996. It is not possible on the existing record to ascertain when and by what means the billing records were brought into the White House, or in whose custody they remained once they were there. Huber testified that she first encountered the billing records during the first or second week of August 1995. She first saw them in the "Book Room," a room on the third floor of the White House residence used at that time to store gifts, photographs, newspaper and magazine articles, and other items to be catalogued. Huber testified that the documents had not been on the

table in the Book Room when she last had occasion to be in that room, a week or two before. Huber retrieved four or five boxes of materials to be catalogued from the Book Room that day. She testified that the documents remained undisturbed in a box on the floor of her office from August 1995 to January 4, 1996, when the table was removed from her office and she examined the contents of the box.

It appears that the billing records were in Foster's possession Foster in February 1992. Webster Hubbell testified that during the Presidential campaign early in 1992, an issue arose regarding contacts Mrs. Clinton may have had with the Arkansas Securities Department on behalf of Madison Guaranty. Either Hubbell or Foster requested that the billing records be printed by the Rose Law Firm accounting department.

The testimony and the FBI fingerprint analysis of the records leave open the possibility that Foster brought the billing records to the White House. If so, they may have passed out of his possession before his death.

Contrary to the Majority's insinuations, Kendall issued a statement on January 5, 1996 making clear that Mrs. Clinton did not put the billing records in the Book Room: "the First Lady was not aware until today that these records were located in the White House." On January 26, 1996, Mrs. Clinton herself told the press, "I do not know how the billing records came to be found where they were found, but I am pleased that they were found, because they confirm what I have been saying."

II. Washington Phase

A. Jean Lewis's 1992 RTC Criminal Referral

1. Introduction

The evidence showed that the Resolution Trust Corporation's 1992 criminal referral regarding the Madison Guaranty Savings and Loan Association was prepared by a politically motivated investigator who pressed the investigation hoping to affect the outcome of the 1992 Presidential election. The referral, which the RTC investigator submitted to the Department of Justice just two months before Election Day, failed to allege any evidence of a crime and named the Clintons as witnesses despite the absence of any reasonable basis to believe that they knew about the matters alleged in the referral.

The allegations contained in the 1992 referral have been repeatedly rejected by federal prosecutors and other investigators. Career officials of the Federal Bureau of Investigation, the Department of Justice, and the United States Attorneys Office for the Eastern District of Arkansas all properly rejected the 1992 referral as a basis for prosecution. The Office of the Independent Counsel, which subsequently took over responsibility for the investigation of the 1992 referral, has brought no criminal charges arising from the referral's allegations. And the law firm of Pillsbury, Madison & Sutro, which the RTC hired to investigate civil claims arising from the failure of Madison Guaranty, found no evidence to support the allegations contained in the 1992 referral and concluded that those

allegations were insufficient to support even a civil cause of action based on fraud.

2. RTC criminal investigator L. Jean Lewis set aside higher priority investigations to focus on Madison Guaranty following the publication of Jeff Gerth's March 8, 1992 article in the New York Times

On December 11, 1991, RTC criminal investigator L. Jean Lewis sent a memorandum to her supervisor setting forth the RTC's 1992 schedule for conducting criminal investigations of failed savings and loan institutions in Arkansas.[1] Lewis, who had been delegated responsibility for the RTC's criminal investigations of all failed S&Ls in Arkansas,[2] set the 1992 schedule in consultation with senior officials in the Little Rock field office of the FBI.[3] Lewis and senior FBI officials agreed that investigations of institutions most likely to lead to meritorious criminal prosecutions should be conducted first and should be made the top priorities for the RTC's limited investigative resources.[4]

Consistent with this approach, Lewis listed Savers Savings Association ("Savers Savings") of Little Rock and First Federal of Little Rock ("First Federal") first and third, respectively, on her December 11, 1991 priority list of failed Arkansas institutions to be investigated in 1992.[5] Lewis and senior FBI officials viewed these two institutions as highly likely to yield meritorious prosecutions; both institutions had failed in the recent past at enormous cost to taxpayers—Savers Savings at a cost of $650 million, First Federal at a cost of $900 million—and both had failed amid strong indications of criminal fraud.[6] Neither institution had been the subject of a previous criminal investigation or prosecution.[7] In light of these factors, Lewis scheduled the RTC's criminal investigations of Savers Savings and First Federal for the first quarter of 1992.[8]

In the same December 11, 1991 memorandum, Lewis placed Madison Guaranty Savings and Loan Association near the bottom of her priority list—tenth out of the twelve failed Arkansas institutions to be investigated in 1992.[9] Madison Guaranty had failed several years earlier at a far lower cost to the taxpayers—approximately $60 million—than Savers Savings, First Federal and the other top priority institutions. Moreover, Madison Guaranty had been the subject of an extensive federal criminal investigation in 1989–90 that had resulted in the 1990 trial and acquittal of James McDougal, the investigation's principal target.[10] As of December 1991, the RTC and the FBI had no information indicating that any criminal activity had occurred at Madison Guaranty other than that already alleged and rejected by the jury in the 1990 McDougal trial.[11] In light of these factors, Lewis and the FBI agreed that further investigation of Madison Guaranty should be made a low priority,[12] and Lewis scheduled the RTC's investigation of Madison for the final quarter of 1992.[13]

Lewis followed the agreed-upon schedule for several months. She shifted her priorities, however, following the March 8, 1992 publication of Jeff Gerth's article on the Clintons' Whitewater investment in the New York Times.

The Tulsa field office of the RTC, where Lewis was assigned at the time, received inquiries about the Gerth article from two senior

RTC officials shortly after the article's publication.[14] Lewis' supervisor, Richard Iorio, testified that the scope of both inquiries was strictly limited to the simple question whether there was "any truth" to Gerth's allegations;[15] neither inquiry sought a significant investigation of Madison Guaranty or suggested that Lewis should advance the investigation of Madison Guaranty from its place near the bottom of her agreed upon 1992 list.[16]

Nevertheless, Lewis—who was neither a trained criminal investigator nor a career civil servant—set aside the higher priority investigations she was conducting and traveled to Little Rock to look through Madison-related documents in a warehouse.[17] In April 1992, Iorio granted Lewis' request that the RTC's criminal investigation of Madison Guaranty be advanced and placed ahead of the other failed Arkansas thrifts on Lewis' priority list.[18]

3. Lewis rushed to complete a criminal referral prior to a self-imposed pre-election deadline

Lewis worked intensively to prepare a criminal referral in the Madison Guaranty case by what she described as a "self-imposed deadline" of August 31, 1992.[19] Lewis set this deadline—a date approximately 60 days before the Presidential election—even though there was no compelling law enforcement interest, such as an imminent statute of limitations deadline, in completing the referral so quickly.[20]

Lewis acknowledged that she understood in 1992 that her work on the Madison Guaranty referral could affect the outcome of the upcoming Presidential election if it became known that the Clintons were involved, even as mere witnesses, in a criminal investigation.[21] But Lewis testified that her "own conservative [political] views" caused her to hold herself to an even higher standard of professionalism in her work on the Madison Guaranty case than the standard to which she held herself in other cases.[22] Lewis denied any intention of creating an "October Surprise" through the submission of a pre-election criminal referral naming the Clintons.[23]

The Committee's record belied Lewis' testimony. Documentary and testimonial evidence established that Lewis did in fact intend her 1992 referral in the Madison Guaranty case to harm Bill Clinton's election chances.

Lewis informed FBI Special Agent Steve Irons in August 1992 that she would soon be submitting a criminal referral in the Madison Guaranty case.[24] Irons' contemporaneous notes of the conversation indicate that Lewis told him she had "g[iven] up a job opportunity in D.C." so that she could "alter history" by completing the Madison referral prior to the election.[25]

Initially, Lewis told the Committee that she had no memory of having made this comment to Irons.[26] Then, after being confronted with Irons' contemporaneous notes, Lewis testified that if she did tell Irons that she planned to alter history through the pre-election submission of her referral, she probably did so sarcastically.[27]

Irons flatly contradicted Lewis' testimony on this point. Fully supported by his contemporaneous notes of the conversation, Irons testified that Lewis' comments about her desire to "alter history" were "very dramatic" and that, in his mind, the comments clearly related to Lewis' identification of the Clintons as witnesses in the

referral.[28] As discussed below, Lewis' conduct in the period immediately following her September 1, 1992 submission of the criminal referral compels the conclusion that Lewis sought to use the referral as a vehicle to alter the course of history by affecting the outcome of the 1992 Presidential election.

The Committee's hearings established that Lewis was motivated by more than just her political interest in affecting the outcome of the 1992 Presidential election. Specifically, the evidence showed that Lewis held a strong personal animus toward Bill Clinton—an animus that was reflected in a letter Lewis wrote to a friend in February 1992, one month before Lewis dropped her work on higher priority institutions to focus on Madison Guaranty, in which Lewis referred to Clinton as a "lying bastard."[29]

4. Lewis' 1992 referral failed to allege evidence of a federal crime and gratuitously named the Clintons as witnesses

With the approval of her supervisor in the field, Lewis transmitted a criminal referral to the United States Attorneys Office and the FBI in Little Rock on September 1, 1992.[30] The referral alleged a check kiting scheme at Madison Guaranty and named the Clintons as possible witnesses.[31]

Career prosecutors at the Department of Justice who reviewed Lewis' 1992 referral uniformly criticized both its completeness and its quality. Mark MacDougal, a trial attorney in the Fraud Section who conducted a thorough written analysis of the merits of the referral, wrote that the referral "does not provide * * * factual allegations sufficient to establish the elements of any of the criminal statutes used in the prosecution of [federal] bank fraud cases."[32] Gerald McDowell, the chief of the Fraud Section and a former chief of the Public Integrity Section, testified that the referral was "junky," that it had "come in half-baked," and that "it could have used more investigation before it came in."[33] Michael Johnson, an Assistant United States Attorney in Little Rock, called the referral's allegations "reckless," "irresponsible" and "odd."[34] Special Counsel Fiske and Independent Counsel Starr have had responsibility for investigating the 1992 referral since January 1994. Consistent with the opinions of the referral expressed by the career investigators and prosecutors, neither Fiske nor Starr has brought any criminal charges based on allegations contained in the referral. Indeed, Charles Patterson, one of the senior lawyers at the law firm of Pillsbury, Madison & Sutro, which investigated possible civil claims arising from the failure of Madison Guaranty for the RTC, testified that the firm found no evidence of the type of "overarching check kiting scheme" alleged in the 1992 referral; Patterson testified that Pillsbury, Madison & Sutro found no evidence to support a civil fraud claim based on the information contained in the 1992 referral, even though such a civil action would require a lower evidentiary showing than would any of the criminal charges contemplated in the referral.[35]

Career prosecutors and investigators also have taken the view consistently that Lewis lacked an evidentiary basis on which to name the Clintons as witnesses to the alleged criminal conduct described in the referral. Mark MacDougal wrote that "[n]o factual claims can be found in the referral to support the designation of

Mr. and Mrs. Clinton as witnesses."[36] FBI Special Agent Steve Irons testified that he "didn't think there was anything in [the referral] to support" the allegation that the Clintons were witnesses to the check-kiting scheme alleged.[37] Donald Pettus, the Special Agent in Charge of the FBI's Little Rock field office, wrote in an October 7, 1992 teletype to FBI Headquarters that "there is indeed insufficient evidence to suggest the Clintons had knowledge of the check-kiting activity conducted by McDougal or Aunspaugh. The earlier mention of a campaign contribution to the gubernatorial campaign also drew no nexus suggesting knowledge or involvement by the Clintons."[38]

On behalf of the RTC, the law firm of Pillsbury, Madison & Sutro later reached the same conclusion as the career prosecutors and investigators—that Lewis lacked an evidentiary basis on which to describe the Clintons as witnesses. The firm's report stated that "there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the source of funds used to make payments on bank debt."[39]

Even Lewis conceded at the Committee's public hearings that "there was no evidence that Mr. Clinton or Mrs. Clinton knew that Mr. McDougal was involved in this check kiting among his different companies."[40]

In sum, the Committee's record indicated that Lewis' 1992 referral failed to allege evidence of a federal crime and that its identification of the Clintons as witnesses was without basis.

5. Lewis pressured the United States Attorneys Office and the FBI to open a formal investigation before the Presidential election

Lewis' supervisor, Richard Iorio, told the Committee that the RTC typically "hears something" back from the FBI or the United States Attorneys Office within approximately 90 days of the submission of a criminal referral.[41] As a general rule, therefore, an RTC investigator has no reason to contact the FBI or the United States Attorneys Office to follow up on a criminal referral, or to inquire about its status, until approximately 90 days have passed since the referral's submission.[42] Even then, Iorio testified, the only reason an RTC investigator would contact the FBI or the United States Attorneys Office would be to find out if either law enforcement agency was going to need the RTC investigator to assist in any continuing investigation; the RTC sometimes needs this information for its own scheduling purposes.[43]

In the case of Lewis' 1992 referral in the Madison Guaranty case, Iorio and others at the RTC expected that it would take at least 90 days for the FBI or the United States Attorneys Office to contact the RTC about the referral. Iorio and others at the RTC understood that the upcoming change in Administrations—and the resulting automatic replacement of the United States Attorney in Little Rock—likely would cause a delay in the work of these federal law enforcement agencies.[44] Thus, there was no reason for Lewis or anyone else at the RTC to contact the FBI or the United States Attorneys Office for a status report on the Madison Guaranty referral until at least 90 days, and probably a longer period of time, had passed since the referral's submission.

Lewis testified that she did not contact the FBI or the United States Attorneys Office about the 1992 Madison referral until December 1992, one month after the Presidential election.[45] Lewis told the Committee under oath that she "would have had no reason" to contact the FBI or the United States Attorneys Office in September, October and November 1992 to ask whether the referral would be pursued, whether subpoenas would be issued, or whether a grand jury investigation would be opened.[46]

As before, Lewis' sworn statements before the Committee were directly contradicted by the testimony and contemporaneous notes of FBI Special Agent Steve Irons. Irons' testimony, along with that of several other career federal law enforcement officials, established that Lewis repeatedly contacted the FBI and the United States Attorneys Office between the referral's submission on September 1, 1992 and the Presidential election two months later. The evidence showed that Lewis tried during this critical time period to determine the status of the referral and to encourage the opening of a formal FBI or grand jury investigation.

Lewis' efforts to press the FBI began almost immediately following her submission of the referral on September 1, 1992. In the course of the next "few days," Lewis tried on several occasions to contact Irons "to ask what the FBI was doing with [the] referral."[47] Apparently frustrated by her inability to reach Irons, Lewis called again on September 9, 1992 and spoke with Irons' secretary, who left the following written message for Irons:

> Jean [Lewis] requested I take a verbatim message & make sure you got it. It is as follows * * * (and don't ask me what a pariah [sic] is!)
>
> Have I turned into a local pariah [sic], just because I wrote one referral with high profile names or do you plan on calling me back before Christmas, Steven????? (816) 968–7237.[48]

Irons returned Lewis' call on September 10, 1992. In response to an inquiry from Lewis, Irons stated that the FBI and the United States Attorneys Office had not made a decision about the Madison Guaranty referral and that they were not going to be in a position to provide status reports in the future.[49]

Nevertheless, Lewis travelled to Little Rock on September 18, 1992 and, without calling ahead, dropped in on Irons at the FBI's Little Rock field office.[50] Irons, who was away from his office, returned to find Lewis there waiting for him.[51] Lewis apologized for her repeated contacts but explained that "her boss, Richard Iorio, kept asking her to try to find out what it was [the FBI was] doing."[52]

Richard Iorio's testimony directly contradicted Lewis on this point. Iorio testified that he never asked Lewis to contact the FBI or anyone else in September or October 1992 to try to determine the status of the Madison referral.[53]

Lewis soon began contacting the United States Attorneys Office in Little Rock about the Madison referral. United States Attorney Charles Banks testified that he was aware of four or five calls that Lewis made to the office between early September and October 16, 1992.[54] Assistant United States Attorney Mac Dodson testified that

Lewis called him "fairly often" between September and November 1992 and that Lewis gave him the impression that she thought prosecutors were not acting on the referral fast enough:

> All the calls would have been between the 1st of September and probably November, around election time. It was my recollection she called me every week or every other week. She called me fairly often. * * * I got the impression she thought I was not moving fast enough.[55]

Lewis explained to Dodson that it was "standard" RTC practice to make a follow-up contact six weeks after the submission of a referral to make sure the referral had been received and to find out if any clarification or assistance was needed.[56] Like the explanation Lewis had given to Special Agent Irons for her repeated attempts to contact the FBI, Lewis' statement to Dodson was contradicted by the sworn testimony of Lewis' supervisor, Richard Iorio; as set forth in greater detail above, Iorio testified that the RTC's general practice was to wait 90 days before contacting the FBI or the United States Attorneys Office to follow up on a referral.[57]

Lewis' contacts with the FBI and the United States Attorneys Office prior to the Presidential election caused several high-level officials in those agencies to be suspicious of Lewis' motives. United States Attorney Charles Banks, for example, testified that the sense of urgency he noted in Lewis' contacts with his office made him "circumspect" about the referral:

> The series of calls that [Lewis] made over a period of two to three weeks struck me as being unusual. There was—I saw no need for the sense of urgency, saving except for who the witnesses were in the referral [the Clintons]. If it hadn't been for the witnesses, Senator, I don't think that there would have been anything like that in the sense of urgency by Ms. Lewis, so it caused me to be very circumspect about it.[58]

Donald Pettus, the Special Agent in Charge of the FBI's Little Rock field office, testified that the timing of Lewis' referral and Lewis' comment about altering the course of history caused him and others at the FBI to be concerned about Lewis' objectivity and overall professionalism.[59]

6. United States Attorney Charles Banks resisted Lewis' pressure and declined to commence a grand jury investigation before the 1992 Presidential election

The argument has been made in Lewis' defense that Lewis would have leaked the existence of the Madison Guaranty referral had she truly wanted to affect the outcome of the 1992 Presidential election.[60] Lewis herself argued in her testimony before the Committee that "the existence of the criminal referral and the information it contained had no effect on the election because it was not revealed."[61] *

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*The Committee's record indicates that in the fall of 1992 a female employee in the RTC's Kansas City field office—the office to which Lewis was assigned at the time—did improperly disclose to a person outside the RTC the fact that the RTC had submitted a criminal referral in a case that "might touch on the Clintons" (Wright, 4/25/96 Hrg. p.117). Betsey Wright, the

Continued

In fact, the opening of a formal inquiry by the FBI or the commencement of a grand jury investigation by the United States Attorneys Office—even in the absence of an actual leak from the RTC—would have made information about the referral, including the identities of the Clintons and other witnesses named therein, available to numerous law enforcement sources. That process very likely could have resulted in actual leaks about the referral and its famous witnesses occurring before the 1992 Presidential election. As Charles Banks, the Republican-appointed United States Attorney in Little Rock, wrote in an October 16, 1992 letter to Pettus:

> You and I know in investigations of this type, the first steps, such as [the] issuance of grand jury subpoena[s] for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven." [62]

The evidence established that it was Banks' steadfast refusal to capitulate to Lewis' pressure that kept the referral out of the public domain prior to the election. Banks' October 16, 1992 letter to Pettus concluded:

> While I do not intend to denigrate the work of [the] RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. * * *
>
> For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States [George Bush].[63]

Chairman D'Amato praised Banks for resisting Lewis' pressure:

> [I]n terms of the action that you took in September, or wherever, or in October, you did absolutely the right thing. * * * You don't start a grand jury investigation as it relates to the then-Governor, presidential candidate, three weeks before [an election]. I mean, that's ridiculous. And I think what you did was absolutely correct.[64]

Deputy Chairperson of the 1992 Clinton Campaign, testified that in September or October 1992 she received a call from a Clinton supporter in California. This person, whose name Wright could not recall at the time of her testimony before the Committee, told Wright that he had just returned from a business trip to Kansas City. He informed Wright that he had gone to a cocktail party in Kansas City and that a female RTC official told him at the party that the RTC had "just sent a criminal referral up to the prosecutor in Little Rock" (Wright, 4/25/96 Hrg. pp.117–121; Wright, 1/26/96 Dep. pp.157–158). The criminal referral, according to the female RTC official, was "about an S&L officer which would implicate the Clintons in Arkansas" (Wright, 4/25/96 Hrg. pp.117–118).

Senator Sarbanes was equally strong in his commendation of Banks:

> I simply want to say that I think [your October 16, 1992 letter to Pettus], and the positions you took, reflected a determined effort to sustain the integrity of the criminal justice system. I think that ought to be recognized, and I think it's this kind of courage that makes the system work, and I commend you for it.[65]

7. The Bush White House and Justice Department showed an interest in Lewis' referral before the 1992 Presidential election

The evidence showed that while Banks was declining to commence a grand jury investigation prior to the 1992 Presidential election, several high level Bush Administration officials at both the White House and the Department of Justice learned of the existence of the confidential criminal referral and made inquiries about it. The Committee's record did not conclusively establish how information about the existence of a confidential criminal referral spread to these senior Bush Administration officials, who made their inquiries after Lewis submitted the referral but before any report of it appeared in the press.

a. The White House

Albert Casey, the Chief Executive Officer of the RTC in 1992, testified that in late September or early October 1992 he received a telephone call from President Bush's White House Counsel, C. Boyden Gray. Casey testified that Gray asked him if he knew anything about an RTC matter involving the Clintons. Casey told Gray that he did not know of such a matter but that he would look into it and call Gray back.[66]

Casey immediately called RTC Vice President William Roelle, who told Casey that there was an RTC criminal referral involving the Clintons.[67] Casey's best recollection was that Roelle told him that the Clintons were not subjects of the referral but that they might be called as witnesses.[68]

Roelle corroborated Casey's testimony. He stated that Casey told him in September 1992 that Gray had contacted him about an RTC criminal referral involving the Clintons. Roelle testified that he confirmed the existence of the referral and showed Casey a copy.[69] Roelle testified further that he told Casey that he should not provide the White House with any information about the referral.[70]

Gray called Casey a second time before Casey was able to call Gray back with the information he had learned from Roelle. Casey testified that Gray told him, "Al, forget my request. I don't want you to tell me a thing."[71] Casey testified that all three conversations occurred on the same day, within a one-hour period.[72]

Gray denied any memory of ever having spoken with Casey about an RTC criminal referral.[73]

b. The Department of Justice

William Barr, President Bush's Attorney General in 1992, testified that White House Cabinet Secretary Edith Holiday asked him on September 17, 1992, during a flight on Air Force One, whether he was aware of an "S&L matter[]" involving Bill Clinton pending

before the Justice Department.[74] At the time, Holiday was serving as the "chief liaison" between the Bush White House and the 1992 Bush-Quayle Reelection Campaign.[75] Holiday had served previously as Chief Counsel and National Financial and Operations Director of the 1988 Bush-Quayle Presidential Campaign and as Counselor to the Secretary and General Counsel of the Department of the Treasury under Secretary Nicholas Brady.[76]

Barr testified that when he returned to the Justice Department he asked Ira Raphaelson, his Special Counsel for Financial Crimes, to check whether there was an S&L case involving the Clintons pending before the Justice Department.[77] Raphaelson told Barr that he would contact the FBI.[78] Raphaelson got back to Barr shortly thereafter and told him that the FBI had no record of such a case.[79]

Barr testified that he reported to Holiday that there was no record of an S&L matter involving the Clintons pending before the Justice Department.[80] Barr thought that Holiday seemed surprised to hear this, and Holiday's reaction made Barr wonder "if she had better information" than he.[81]

Barr went back to Raphaelson and asked him to check again for a record of a pending S&L matter involving the Clintons.[82] Raphaelson contacted the FBI again and the Executive Office of United States Attorneys and soon learned that an RTC criminal referral mentioning the Clintons did exist.[83] When Raphaelson reported this information to Barr, Barr was angry because he felt that the United States Attorney in Little Rock had "deliberately withheld" information about the referral from him.[84]

Raphaelson testified that he learned of the Madison referral near the time that the United States Attorney in Little Rock forwarded it to the Department of Justice in Washington in an "Urgent Report" dated October 7, 1992.[85] On October 8, 1992, one day after the Department of Justice in Washington received the referral, Raphaelson discussed the referral at a meeting attended by Robert Mueller, the head of the Justice Department's Criminal Division, and by FBI Assistant Director Larry Potts and other senior FBI officials.[86]

The next day, October 9, 1992, FBI Headquarters sent a teletype to the FBI's Little Rock field office directing them to review the Madison referral and to report back by October 16, 1992.[87] The Little Rock field office reported back on October 16, 1992, concurring in the view of United States Attorney Banks that no action should be taken on the referral at that time.[88]

Holiday denied any recollection of having asked Barr in September 1992 whether he was aware of an S&L matter involving the Clintons pending before the Department of Justice.[89] Holiday also denied any recollection of having had a subsequent conversation with Barr about the S&L matter prior to the 1992 election.[90]

c. The passport controversy

On October 5, 1992, during the same time period in which Boyden Gray, Edith Holiday and William Barr were making inquiries about the existence of an RTC criminal referral involving the Clintons, The Washington Post reported that the FBI was investigating whether Bush Administration officials at the State Depart-

ment had improperly tried to gain access to Bill Clinton's confidential passport file.[91] Efforts of Bush Administration officials to learn more about the 1992 Madison referral and to accelerate its investigation appear to have ceased shortly thereafter.

8. The Clinton Justice Department properly handled Lewis' 1992 referral

Despite the consensus view among career prosecutors in the Department of Justice that the 1992 referral failed to cite evidence of any federal criminal offense, the United States Attorneys Office in Little Rock did not send the RTC a letter formally declining to prosecute the matters described in the referral until Paula Casey, the Clinton Administration's newly appointed United States Attorney, did so on October 27, 1993. It has been suggested that this delay was the result of interference by officials of the Clinton Administration. The evidence proved otherwise.

As described above, Charles Banks, the Republican-appointed United States Attorney in Little Rock, courageously decided not to act on the referral prior to the 1992 Presidential election. After the election, Banks wrote a letter to the Department of Justice in Washington seeking advice on whether his office should be recused from the investigation.[92] A several-month delay ensued at Main Justice as Banks' recusal inquiry became an unintended casualty of the transition period at the end of the Bush Administration and the beginning of the Clinton Administration. Douglas Frazier, a career prosecutor who worked in the Office of the Deputy Attorney General during this period, explained the problem as follows: "[T]he entire hierarchy of the Department ceased to exist on one day [January 20, 1993], and it took until May to get it semi reestablished.[93]

The referral then was analyzed by the Fraud Section, was found wanting, and was returned by career officials to the United States Attorneys Office in Little Rock with a strong indication that it should not be pursued.[94] Specifically, John Keeney, the acting head of the Criminal Division and the senior career prosecutor in the entire Department of Justice, wrote that due to the referral's shortcomings "we would not question a decision by the United States Attorney to decline further substantive action on the referral."[95]

Paula Casey subsequently based her formal declination of the referral on the uniform recommendations and analyses of the referral provided by career officials at the Department of Justice, the United States Attorneys Office and the FBI.[96]

9. Webster Hubbell had no involvement in the handling of Lewis' 1992 referral

The evidence showed that Webster Hubbell had no involvement in the appointment of Casey as United States Attorney in Little Rock or in any aspect of the Justice Department's handling of the RTC criminal referrals relating to Madison Guaranty. The Committee's exhaustive examination showed that Hubbell did not influence or seek to influence the Justice Department's disposition of the referrals. Hubbell himself testified that he did not even hear about the 1992 referral until late summer or early fall 1993.[97] No evidence contradicted Hubbell's testimony.

10. Other failed S&Ls in Arkansas went uninvestigated due to Lewis' focus on Madison Guaranty

As discussed above, Jean Lewis and Special Agent Steve Irons agreed in late 1991, a few months before Jeff Gerth's article appeared in The New York Times—that Savers Savings Association and First Federal were their top priorities for prompt criminal investigations and that Lewis would fully investigate these two failed Arkansas institutions during the first quarter of 1992.[98] Over the course of the next several years, as Lewis instead focused her efforts nearly exclusively on Madison Guaranty, Irons and others at the FBI—including officials at FBI Headquarters—repeatedly reminded Lewis and the RTC of their strong interest in receiving timely referrals on Savers Savings and First Federal, which had failed at a cost to taxpayers of $650 million and $900 million, respectively.[99]

The efforts of Irons and others at the FBI to get Lewis to work on Savers Savings and First Federal were unavailing. Despite the FBI's view that Savers Savings and First Federal were "believed to have much greater prosecutive potential than Madison Guaranty Savings and Loan,"[100] Lewis did not submit a referral on either institution after putting them at the top of her December 11, 1991 priority list.[101]

In the spring of 1995, based on the work of an investigator other than Lewis, the RTC finally submitted a criminal referral arising from the failure of First Federal of Little Rock.[102] So much time had passed, however, that the FBI and the United States Attorneys Office were unable to act on the referral. The statute of limitations had expired on most of the allegations contained in the referral, and the documents necessary to the investigation of the few remaining claims had been dispersed throughout the country when the RTC sold off the institution's assets.[103]

B. THE INVESTIGATIONS OF DAVID HALE

The Special Committee's investigation established that the White House did not delay or obstruct the investigation and liquidation of Capital Management Services ("CMS") or the prosecution of David Hale. Specifically, the evidence showed that Hale was indicted quickly after the Small Business Administration ("SBA") uncovered evidence of Hale's numerous fraudulent activities, and that he received no preferential treatment either by the SBA or the Justice Department. White House officials knew of developments regarding Hale and CMS, but made no effort to affect the way in which the SBA or the Justice Department handled their investigations.

1. The SBA uncovers Hale's fraudulent activity

The SBA began to investigate Hale and CMS in September 1992, when Hale falsely represented to the SBA that CMS had received $13.8 million in donated non-cash assets, and sought SBA matching funds.[104] Several aspects of the transaction raised concerns at the SBA about the legitimacy of this financial activity, including the transfer of assets from bank accounts in the Cayman Islands. Consequently, Wayne Foren, then-Associate Administrator for the

program which regulated CMS, ordered an independent examination of the deal.

The examination report, dated March 11, 1993, raised "questions relative to the donated assets and * * * other transactions."[105] Specifically, the examination concluded* that CMS: "transferred assets to an associate without SBA approval;" "did not properly safeguard its assets during the exchange [of portfolio assets];" and "misclassified and misrepresented the sale of assets as financings to small concerns."[106] The examination report led Foren to tell Hale that "these assets are not worth the represented value, in which case you are perpetrating a fraud against the SBA, or you are being bribed."[107] By this point, Foren was "concerned that [the SBA] was not dealing with an entity that was dealing in good faith and trust with us."[108] Later, Foren realized that CMS "was attempting to defraud SBA with its 1992 $13.8 million noncash capital increase and related requests for $6 million of [SBA matching funds], and that its 1988 capital increase and related leverage was in fact fraudulent."[109] Foren testified that Hale's activities at CMS constituted "one of the most blatant cases of fraud" he had ever witnessed.[110]

On May 5, 1993, Foren referred CMS to the SBA's Inspector General for further investigation and sent Hale a letter notifying him of the referral.[111] Foren discussed the timing of the referral with Erskine Bowles, who had been nominated to head the SBA. According to Foren, Bowles told Foren to issue the referral that day.[112] On May 20, 1993, the SBA Inspector General referred the case to the Federal Bureau of Investigation (FBI), which had superior resources to investigate Hale's complicated fraudulent transactions. In addition, the U.S. Attorney's Office and the FBI field office in Little Rock had already been investigating Hale's involvement in other fraudulent transactions in 1986 and 1988, which confirmed Foren's concerns about Hale and CMS.[113]

On July 21, 1993, the FBI executed a search warrant at CMS' offices and seized documents and records relevant to its investigation. Shortly after the U.S. Attorney's office received access to relevant records stored in the RTC's Kansas City office, Hale was indicted on September 23, 1993, for defrauding the SBA and making false statements to the SBA.[114] What Foren described as the "rather swift" action to indict Hale demonstrated the absence of any improper considerations to Hale.[115]

Hale pleaded guilty to two counts of fraud on March 22, 1994. At the time of his plea, Hale admitted that in 1988 and 1989, $1 million had been temporarily transferred to CMS permitting Hale to mislead the SBA to believe that some non-performing loans had been repaid, thus enabling Hale to receive an additional $900,000 in SBA funds. Hale also admitted at the time of his guilty plea, that he submitted numerous false statements to the SBA.[116] The

*The General Accounting Office reached a harsher conclusion in its 1994 report on CMS: "Mr. Hale operated Capital Management in an improper manner by entering into prohibited transactions. Such prohibited transactions included loans to business associates and loans for real estate purchases, both of which violated SBA regulations. He also took advantage of the opening provided by the flexibility in SBA guidelines—for determining socially or economically disadvantaged individuals—to provide loans to individuals with questionable claims to program eligibility." U.S. General Accounting Office, "Small Business Administration: Inadequate Oversight of Capital Management Services, Inc.—an SSBIC," GAO/OSI–94–23, p. 3 (March 21, 1994) (citations omitted).

General Accounting Office has estimated that Hale's fraudulent activity alone cost the SBA $3.4 million.[117]

2. The White House does not interfere with the investigation

It has been alleged that the White House interfered with the SBA's investigation of Hale. The evidence, however, refutes these allegations. Foren testified that he briefed SBA Administrator Erskine Bowles on May 5, 1993 about his decision to refer CMS to the SBA Inspector General. Foren testified that Bowles told Foren to send the referral immediately, that Bowles briefed former White House Chief of Staff Thomas "Mack" McLarty on the CMS referral at dinner that night, and that on May 6 Bowles told Foren about briefing McLarty the night before.

Bowles and McLarty testified that they did not have dinner on May 5 and that they never discussed CMS. But even if Bowles did tell McLarty about the referral, Foren testified that there would have been nothing illegal or unethical about Bowles briefing McLarty on CMS, that there were no attempts by McLarty, Bowles or the White House to delay or impede SBA's investigation of CMS, and that Hale was indicted in record time.[118] Bowles instructed Foren and the career SBA staff to proceed with the CMS investigation with the same vigor as they would any other investigation and to take all appropriate steps to prosecute any individuals who had committed any fraud or abuse.[119] Moreover, Foren's understanding was that he was to "proceed with this case as you do any other case;"[120] there was never any suggestion that anyone should "go easy" on Hale.[121]

Similarly, there were no instructions from or pressure by the White House to provide Hale with any favored treatment.[122] Associate General Counsel Mark Stephens, who handled the liquidation of CMS and served as the SBA's liaison with the FBI, testified that neither White House officials nor SBA political appointees ever tried to influence his investigation of CMS or Hale.[123]

It should also be noted that on May 5—the date when the SBA referred CMS to the Inspector General—the SBA informed Hale by letter that his company had been referred to the Inspector General. It was standard procedure at that time to inform a target of an investigation of a referral to the Inspector General.[124] Thus, there is no valid claim that the White House gave Hale a "heads up" and thus undermined or compromised the subsequent investigation of CMS.

3. The SBA provides the White House with copies of documents already sent to Congress

The SBA did not undermine the Justice Department's investigation of Hale and CMS merely by providing the White House with copies of documents that had already been sent to Congress. On November 4, 1993, House Small Business Committee Chairman John LaFalce asked the SBA to produce a report on CMS by November 15. Associate White House Counsel Neil Eggleston read news stories about LaFalce's request.[125] Eggleston called the SBA, and later received a return call from SBA General Counsel John Spotila. Spotila confirmed that the SBA had sent a report to Congress regarding CMS.[126] Eggleston asked if it would be appropriate

for the SBA to provide the White House with a copy of the report that had been submitted to Congress.[127] Spotila later agreed to produce the report, and faxed a copy of the four-page report to Eggleston on November 16.[128] When Eggleston realized that attachments to the report had not been provided, he requested those as well. Spotila determined that the SBA could appropriately provide to the White House copies of the attachments that the SBA had submitted to Congress.[129] Thus, the SBA did not provide the White House with any documents that the SBA had not already provided to Congress at the request of the House Small Business Committee Chairman John LaFalce.[130]

According to Spotila, SBA ethics officer Martin Teckler said it would be appropriate to give the documents to the White House. SBA Associate General Counsel Mark Stephens testified that most of the documents that were attached to the report were either public documents (such as the court pleadings filed in a federal court in Arkansas), or contained information that was not confidential.[131] Spotila testified that he did not believe sending the documents to the White House constituted a public release of documents. Importantly, Teckler and Spotila testified that the documents had been screened prior to being sent to Congress.

A few days later, Stephens called Eggleston and told him that the SBA had decided to discuss the issue with officials at the Department of Justice.[132] Allen Carver and other Justice Department officials informed Stephens that the SBA should have the White House return the documents for the sake of appearances. Eggleston returned the documents to Stephens on November 21, just four days after he had received them.[133]

The document transfer did not undermine the CMS investigation. Hale was indicted on September 23, 1993—nearly two months before the White House received the November 15 report. Moreover, the evidence showed that the documents were not used inappropriately. The Deputy Chief of the Justice Department's Fraud Section, Allen Carver, testified that he thought the request for the documents was "totally innocent," and that the White House wanted to track Congressional inquiries.[134] Irv Nathan, an aide to Deputy Attorney General Phil Heymann, believed Eggleston's explanation for why he sought the SBA documents was "reasonable and sensible."[135] Mark Stephens believed the whole matter was "much ado about nothing" and did not believe that the document transfer undermined or compromised the CMS investigation.[136] Teckler, Eggleston, and Spotila did not believe that SBA provided any "sensitive documents" to the White House.[137] As Teckler testified, "I think we satisfied ourselves, and I think Mr. Spotila satisfied himself, prior to having sent the documents forward that there were no sensitive documents. We certainly are satisfied to that effect afterwards."[138] Actually, the SBA's report to Congressman LaFalce was converted into an information sheet that was made available to the public at the time the documents were sent to Congress.[139] The attachments were merely "background" materials about CMS.[140]

C. THE RTC'S HANDLING OF THE 1993 REFERRALS

Jean Lewis has claimed that RTC attorney Julie Yanda "obstructed" the RTC investigation of Madison Guaranty "with her unprecedented demand that her staff first conduct a 'legal review' of the referrals." [141] The Committee's investigation demonstrates that the legal review of the 1993 referrals was not an attempt to obstruct the Madison investigation. The evidence showed that the legal review was appropriate because RTC policy required such a review, because Lewis's 1992 referral was poorly drafted, and because the poor quality of other referrals prepared by the Kansas City RTC criminal investigators had prompted complaints from the FBI and federal prosecutors.

After Lewis and Yanda had testified before the Committee, Chairman D'Amato informed Yanda that "I certainly want publicly to put on the record there is no one on this Committee who impugns you or your integrity, or your undertaking your job." Chairman D'Amato added that:

> I can certainly understand that if actions that you have undertaken in good faith are characterized in that manner, and certainly the fact that on June 17 there was a procedure that then implemented this and the fact that I think you took something like nine days * * * in the review, that certainly does not appear to this Senator to be any actions that should be characterized as obstruction.[142] For the reasons stated below, we share this view of the matter.

1. The legal review was consistent with RTC policy

RTC policy required a legal review of the referrals before they were sent to the U.S. Attorney's Office in Little Rock. As Yanda testified, the "unambiguous language" of the June 17, 1993 RTC Policy Directive required her to conduct a legal review of the referrals. The Policy Directive stated:

> Except in rare circumstances, criminal referrals shall be reviewed by RTC Investigations and Legal Division Criminal Coordinators before they are delivered to the U.S. Attorney and the FBI or other investigative agencies. RTC criminal coordinators shall make certain that all required and support documents are provided.[143]

James Thompson, a senior RTC official who served as deputy regional director in Kansas City in 1993, testified that this language certainly supported Yanda's view that the legal division should review referrals before they were sent to prosecutors or the FBI.[144] Similarly, RTC criminal coordinator Karen Carmichael interpreted this language as requiring her "to review the referral before it went out, make sure all the attached documents state the same thing as the referral and * * * do a legal review of the referral." [145]

The legal review was also consistent with the internal policy of the RTC's Kansas City office, which had organized a 1993 blue ribbon task force to facilitate cooperation between the office's attorneys and investigators.[146] Thompson, Yanda, and investigations chief Richard Iorio all supported the task force, which Thompson believed helped avoid conflicts "between the investigators and the

attorneys on how we were going to get to a decision and who was going to do what."[147] Thompson testified that if "you're working on referrals or working on legal cases or working on anything involving the law, somewhere in the process appropriate legal counsel should be sought."[148] The goal of the review was simply to improve the quality of the referrals, not to obstruct them.[149] Thompson concluded, "if you're afraid of your own attorney's opinion, you have a fundamental problem."[150]

The evidence indicates that the legal review was objective and useful. Yanda assigned Carmichael—a former aide to Republican Senator Don Nickels[151]—and former Justice Department prosecutor Philip Adams to conduct the legal review. Yanda, Carmichael, and Adams had no apparent motive to obstruct the RTC's investigation. Rather, they reviewed the referrals and submitted 13 pages of concerns and recommendations within ten days of receiving the referrals and exhibits.[152] Even in that limited amount of time, they were able to flag important issues, such as whether Lorene McDougal, one of the targets of the RTC investigation, had died before Lewis drafted the referral. As Yanda testified, "I honestly do not believe . . . that it is in the interest of the RTC for its investigators to recommend to the U.S. Attorney and the FBI that they conduct a criminal investigation of a dead person."[153] The attorneys also sought to review the referrals regarding double jeopardy, the statute of limitations and other legal issues.[154] Randy Knight, one of Lewis's colleagues in the criminal investigations office, believed that it was reasonable and useful for the attorneys to review the referrals and provide their recommendations to the FBI and to the U.S. Attorney.[155]

2. The poor quality of previous referrals made legal review essential

As discussed earlier, career prosecutors at the Justice Department harshly criticized Lewis's 1992 referral.* The poor quality of the 1992 RTC referral was not unique. Carmichael testified that in June 1993, an Assistant U.S. Attorney in Oklahoma who handled bank fraud investigations, complained about the "problems he had with the RTC's referrals and how they had all been unfounded, none of them were supported by any facts, that they had spent exceptional amounts of money and time and special authority to travel from their district up to Kansas City to review documentation which was not provided to them, that they had to find documents themselves."[156] This federal prosecutor did not "trust" referrals

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*While the Majority's report gives Lewis credit for identifying suspected criminal activities that formed the basis of the indictment against Tucker and the McDougals, the facts are as follows. James McDougal's criminal activities were "old news" by the time Lewis drafted the 1992 referrals. The government had already prosecuted McDougal just a few years earlier. McDougal had been stricken by serious physical and mental illnesses. He was also destitute and living in a borrowed trailer; clearly there was no prospect of McDougal being held financially accountable for losses suffered by the RTC.

Two of Lewis' 1993 referrals became the basis of charges against Tucker. The facts contained in RTC Criminal Referral No. 730CR0190, which accused Tucker of diverting approximately $135,000 in proceeds from a Madison Guaranty loan, were described as overt acts in Count I of the indictment. A jury convicted Tucker on this count. The facts contained in RTC Criminal Referral No. 730CR0198, which accused Tucker of participating in fraudulent land transactions regarding a Main Street property in Little Rock, were contained in Count 20 of the indictment. A jury acquitted Tucker of this charge.

As previously discussed, however, Lewis's contribution to the 1992 referral was substantially marred. The document was poorly drafted and improperly designated the Clintons as "witnesses" to alleged criminal offenses.

written by Lewis and her colleague Ed Noyes, and "he would not accept the referral" from them that RTC attorneys "had not absolutely put their blessing on and agreed that this was in fact a legitimate referral."[157] Other U.S. Attorney's Offices had expressed concerns about the quality of criminal referrals being submitted by Lewis and other investigators in Kansas City.

Another federal prosecutor had complained that Lewis had made a mistake that led to a significantly diminished civil recovery from a financial institution in Paragould, Arkansas.[158] In 1992, Lewis had refused to cooperate with the senior RTC attorney who had been assigned to handle a fidelity bond claim. Lewis failed to inform RTC attorneys about a criminal referral she had sent to the U.S. Attorney's Office.[159] Lewis and an Assistant U.S. Attorney arranged a plea agreement with a "target defendant" that did not incorporate any requirement of restitution or cooperation by the defendant. Consequently, "the interests of the RTC were wholly unprotected"[160] and resulted in a loss to the RTC of approximately $200,000.[161]

Similarly, the U.S. Attorney and the FBI in Little Rock had complained about the failure of the RTC to provide them with subpoenaed documents relevant to the Madison investigation in the fall of 1993. In late August or early September 1993, the RTC's Kansas City office received a grand jury subpoena for documents related to Madison Guaranty.[162] After several months of trying to locate these documents, Yanda and Carmichael eventually discovered Lewis and Ausen "had 100 boxes worth of documents responsive to subpoenas that the FBI and AUSA knew about but which nobody had bothered to tell [RTC lawyers] about, despite our repeated requests."[163] Consequently, Yanda concluded that "we had a team member, Ms. Lewis, who had a demonstrated failure to perform as part of that team" and asked that Lewis be removed from the Madison investigation.[164]

Given these facts, it is obvious that a legal review of Lewis's criminal referrals was reasonable and appropriate. The review allowed RTC lawyers to be aware of all facts related to their cases and allowed the RTC to maximize the recovery of taxpayer dollars lost due to fraudulent activity. Moreover, the legal review may have been useful to federal prosecutors and to the FBI in assessing and pursuing matters that were referred to them.

3. The legal review was not an attempt to impede the Madison investigation

There exists no evidence that the legal review was an attempt to impede the RTC investigation of Madison Guaranty. Randy Knight, an RTC criminal investigator who prepared two of the 1993 criminal referrals, did not believe that the legal review of the referrals was intended to undermine or impede the investigation of Madison Guaranty or was politically motivated.[165] Richard Iorio, Lewis's supervisor, noted that the legal review of the referrals took no more than nine days, and that all referrals drafted since the issuance of the June 17 policy directive have been subjected to the same legal review for a comparable length of time as the 1993 Madison referrals.[166]

Similarly, Lewis's claim that the legal review of the 1993 referrals was "unprecedented" is extremely misleading. As Yanda testified,

> The review of the Madison referrals was unprecedented only in the unremarkable sense that they were the first ones made available to my lawyers and me in order for such a review to occur. I assure you that if previous referrals had been provided for review, they would have received the same professional analysis that Ms. Carmichael and Mr. Adams applied to the Madison referrals, and that attorneys in my section have applied to every referral that we have received since September 1993.[167]

Carmichael's testimony corroborated Yanda's recollection that these were simply the first referrals that the investigators had presented for legal review after the nationwide issuance of the June 17, 1993 Policy Directive.[168] Carmichael testified that there was nothing "novel" about the review of the Madison referrals, noting that she has reviewed four other referrals in addition to the Madison referrals.[169]

4. Lewis was not a credible witness and her allegations are therefore suspect

Lewis's testimony contained numerous inconsistencies and implausible statements. Lewis testified, for example, that the recorder that taped her entire conversation with April Breslaw on February 2, 1994, turned on by itself.[170] In explaining this unlikely phenomenon, Lewis admitted that the tape recorder was not a voice-activated machine[171] but testified that the tape recorder was "eight years old at that point, it didn't always function as it was expected to."[172] The Committee issued a subpoena for that tape recorder, but Lewis testified that after the recorder "died" in mid-February 1994, she purchased a new tape recorder and discarded the old one, which had supposedly taped conversation with Breslaw.[173] In response to the Committee's request for documentation of the purchase of the "new" recorder, Lewis's attorney sent a November 7, 1995 letter to the Committee indicating that "Ms. Lewis has reviewed her bank statements * * * and determined that the following entry * * * reflects the purchase of the tape recorder:

"Date	Description	Checks/Debits
"02–17	#Purchase "Merchant Purchase Terminal 440140. "Office Depot #176 Shawnee KS".	64.94

The evidence, however, contradicts Lewis's assertion. Office Depot, the store that sold the new tape recorder to Lewis, subsequently provided records that proved that Lewis purchased other office supplies, not the new recorder, on February 17, 1994. The Office Depot records incontrovertibly established that Lewis had actually purchased the new tape recorder on January 17, 1994, over two weeks prior to the taping of the conversation with Breslaw.[174] Thus, Lewis's explanation of the tape recorder turning on by itself—which strained credulity in the first place—is refuted by the fact that she had already purchased the new tape recorder and, by

her own admission, had discarded the old recorder when she purchased the new one.

In addition, it was improper for Lewis to have taped this conversation without first obtaining Breslaw's consent. Lewis denied deliberately setting out to surreptitiously record her conversation with Breslaw. Nevertheless, Lewis admitted that she was aware from the beginning that the conversation was being recorded and that she consciously decided to continue taping the conversation.[175] To insure that Breslaw remained unaware that the conversation was being taped, Lewis sat on the same side of her desk as Breslaw so that Breslaw "would not see the tape recorder."[176] Former RTC General Counsel Ellen Kulka testified that this clandestine taping of Breslaw was one of the justifications for placing Lewis on administrative leave.[177] *

Another example of Lewis's implausible testimony before the Special Committee occurred when Lewis stated that she never attempted to profit from the Madison investigation.[178] Lewis later conceded she attempted to market versions of copyrighted shirts and products containing the acronym "B.I.T.C.H.," which stood for "Boys I'm Taking Charge, Hillary" or "Bubba, I've taken charge. Hillary."[179] Lewis provided her RTC office telephone number to potential investors so that she could pursue her business interests while at work.[180] Lewis testified that the use of the word "bitch" was "in no way intended to denigrate the First Lady."[181] Lewis refused to acknowledge the impropriety in conducting personal business affairs in her governmental office, or in marketing a product that disparaged people she had identified as witnesses in the course of her investigation.

Finally, Lewis leaked confidential RTC information during her February 18, 1994 meeting with Republican Congressman Jim Leach. The release of this confidential information directly violated RTC policy. The RTC's Director of the Office of Investigations and several members of the RTC's Office of the General Counsel issued a June 17, 1993 Memorandum that stated, "All referrals are sensitive and must be handled with appropriate confidentiality and care."[182] James Thompson, an RTC vice president in the Kansas City region in 1993, testified that criminal referrals and their exhibits are confidential material, and that such materials "would not be disclosed to Congress" from "the regional level."[183] Nevertheless, Lewis provided Congressman Leach with material she knew to be confidential, such as internal RTC memoranda and correspondence regarding the Madison referrals, as well as documents from Madison Guaranty, Madison Bank and Madison Financial Corporation gathered by the RTC during the course of its investigation. Lewis also provided Congressman Leach with a summary of her conversation with Breslaw after playing the tape recording for Congressman Leach, even though she recognized that the conversation contained confidential information.[184] Predictably, Congressman Leach then released all of these documents to the public on March 24, 1994. Thus, Lewis's unilateral decision to leak RTC documents to Congressman Leach directly resulted in the public dissemination of

* According to Lewis, even Congressman Jim Leach described Lewis's taping of this conversation without Breslaw's consent as "inappropriate. (Lewis, 10/30/95 Dep. p.238).

confidential information in the middle of the Special Prosecutor's investigation of Madison-related matters.

Lewis fully understood the impropriety in releasing these materials. She recognized that "there are fairly stringent regulations with regard to documents that are released from government agencies for public access"[185] including the June 17 RTC Memorandum discussed above. As Lewis recognized, these restrictions exist because disclosing confidential information to third parties "[m]ight create a problem" for an ongoing investigation.[186] However, Lewis chose not to notify her supervisors in advance of her meeting with Congressman Leach because she feared they would not have concurred with her decision to provide Congressman Leach with confidential RTC documents.[187]

The facts refute Lewis's claim that she was acting as a "whistle blower" by disclosing this confidential information to Congressman Leach. As Knight observed, none of the people listed in the referral "are our supervisors or government employees * * * so that would not be whistle-blowing; that would be criminal."[188] Knight correctly believed that leaking confidential information to Congressman Leach was no different than providing the information to the press because "the outcome is the same."[189] Most significantly, Special Prosecutor Robert Fiske, a Republican and a former federal prosecutor, was conducting an ongoing investigation regarding transactions that directly related to the confidential information that Lewis leaked to Congressman Leach. Instead of providing relevant information to the prosecutor, Lewis chose to politicize the investigation by disclosing the information to a Republican congressman who promptly released the confidential information to the public.

The leaking of this information constituted a serious breach of RTC policies. Knight noted that some of Lewis's colleagues felt that "'if I would have done that, I'd have been fired'" and that RTC employees had been fired for more minor infractions—like misusing postage stamps—than leaking confidential documents.[190] Thompson agreed, testifying that the leak of confidential information connected to a criminal referral "would be cause for disciplinary action" and "very likely could include termination of the employee."[191]

D. THE JUSTICE DEPARTMENT'S HANDLING OF THE 1993 REFERRALS

It has been alleged that U.S. Attorney Paula Casey treated David Hale unfairly by requiring him to explain what information he could provide to the prosecution before entering a plea agreement with Hale. The evidence showed, however, that Casey followed standard Justice Department procedures in the negotiations with Hale and his attorney, Randy Coleman. Actually, Casey offered Hale a more lenient plea than Hale ultimately accepted from the Independent Counsel.

1. The U.S. Attorney's office handled the 1993 referrals properly

The FBI in Little Rock received the SBA referral regarding Hale and CMS in June 1993.[192] Assistant U.S. Attorney Fletcher Jackson reviewed the referral and then reviewed the documents that the FBI had seized while executing a search warrant at CMS's offices on July 21, 1993. Interestingly, the RTC office in Kansas City

had not been cooperating with the FBI's attempts to obtain information relevant to their investigation. The FBI contacted Michael Johnson, First Assistant U.S. Attorney in Little Rock, for assistance in resolving the matter. As Johnson testified, "The agents indicated to me that they were seeking records in the possession of the RTC essential for the initial phase of the FBI's criminal investigation. They indicated to me that the RTC had continually represented to them that the records needed to be retained in Kansas City so that the RTC personnel could prepare criminal referrals. They indicated to me that the criminal referrals had been promised in July 1993, but the RTC kept delaying the date. The agents further indicated to me that they believed the referrals would concern the same matters that the FBI had outlined to me and already wanted to investigate."[193] Johnson interceded on the agents' behalf,* but ultimately the agents "simply had to wait until the RTC sent the referrals in mid-October before we could actually begin what we had been already attempting to do."[194]

Paula Casey, the U.S. Attorney in Little Rock, recalled receiving the criminal referrals from the RTC's Kansas City office in October 1993. After reviewing these referrals, Casey believed she had to recuse herself from the investigation.[195] Her top assistant, career prosecutor Michael Johnson, however, asked her to delay making a recusal request until he and the FBI had had a chance to assess the referrals more carefully.[196] Johnson, who had no connection with individuals named in the referrals, wanted to make a "preliminary assessment" of the referrals because his "past experience with the RTC" caused him to "not have the confidence in the RTC that [he] had in the FBI."[197] By then Johnson had read Jean Lewis's 1992 referral, and "[t]he nature of the referral and the manner in which it was set forth made me cautious about relying on allegations by the RTC as the sole basis to make the important decision of recusal."[198] Johnson therefore discussed the referrals with the FBI, drafted subpoenas for relevant documents, and arranged to travel to Kansas City to review RTC documents.

On November 3, 1995, Casey met with senior Justice Department officials in Washington, where the 1993 referrals were discussed. The general consensus of the group was that Casey should recuse. On November 5, 1993, Casey sent a written recusal letter to Deputy Attorney General Phil Heymann, in which she formally recused herself and the U.S. Attorney's office in Little Rock from the investigation of Hale and the 1993 referrals.[199] Heymann accepted her recusal request, and a team of prosecutors from the Justice Department, led by former Nixon appointee Donald MacKay, assumed control of the investigation.

Before Johnson's departure for Kansas City, which had been planned for November 8, Casey informed him that she had recused the office from the matter, therefore eliminating the need for Johnson to travel to Kansas City. Mackay went to Kansas City instead.[200] Johnson then facilitated the transition of the Hale matter

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*When the Justice Department assumed control of the investigation stemming from the nine referrals, the deputy chief of the Fraud Section, Allen Carver, recognized that FBI agents in Little Rock had "wanted to get speedier action on getting documents that they were trying to get from the RTC." To ease tensions between the FBI and the RTC in Kansas City, Carver sent Mackay to Kansas City in early November 1993 "to try to work with the Kansas City RTC and to develop a relationship with them . . . ." Carver, 10/17/95 Dep. pp.120–122.

and the 1993 criminal referrals to the Justice Department and ultimately to the Independent Counsel's office.[201]

Casey testified that no one in her office attempted "to obstruct the investigation of any of the RTC referrals during the few weeks that they were in my office."[202] Johnson testified that "no one associated with the Department of Justice, the White House, the Federal Bureau of Investigation, or any other federal agency, ever attempted to delay, control or obstruct the investigation being conducted by our office."[203] Similarly, the Little Rock prosecutor who handled the Hale investigation and the criminal referrals testified that prior to Casey's decision to recuse herself, Casey "didn't interfere in any way with what I was doing."[204]

2. Plea negotiations with Hale were handled appropriately

Hale demanded that U.S. Attorney Paula Casey grant him an unusually lenient plea agreement—without first requiring him to proffer any facts relevant to the criminal investigation.[205] Coleman wanted a misdemeanor plea for Hale that would have allowed Hale to retain his license to practice law and to remain a judge.[206] Casey and numerous career Justice Department officials uniformly testified that, in the absence of such a proffer, the U.S. Attorney would have risked "buying a pig in a poke"—that is, giving the benefit of a lenient plea without knowing whether they would receive the benefit of information that would be useful to the prosecution.[207] Michael Johnson, a career prosecutor with 22 years of experience, testified that it is "a common occurrence, when dealing with potential defendants who seek leniency in exchange for information, to demand and obtain from them a proffer, that is, a preview of the evidence they have to offer before agreeing to the arrangement."[208] According to Johnson, the proffer would have allowed the FBI and the U.S. Attorney's office "to assess and corroborate the information, and to make the determination whether to enter into a plea arrangement whereby Mr. Hale would receive leniency in exchange for the information and testimony. It was standard Department of Justice operating procedure."[209] The high-ranking career Justice Department prosecutors who reviewed the actions of the U.S. Attorney's office in Little Rock agreed that the office acted appropriately in rejecting Hale's attempt to push them into a blind agreement.

Rather than make a proffer to the prosecutors, Hale chose to contact Clinton's most vociferous opponents,[210] and to provide lengthy interviews to reporters while Coleman contacted the White House Counsel's Office in a futile attempt to get the White House to do something "foolish" with respect to the investigation.[211] Johnson believed that Coleman "was manipulating public perception, in part through the news media, in an effort to scare [the U.S. Attorney's office] into capitulating regarding the potential indictment of his client."[212] Nevertheless, no one in the White House tried to influence Casey's or the Justice Department's handling the Hale case.[213]

On November 8, 1993, Donald Mackay, a prosecutor in the Department of Justice's Fraud Section assumed the investigation of the Hale matter and the nine criminal referrals.[214] The Department of Justice's position regarding Hale's plea demands was the same as Casey's position. Like Casey, Mackay informed Coleman

that the prosecution would not plea bargain with Hale until Hale informed them directly of the information he could provide in exchange for the agreement.[215] According to Acting Assistant Attorney General John Keeney, the Justice Department position was "that no deal would be made with Hale until we had a lawyer's proffer and were able to evaluate it".[216] Yet, Hale still refused to make a proffer in absence of a promise of immunity or the dismissal of the charges.[217]

Johnson noted that Hale eventually began to negotiate "in earnest" with the U.S. Attorney's office on October 21, 1993: "As a result of that negotiation, Mr. Hale agreed to accept a felony plea and make himself available for interview. However, by [the] time he did so, on November 8th, 1993, our office had recused from the case."[218] The Justice Department and then the Office of the Independent Counsel assumed the negotiations. Ultimately, the Independent Counsel required Hale to plead guilty to two felony counts, while Casey had insisted on a plea to a single count—a dramatic contrast to the grant of immunity or misdemeanor plea Hale originally had sought.[219] Michael Johnson, who supervised the plea negotiations with Hale, summarized the matter:

> The United State's Attorney's office offered Mr. Hale a plea agreement which would have required him to plead guilty to a single felony. He rejected that and insisted on receiving immunity, or at most, pleading to a misdemeanor offense. This issue was ultimately resolved between Mr. Hale and the Independent Counsel's office when Mr. Hale pled guilty to two felony offenses, not one.[220]

The prosecutors handled negotiations with Hale and Coleman properly. Given the plea offer Hale ultimately accepted from the Independent Counsel, it is clear that the U.S. Attorney would have acted unwisely if she had accepted Hale's requests for lenient treatment.

3. Casey's recusal was handled properly

As discussed above, Hale and Coleman refused to make a proffer during the plea negotiations with the U.S. Attorney's office. As a result, prosecutors were left with nothing beyond unsubstantiated rumors circulating in media accounts regarding Hale's allegations about President Clinton. Michael Johnson, a career prosecutor and the top Assistant U.S. Attorney in the Little Rock office, advised Casey not to recuse herself on the basis of unsupported rumors that Hale had circulated in the media:

> I advised Ms. Casey of the same things that I had told Mr. Keeney, and urged her for the same reasons not to consider recusal unless and until we had obtained information on which a recusal might be warranted, and until we had an opportunity to assess the reliability of that information. It was my professional view then, and it is my professional view now, that to do otherwise was irresponsible and would abdicate our duty as prosecutors.[221]

Johnson was concerned that a recusal under these circumstances would set a precedent that could result in defendants routinely

forcing the U.S. Attorney's office out of cases simply by making unsupported allegations against Governor Tucker or the Clintons.[222]

Nevertheless, Casey recused herself on November 5, 1993, to avoid the appearance of any conflict of interest. After MacKay assumed control of the investigation, he handled plea negotiations in essentially the same manner as Casey had previously.[223] Most significantly, officials in the Justice Department and the U.S. Attorney's office in Little Rock agreed that the timing of Casey's recusal did not affect the investigation in any way. As Fletcher Jackson testified,

> [Casey] didn't interfere in any way with what I was doing. So I don't really think it made any difference whether she recused one week or the next week or whenever, and when she eventually did. I don't see any harm that occurred from, you know, from when * * * it occurred.[224]

4. The White House did not influence the investigation

Casey testified that her office was not subjected to any attempt by the White House or Justice Department to improperly influence the investigation of Hale. She testified that she did not speak with Webster Hubbell in 1993.[225] Neither Casey nor anyone in her office was in contact with the White House on this matter.[226] Johnson also was not aware of anyone in his office speaking to Hubbell about Hale, Madison Guaranty or the criminal referrals.[227] Lastly, Hubbell testified that although a September 1993 internal Justice Department memorandum routinely routed to him informed him of the referral, he took no action regarding the memorandum.[228]

In sum, the best evidence proving the lack of White House interference was the prompt indictment of Hale and the refusal of the White House to be drawn into Hale's scheme to involve the White House in the matter. Casey's handling of the matter in conjunction with career prosecutors in the Little Rock U.S. Attorney's office was entirely consistent with Justice Department procedures and was in all respects proper.

E. The Clinton administration's contacts with Beverly Bassett Schaffer in 1993 and 1994 were proper and appropriate

On April 29, 1985, Mrs. Clinton had a brief telephone conversation with Arkansas Securities Commissioner Beverly Bassett [Schaffer]. Mrs. Clinton informed Schaffer that Madison Guaranty planned to submit a proposal to issue preferred stock, and asked Schaffer to whom the application should be directed.[229] Schaffer advised Mrs. Clinton that she was familiar with the issue of preferred stock offerings by savings and loan associations, and considered it "very simple, very basic, very straightforward."[230] Although the conversation lasted only five minutes, and was not substantive,[231] it has been alleged that as a consequence of the conversation Madison Guaranty received preferential treatment from the Arkansas Securities Department.[232] As discussed in Section III.E, below, the allegation of favored treatment lacks merit.

It also has been suggested that the Clinton Administration interfered with possible investigations into Mrs. Clinton's conversation with Schaffer. In particular, it has been alleged that in late 1993

and early 1994 representatives of the Clinton Administration improperly importuned Schaffer to defend Mrs. Clinton against allegations of impropriety arising out of their conversation. The evidence does not support the allegation that the Clinton Administration sought to influence the content of Schaffer's statements on the issue. All the Administration sought to do was to have Schaffer speak publicly, as she had done in 1992, to rebut false allegations raised in the press. It was proper and appropriate for Administration representatives to ask Schaffer to speak out publicly regarding the regulation of Madison Guaranty during the 1980s. Indeed, there was no reason for the Administration to want to influence what Schaffer would say; her past public statements fully supported the conclusion that Mrs. Clinton obtained no special treatment for Madison Guaranty with the Arkansas Securities Department.

1. Background

During the 1992 presidential campaign, regulatory treatment of Madison Guaranty—including Mrs. Clinton's conversation with Schaffer—became a political issue. In this regard, allegations were raised that the conversation resulted in special treatment for Madison Guaranty. Schaffer, however, publicly denied that Madison Guaranty received favored treatment from the Arkansas Securities Department while she was Commissioner.[233] Schaffer also made herself available to the press to refute the allegations of special treatment.

By late 1993, press interest in the regulatory treatment of Madison Guaranty had revived. For example, during the first week of November 1993, The Washington Post, The New York Times and The Wall Street Journal published articles on the subject.[234] Also, on December 20, 1993, The New York Times published an editorial urging the Administration to provide the press with additional information regarding the regulation of Madison Guaranty.[235] President Clinton read the article and forwarded it to Mack McLarty and Bruce Lindsey. The President noted in the margin: "This is important to be on top of. Bassett did a good job in [campaign] on this—can she now."[236]

Approximately a week later, President Clinton and Bruce Lindsey attended a University of Arkansas basketball game.[237] Ms. Schaffer's husband, Archie Schaffer, also attended the game, but with others.* During halftime, the President and Lindsey visited the corporate box owned by Tyson's Chicken. By coincidence, Schaffer also visited the Tyson's box.[238] Lindsey took the opportunity to ask Archie Schaffer whether Ms. Schaffer would restate publicly the views she expressed in 1992 on the Securities Department's handling of Madison Guaranty.[239] Mr. Schaffer was noncommittal—not because Ms. Schaffer's views had changed, but because by this time, Ms. Schaffer was the subject of so much media attention that her life had been disrupted.[240] Thus, Ms. Schaffer was reluctant to get involved again with the press. At no time during this

*The implication has been raised that Lindsey knew Archie Schaffer would attend the basketball game and contrived to speak with him. There is no evidence to support this allegation. On the contrary, Lindsey testified that attending the basketball game was not a disguise for meeting with either Mr. Schaffer or Ms. Schaffer (Lindsey, 01/16/96 Hrg. pp. 229–230.)

conversation—or any other conversation—did Lindsey seek to influence the substance of Ms. Schaffer's story.[241]

During the first two weeks of January 1994, senior White House officials met regularly to coordinate the Administration's response to press inquiries concerning Whitewater.[242] At one such meeting, on January 7, 1994, the discussion included possible responses to the renewed allegations that Madison Guaranty received special treatment from the Arkansas Securities Department.[243]

According to Mark Gearan's notes of the meeting, Deputy White House Chief of Staff Harold Ickes considered Ms. Schaffer's statements an important part of the Administration's response. Before relying on her statements, however, Ickes wanted to "make sure her story is OK."[244] This note has been mischaracterized as indicating an interest in manipulating Ms. Schaffer's statements. The evidence showed, however, that Ickes had no interest in manipulating the content of Ms. Schaffer's statements. To the contrary, Ickes testified that he had two goals concerning Ms. Schaffer: first, to ensure that Ms. Schaffer made the correct legal judgment regarding the preferred stock issue back in 1985, *i.e.*, that Madison Guaranty received no favored treatment; and second, assuming that Ms. Schaffer acted properly in 1985, to persuade her to speak out publicly again.[245] Gearan confirmed Ickes's explanation.[246]

Documentary evidence also confirmed Ickes' testimony. The White House did, in fact, conduct research into whether Ms. Schaffer reached the correct judgment on the preferred stock issue. A January 11, 1994 memo by Jake Siewert collected numerous authorities in support of Schaffer's opinion that a state chartered S&L in Arkansas could issue preferred stock.[247] The Majority has characterized Madison Guaranty's inquiry as "novel" and "controversial." However, the research conducted by the White House demonstrated that it was neither. Federally insured savings and loan associations had authority to issue preferred stock as early as 1975.[248] By 1984, Federal Home Loan Bank Board ("FHLBB") regulations expressly recognized that the issuance of preferred stock by savings and loan associations was common.[249] In fact, the FHLBB actively encouraged thrifts to raise capital by issuing preferred shares under appropriate circumstances.[250]

During the January 7 meeting, consideration was also given to contacting Schaffer to determine whether she would be willing to speak to the press.[251] Several possible emissaries were considered to visit Ms. Schaffer in Arkansas, including Paul Begala, Bruce Lindsey, and Michael Waldman.[252] There was also a discussion about the possibility that James L. (Skip) Rutherford or John Tisdale could contact Ms. Schaffer.[253]

There was no legal or ethical reason not to contact Schaffer. It would have been appropriate and proper to confirm Schaffer's recollection of events that had taken place nearly a decade earlier, and to ask her to state her recollection publicly, as she had in 1992. In the end, however, the group concluded that it would not be politically prudent to contact Schaffer. According to Gearan's notes, Ickes expressed concern that an attempt to contact Schaffer would be misinterpreted as an attempt to alter her recollection.[254] This, in turn, would simply create another news story.[255] As such, the

decision was made not to contact Schaffer, even though doing so would have been proper.[256]

Finally, the implication has been raised that the White House sought to influence the substance of Schaffer's statements regarding the regulatory treatment of Madison Guaranty. This allegation is groundless. There was no discussion of influencing Schaffer's statements regarding Madison Guaranty at the January 7 meeting—or any other meeting.[257] Moreover, during the 1992 presidential campaign, Schaffer made numerous public statements regarding the regulation of Madison Guaranty. In every instance, Schaffer described the regulatory treatment of Madison Guaranty as proper and appropriate. As such, there was no reason for the White House to influence her testimony.

2. There were no improper contacts between the Clinton administration and Beverly Bassett Schaffer

Despite Ickes's determination that it would be politically imprudent to send an emissary to speak with Schaffer, the press continued to make inquiries regarding the regulatory treatment of Madison Guaranty. As such, the Administration still had to communicate with Schaffer to determine whether she would respond to press inquiries. Several people did, in fact, reach out to Schaffer. The implication has been raised that these individuals sought to influence Schaffer's recollection of events. The evidence, however, showed that there were no improper contacts between the Clinton Administration and Schaffer.

Rutherford—an Arkansan who worked on the Clinton presidential campaign—testified that he had a telephone conversation with Mr. Schaffer, which was possibly joined by Ms. Schaffer, in December 1993 or January 1994. During that conversation they discussed the Schaffers' concern that Ms. Schaffer was being stalked by the news media.[258] Mr. Schaffer and Rutherford also had a subsequent telephone conversation, in December or January, in which they discussed the concern about a stalker, the large number of press calls Ms. Schaffer was receiving, and the possibility that Ms. Schaffer might hold a press conference to respond to the press inquiries.[259] There was nothing improper about these conversations. In any event, the conversations did not result from White House efforts to contact Ms. Schaffer. Rutherford testified that: "no one at the White House ever asked me to contact Beverly Bassett Schaffer."[260] Schaffer also spoke with John Tisdale, a lawyer at her firm, who asked her to assist him in compiling a chronology and a list of documents concerning Whitewater.[261] There is no evidence that Tisdale sought to influence Schaffer.*

Finally, when Schaffer testified before the Special Committee, she was asked whether she spoke with anyone from the Clinton Administration regarding the regulatory treatment of Madison Guaranty after the 1992 presidential campaign. Initially, Schaffer did not recall any such conversations.[262] She later agreed that she "may" have spoken with Lindsey, but was not sure. Moreover, even if she did speak with Lindsey, "[the conversation] wasn't of any consequence * * * ."[263] In the end, Schaffer could not recall any

*The Committee did not seek testimony from Tisdale.

conversation in which the White House attempted to influence her actions relating to Madison Guaranty and no one tried to influence the substance of Schaffer's statements that Madison Guaranty received no special treatment.

3. Conclusion

The evidence demonstrated that the Clinton Administration's dealings with Beverly Bassett Schaffer during 1993 and 1994 were proper and appropriate. No efforts were made to influence or alter her recollections regarding the regulatory treatment of Madison Guaranty (or any other subject). On the contrary, the Clinton Administration sought only to confirm that Schaffer's actions as Arkansas Securities Commissioner were proper—which they were—and to encourage her to speak publicly about them.

F. The OGE report and the transmission of investigative materials to transmission of investigative materials to the White House and Secretary Bentsen

On March 4, 1994, Treasury Secretary Lloyd Bentsen asked the Office of Government Ethics ("OGE") to review a series of contacts among officials of the Treasury Department ("Treasury"), the Resolution Trust Corporation ("RTC") and the White House between September 1993 and February 1994 ("the White House/Treasury contacts"). Specifically, Secretary Bentsen asked OGE to determine whether the Treasury officials who participated in the White House/Treasury contacts had violated federal ethics standards.

At OGE's request, the Inspectors General of the Treasury ("Treasury-IG") and the RTC ("RTC-IG") conducted a comprehensive factual investigation of the White House/Treasury contacts. Based on the IGs' fact-finding, OGE concluded on July 31, 1994 that no current Treasury officials violated the ethics rules and regulations set forth in the Standards of Ethical Conduct for Employees of the Executive Branch.[264]

Section (b)(2)(E) of Senate Resolution 120 authorized the Special Committee to investigate whether improprieties occurred in connection with the OGE investigation. In particular, the Committee was authorized to investigate whether the OGE report or related transcripts of depositions taken Treasury-IG and RTC-IG investigators:

> (i) were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing, and Urban Affairs pursuant to Senate Resolution 229 (103d Congress); or
>
> (ii) were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation.

The evidence demonstrates that no improprieties occurred in connection with the IGs' investigation or OGE's analysis.

1. OGE'S investigation was thorough and complete, and received the full cooperation of the administration

It has been suggested that OGE's conclusions should be discounted because the Inspectors Generals' investigation was incom-

plete and did not have the Administration's full cooperation. In fact, the record is clear that the investigation was thorough and complete, and received full cooperation from the Administration. Every witness the investigators sought to depose voluntarily agreed to testify, and every document the investigators requested was made available to them. Moreover, the IGs' investigators and OGE officials uniformly testified that no one—from within the Administration or outside it—tried to influence their inquiry in any way.

a. The Inspectors Generals' investigation was thorough and complete

The IG investigators uniformly testified that their inquiry was thorough and complete. At least 8 professional investigators worked virtually full-time for a month and conducted 27 depositions and reviewed thousands of pages of documents. The record is clear that the investigators received testimony from every witness they sought.[265] James Cottos, the lead Treasury-IG investigator, stated clearly that:

> We had access to all the witnesses that we deemed necessary. No one restricted us on witnesses, whether it be the White House, Treasury, RTC. Everyone we felt we had to interview was made available to us.[266]

Moreover, the witnesses all appeared voluntarily. This is particularly significant because the investigators had no authority to compel testimony.[267]

Similarly, the record is clear that the investigators had access to every document they sought.[268] The documents were provided to them without material conditions or limitations.[269] Here, too, the Administration's cooperation was largely voluntary. The IGs had no legal authority to compel production of documents from outside their own agencies. Yet the investigators were denied nothing. In this regard, Patricia Black, Counsel to the Inspector General of the RTC, stated succinctly: "I know of no relevant materials that we were denied."[270]

Finally, the investigators uniformly testified that they were free to follow whatever leads they developed. No one in the Administration tried to limit the scope of their inquiry or to restrict the investigation.[271] In this regard, OGE Director Stephen Potts stated plainly that "[t]here were no limits placed on our role" and no subjects that OGE could not address.[272] OGE's Deputy General Counsel Jane Ley agreed: "To my knowledge * * * no limits were placed on the investigation."[273]

b. The IGs had sufficient time to conduct the investigation

The majority also has questioned the investigation on the grounds that the IGs worked under time constraints. There is no question that the investigators completed the investigation expeditiously, but this does not diminish the value of the investigation. The investigators uniformly testified that they had sufficient time to conduct a thorough investigation.

As a preliminary matter, it should be emphasized that the Administration did not impose any time limits on the investigators.

Any time concerns were caused by the Special Counsel and congressional investigators.

In March 1994, while planning the investigation, OGE became concerned that its investigation might affect Special Counsel Fiske's inquiry into the White House/Treasury contacts.[274] Accordingly, OGE consulted with Fiske, and at his request, agreed to postpone its investigation until Fiske advised otherwise. OGE and the IGs continued to plan their inquiry and to perform background research, but did not contact witnesses.[275] On June 30, 1994, Fiske advised OGE that it could begin its investigation.

By the time Fiske approved the OGE investigation, the Senate Banking Committee and House Banking Committee also had begun investigations into the White House/Treasury contacts. In addition, the White House had initiated an internal review under the direction of Special Counsel Lloyd Cutler. Thus, when OGE began its investigation on June 30, 1994, its investigation was one of five overlapping inquiries.

In general, the other investigations had little bearing on OGE's efforts. However, the congressional investigations did have one concrete effect. By June 30, 1994, it was clear that Congress would call Secretary Bentsen to testify regarding the White House/Treasury contacts. In order to avoid interference with OGE's investigation, Secretary Bentsen had forbidden any other internal Treasury Department inquiries into the White House/Treasury contacts.[276] Therefore, as a practical matter, OGE was the only source for the information Secretary Bentsen needed to provide Congress with complete and accurate testimony.

Although the investigators knew that Secretary Bentsen was dependent upon their efforts—and they wanted to accommodate his needs—this concern did not materially affect the investigation. The investigators uniformly testified that no one instructed them to complete their work by a specific date.[277] They further testified that irrespective of Secretary Bentsen's congressional testimony, they would not have concluded the investigation if it remained incomplete.[278] Finally, the investigators testified that there were no other witnesses they would have deposed and no other documents they would have reviewed if they had had more time.[279] RTC-IG Counsel Black stated:

> I am aware of no evidence we didn't collect or any witnesses we did not speak to that I would say we needed to.[280]

Therefore, the evidence established that the time concerns arising out of the Administration's efforts to cooperate with congressional investigations had no substantive impact on the IGs' inquiry. The investigators had sufficient time to conduct a thorough and complete investigation.

c. The administration cooperated fully with the investigation

In reviewing the IGs' investigation, it cannot be forgotten that Secretary Bentsen initiated the inquiry. As such, the investigation only took place because the Administration requested it. Moreover, the Administration went to great lengths to ensure that the inves-

tigation would be vigorous and credible. OGE Director Potts explained that:

> [Secretary Bentsen] wanted to have as independent and authoritative analysis of the situation as he could get, so that's why he was calling on us.[281]

Further, as discussed above, the record shows that the Administration cooperated fully with the investigation. The investigators testified that they had access to all the witnesses and documents they sought. These facts alone belie the Majority's criticism.

Finally, the investigators themselves rejected any suggestion that their investigation was impeded, or that the Administration somehow failed to cooperate. For instance, Assistant Treasury IG James Cottos stated that the Administration cooperated completely with the investigation. He explained:

I think that everyone interviewed cooperated, Treasury people, RTC people and the White House people. There was not anything that came back about people not cooperating.[282]

RTC-IG Counsel Patricia Black concurred; she described the Administrative as "cooperative in full."[283]

In the end, the investigators concluded that the cooperation of witnesses must have reflected the attitude of high level Administration officials.[284] Witnesses rightly believed that their superiors expected them to cooperate fully, and they did so. –

d. No one in the administration tried to influence the IGs' investigation or OGE's conclusions

The evidence demonstrates that the Administration did not seek to influence the IGs' investigation or OGE's analysis in any way. On the contrary, the testimony clearly establishes that the IGs and OGE were permitted to do their jobs as they deemed appropriate. OGE Director Stephen Potts and Deputy General Counsel Jane Ley both testified that no one in the Administration tried to influence OGE's analysis.[285] Similarly, the RTC–IG investigators and the Treasury-IG investigators uniformly testified that no one from the Administration tried to pressure them.[286]

e. Conclusion

In light of the foregoing, it is clear that the IGs' investigation was thorough and complete. Moreover, the Administration made no effort to influence the investigation and, in fact, sought to facilitate the inquiry. The lead Treasury-IG investigator, James Cottos, stated that he was "proud" of the investigation.[287] According to OGE Deputy General Counsel Jane Ley, subsequent events confirm that the investigation was deserving of Cottos' confidence. She stated:

> With the benefit of what's gone on since * * * there has been no other document, no other information that has shown up through anybody else's investigation, through any news people, through anything else that's indicated we missed—there was something missed that would have changed that analysis.[288]

2. It was proper for the White House counsel's office to receive transcripts of the depositions taken by the Inspectors General

On July 23, 1994, Acting Treasury Inspector General Bob Cesca authorized the release of the IGs' deposition transcripts to the White House Counsel's Office. It has been asserted that the transcripts were improperly disseminated to the White House. In fact, the release of the transcripts to the White House was entirely proper and appropriate, and it caused no harm to the IGs' investigation or any other inquiry.

a. The White House had a legitimate and pressing need for the deposition transcripts

As noted previously, OGE's investigation was one of five concurrent inquiries regarding the White House/Treasury contacts. In particular, while the IGs were investigating the conduct of Treasury and RTC officials, White House Special Counsel Lloyd Cutler was conducting an internal inquiry into the conduct of White House officials at the request of Chief of Staff Mack McLarty. Like Secretary Bentsen, Cutler needed the information contained in the IGs' deposition transcripts to complete his investigation. Also, Cutler was scheduled to testify before the House Banking Committee on July 26, 1994 and the Senate Banking Committee shortly thereafter. Cutler had an obligation to ensure that his testimony was based on complete and accurate information.

Cutler's need for complete and accurate information created a conundrum. Plainly, he could not complete his investigation without taking steps to determine what the Treasury officials who engaged in the White House/Treasury contacts had to say about them. But Cutler was concerned that a White House effort to interview non-White House officials could be construed as an attempt to influence their testimony.[289] Steven Switzer, the RTC's Deputy Inspector General, characterized Cutler's concern as "reasonable" and noted that Cutler was in a "tough situation."[290] Assistant RTC Inspector General Clark Blight agreed that Cutler was in "a difficult situation" due to the time pressures imposed by Congress.[291]

To resolve this dilemma, Cutler agreed with Secretary Bentsen that his investigators would not interview Treasury or RTC employees, but would receive their deposition transcripts for review.[292] Although Cutler considered this an imperfect solution—he would have preferred to conduct his own interviews—he agreed to it to protect the integrity of OGE's investigation. The arrangement between Secretary Bentsen and Special Counsel Cutler was no secret. On June 30, 1994, before OGE's investigation even began, Cutler stated in a White House briefing that "we will be coordinating with the Treasury inspector general with respect to interviews and exchanges of factual information on the Treasury side and the White House side."[293] On July 26, 1994, when Cutler testified before the House Banking Committee, he stated plainly that he had seen the IG deposition transcripts. Cutler made no effort to conceal that fact; on the contrary, he volunteered the information.[294] Cutler's openness refutes any implication that the transcripts were procured or used wrongfully.

Nearly two years ago, during Cutler's testimony to the Senate Banking Committee, Chairman D'Amato concluded that it was appropriate for the White House to receive the deposition transcripts for use in Cutler's investigation. Senator D'Amato stated:

> Mr. Chairman, if I might make a point. I have to tell you, I understand sending the depositions over to Mr. Cutler. I think that is a closed question. But I think reasonable people could say, well you know he is conducting an investigation of his own, et cetera, so should he not have that information? [295]

Nothing the Committee has learned in the intervening period conflicts with Senator D'Amato's conclusion. On the contrary, the evidence confirms the propriety of the White House's receiving the transcripts.

The Committee learned, for example, that OGE encouraged Cutler to review the transcripts. Jane Ley, OGE's Deputy General Counsel, advised White House Associate Special Counsel Jane Sherburne that the White House had a "responsibility" to investigate the White House/Treasury contacts, and should read the transcripts in order to do a proper job in the White House's internal investigation. [296] Ley recounted that:

> I simply said to them that if they were conducting their own investigation of their own employees' conduct, they ought to at least read their own employees' transcripts.

Moreover, Ley stated that Cutler "certainly" should have obtained unredacted deposition transcripts, at least for White House employees. [297] She explained that the transcripts are "a source of information of statements made by their own employees about their own actions, and they ought to know that." [298]

Nor was OGE alone in its view that the White House acted properly in seeking the deposition transcripts. Acting Treasury IG Robert Cesca—who approved the release of the transcripts—testified that he continued to believe that the release was appropriate. [299] So did Francine Kerner, Counsel to the Treasury IG. [300]

Even Inspector General personnel who objected to the release of the depositions acknowledged that the White House acted properly in seeking the transcripts. For example, RTC IG Jack Adair testified that "I didn't think it was inappropriate [that] they were asking [for the deposition transcripts] * * *." [301] Treasury Assistant Inspector General Cottos stated: "I understood why the White House would ask [for the deposition transcripts], that's never been a question." [302] Cottos added that it was reasonable for the White House to assume that the decision to release the transcripts had been approved by the Inspectors General. [303]

Finally, the Treasury Department's most senior career lawyers testified that the Department had an obligation to cooperate with the White House investigation by providing the deposition transcripts. In fact, according to Assistant General Counsel Robert McNamara, Treasury Department lawyers believed they had an affirmative obligation to provide Cutler with the transcripts, and were concerned that refusing to release the depositions could be construed as obstructing the White House investigation.[304] Ed

Knight, the Executive Secretary to Secretary Bentsen, similarly testified that the Department had "no choice" but to provide the transcripts to Cutler in connection with his investigation.[305]

In sum, the evidence has shown that Secretary Bentsen acted properly in providing the deposition transcripts to Special Counsel Cutler for use in the internal White House review of the White House/Treasury contacts.

b. There is no evidence that OGE's investigation was affected by the release of the deposition transcripts to the White House

It has been suggested that the release of the transcripts to the White House permitted witnesses to conform their testimony, thus undermining the integrity of the investigation. However, the assertion that witnesses conformed their testimony is unsupported by evidence. On the contrary, the evidence demonstrated that witnesses were not permitted to review the testimony of other witnesses, and that no improper use was made of the transcripts. Moreover, by the time the White House received the transcripts from Treasury on July 23, 1994, all White House witnesses already had been deposed by the IGs.*

The OGE and IG personnel who conducted the investigation confirmed that the release of the transcripts to the White House had no effect on the inquiry. First, OGE Director Stephen Potts testified that the release of the transcripts to the White House had no effect on OGE's analysis.

> As far as our analysis that we provided to the Secretary, I am positive that it didn't impact on that * * *. [I]t wasn't a factor at all in the analysis.[306]

Second, the IGs' confirmed that the release of the transcripts had no effect on their investigation. For example, Clark Blight, the supervisory RTC–IG investigator, testified that the IGs' report was not affected by the release of the transcripts to the White House.[307] Similarly, Steven Switzer, the RTC's Deputy Inspector General, testified that the release of the transcripts to the White House on July 23 had no bearing on the IGs' investigation or report.[308] Treasury-IG's Cottos testified that he had no reason to believe the transcripts were used to prepare witnesses. He stated:

[O]ur interviews were already done at that point, so no, that did not affect our interviews.[309]

Finally, Pat Black, Counsel to the RTC Inspector General, testified that the results of the IGs' investigation were not affected by the provision of the transcripts to the White House.[310]

c. There is no evidence that the White House Counsel's Office used the deposition transcripts or the information contained in the transcripts to influence the congressional testimony of White House officials

When the Treasury Department provided the White House with the deposition transcripts, the White House agreed they would be

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*One non-White House deposition was conducted after July 23; Comptroller of the Currency Gene Ludwig was deposed on July 27. However, there is no evidence that Ludwig's testimony was influenced by the release of the transcripts to the White House.

used to help White House Special Counsel Lloyd Cutler complete his investigation and prepare for his upcoming congressional testimony.[311] Questions have been raised whether the White House complied with the terms of this agreement. In particular, concerns have been raised that the White House Counsel's Office used the deposition transcripts or the information contained in them to influence the congressional testimony of White House officials.

The evidence has demonstrated that the White House did not make improper use of the transcripts. The White House used the transcripts solely for the purposes agreed upon—to help Cutler complete his investigation and prepare accurate and complete testimony for the Congress. No transcripts were provided to anyone outside Cutler's office.

As a preliminary matter, OGE began its investigation after Special Counsel Fiske completed his investigation into the White House/Treasury contacts. Therefore, the witnesses deposed by the IGs already had been questioned on the same subject by the Federal Bureau of Investigation and the Independent Counsel. Many of the witnesses also had been deposed by congressional investigators. As such, witnesses had given two or three sworn statements on the White House/Treasury contacts before they spoke with the IGs' investigators. This makes it highly unlikely they could have altered their testimony based on a review of the IG depositions, even if they had received them—which they did not.

When first asked what use he made of the transcripts, Cutler was clear and concise. In an August 3, 1994 letter to then-Chairman Riegle, Cutler stated that the transcripts were not shown to any witnesses and were not used to prepare any witnesses for their congressional testimony. He wrote: "These transcripts were used by me and my staff to complete my review of these matters and prepare for my congressional testimony. We did not provide copies to anyone."[312] Thus, Cutler's contemporaneous testimony was unequivocal; the agreement was complied with meticulously.

Cutler later created some confusion regarding the use of the transcripts. The Associated Press reported on May 8, 1995 that "White House attorneys used the depositions to identify contradictory accounts and confront aides just before witnesses were to testify before Congress."[313] The report quoted Cutler as saying the following:

> If we found inconsistencies, we would go back to White House officials, and go back over testimony they gave us * * *. And then we would say we have heard other reports. I think it was perfectly appropriate to say that this is your testimony to us. There is conflicting testimony. Are you sure that's what you said?[314]

Understandably, the apparent conflict between Cutler's contemporaneous letter and his subsequent interview raised questions regarding the use to which the transcripts were put. In his testimony to this Committee, Cutler resolved the confusion. He acknowledged making the statement attributed to him by the Associated Press, but denied using the transcripts as he had stated. Cutler testified that at the time of the interview—nine months after the fact—he

had a mistaken recollection as to when the White House received the transcripts and the use made of them.[315]

Other White House witnesses supported Cutler's testimony. Associate Special Counsel Jane Sherburne, Cutler's assistant at the time, confirmed that the transcripts were not shown to any potential witnesses or their counsel.[316] So did Sharon Conaway of the White House Counsel's Office, who had physical custody of the transcripts.[317]

Moreover, the investigators themselves debunked the notion that Cutler made improper use of the deposition transcripts. Assistant Treasury Inspector General Cottos—who objected to releasing the transcripts before the IGs rendered their final report—put this whole issue in perspective. He testified that:

> Nothing has ever been disclosed to me that individuals took advantage of the fact that we released those transcripts.[318]

Clark Blight, the lead RTC–IG investigator, offered similar testimony.[319] And RTC Inspector General Jack Adair stated simply that he had "no reason to believe" that anyone in the White House made improper use of the information contained in the deposition transcripts.[320]

d. The deposition transcripts did not contain material, confidential RTC information

Although the transcripts provided to the White House were later redacted to remove certain information regarding the RTC's underlying investigation, virtually all the information in the transcripts had become public long before the depositions were conveyed to the White House. The limited information that had not been made public was inconsequential.

As a preliminary matter, only a tiny fraction of the information contained in the transcripts could possibly be characterized as confidential. Just 12 of the 27 deposition transcripts were redacted at all. Those redactions often involved a single word or phrase. Even the investigators agreed that the redactions involved only a modicum of the total contents of the depositions. For example, Patricia Black, Counsel to the RTC–IG, testified that the purportedly confidential information represented a "very small amount" of the total information contained in the transcripts, and that "the unredacted material * * * was the vast majority.[321] Assistant RTC Inspector General Clark Blight similarly testified that "[n]ot very much" information was redacted.[322]

Moreover, even the small amount of information that was redacted cannot seriously be characterized as confidential. All the redacted information concerned the RTC's investigation into Madison Guaranty, in particular the 1992 and 1993 referrals. For example, the RTC redacted the exact number of referrals, which can hardly be characterized as a matter of consequence.

Moreover, the contents of the referrals were public long before OGE began its investigation. In fact, press coverage of the referrals and the RTC's investigation preceded the OGE depositions by at least eight months. On October 31, 1993, for example, the Washington Post published a front-page article on the RTC's investiga-

tion and the contents of the 1992 and 1993 criminal referrals.[323] In the ensuing weeks, The Washington Post reported at length on those same subjects.[324] The New York Times and The Wall Street Journal also devoted substantial coverage to the RTC's investigation and the referrals.[325] Accordingly, by the time the IG depositions were taken, it was common knowledge that the RTC had made criminal referrals against James McDougal and others with respect to Madison Guaranty, and that President and Mrs. Clinton had been named as possible witnesses.

Thus, despite the fact that certain limited information about the referrals had not been formally released by the RTC, Treasury-IG officials testified that the transcripts did not contain information that was truly confidential. For example, Francine Kerner, Counsel to the Treasury Inspector General, characterized the redactions as "ludicrous," because all the information in the transcripts already had been reported in the press.[326] Acting Treasury Inspector General Bob Cesca similarly stated that the transcripts did not contain any non-public information because everything in the transcripts already had been reported in the press.[327]

Even RTC–IG officials—who opposed the release of unredacted transcripts—confirmed that the information later redacted was widely known. For example, Patricia Black testified that the subsequent redactions involved information which had been widely reported in the press—such as the total number of referrals—but had not been officially confirmed by the RTC.[328] The redactions also included information that had been the subject of substantial "public speculation."[329] Finally, Black acknowledged that the widespread dissemination of information prevents an agency from asserting confidentiality:

> there comes a point at which, even if a release has not been authorized or confirmed by the agency, that something comes to be so far in the public domain that you will not—one will not be able to withhold it any longer under FOIA, even as a discretionary matter.[330]

In light of the foregoing, it is plain that the deposition transcripts did not contain material confidential information.

e. Conclusion

The record is clear that OGE's investigation and the inquiries conducted by the House and Senate Banking Committees were unaffected by the release of the IG deposition transcripts to the White House on July 23, 1994. Nor was the RTC's underlying investigation into Madison Guaranty affected. Former RTC General Counsel Ellen Kulka—who subsequently caused the transcripts to be redacted—testified that the transmittal of unredacted transcripts to the White House Counsel's Office did no harm. In particular, Kulka stated that the release of the unredacted transcripts to the White House had no "significant practical effect" on the RTC's investigation.[331]

In the end, then, there is no evidence that any harm resulted from the release of the deposition transcripts. On the contrary, the record showed that the White House had a legitimate and pressing

need for the transcripts and that it was entirely proper and appropriate for the White House to receive them.

3. The Treasury Department did not exert undue influence on OGE's investigation

a. It was proper for Secretary Bentsen and his representatives to receive a draft version of the IGs' report and the deposition transcripts

Questions have been raised regarding the provision of the deposition transcripts and the draft IG report to Treasury Department officials. The record demonstrates that Secretary Bentsen had a legitimate and pressing need for the information contained in the depositions and report, and that the officials who received the report were acting on behalf of Secretary Bentsen. Thus, it was appropriate for Secretary Bentsen's representatives to receive the transcripts and the draft IG report.

As a preliminary matter, the premise that the deposition transcripts and draft report were provided to Treasury's Office of General Counsel ("OGC") is misleading. Although Assistant General Counsel Ken Schmalzbach and Deputy Assistant General Counsel Stephen McHale formally were employed by OGC, they did not function as OGC lawyers in connection with the OGE investigation. Rather, they acted as the personal representatives of Secretary Bentsen.[332] Secretary Bentsen plainly had the right and responsibility to seek legal assistance in such a complicated and serious matter. However, he could not turn to Treasury's General Counsel Jean Hanson or Deputy General Counsel Dennis Foreman because they were involved in the White House/Treasury contacts. Schmalzbach and McHale were the Treasury's most senior career ethics officers, and were completely removed from the events under investigation.[333] Thus, it was entirely logical and appropriate for them to assist Secretary Bentsen.*

The substance of the concern is equally spurious. It is undisputed that the OGE investigation was undertaken at Secretary Bentsen's request.[334] The investigators clearly understood that Secretary Bentsen was "the end user" of their investigative product; there was never any question that Secretary Bentsen would receive the deposition transcripts and the IGs' report.[335] Moreover, Secretary Bentsen made it clear from the outset that he needed the IGs' report before he testified at congressional hearings on the White House/Treasury contacts.[336] Those hearings commenced on July 26, 1994.

Secretary Bentsen had an obligation to provide complete and accurate testimony to Congress. He also needed the information contained in the transcripts and draft report to make personnel decisions and to determine whether Treasury's policies or practices should be modified.[337] As discussed previously, OGE and the Inspectors General were the only possible source of information concerning the White House/Treasury contacts.[338] Moreover, for reasons entirely outside his control, OGE had postponed its efforts for

*Along with Assistant General Counsel Robert McNamara, Schmalzbach and McHale played a similar role in connection with all five investigations into the White House/Treasury contacts.

four months after Secretary Bentsen's request for their assistance. Thus, Secretary Bentsen could not countenance any further delay; he had no choice but to seek the information in the transcripts and draft report.

Finally, both Inspectors General considered it was appropriate for Secretary Bentsen to receive the deposition transcripts and the draft IGs' report. In this regard, Acting Treasury Inspector General Robert Cesca testified that it was "important" and "proper" to provide Secretary Bentsen with the draft report.[339] Jack Adair, the RTC Inspector General agreed that it was appropriate for Secretary Bentsen to receive the transcripts and draft report. In particular, Adair noted that the CEO of the RTC receives all draft and final reports prepared by the IG's Office, and may be briefed regarding ongoing investigations. Adair agreed that the transmittal of the draft report to Bentsen was analogous to the procedures that were routinely followed by his office.[340]

b. No harm resulted from the release of the deposition transcripts and draft report to the Treasury Department

As a preliminary matter, there is no evidence that any improper use was made of the draft IGs' report or the deposition transcripts. On the contrary, Ken Schmalzbach, Robert McNamara, Stephen McHale and Ed Knight—the Treasury officials who reviewed the deposition transcripts and draft IGs' report for Secretary Bentsen—uniformly testified that they did not share the deposition transcripts with other witnesses.[341]

Nor is there any evidence that the release of the transcripts and the draft report to Secretary Bentsen affected the IGs' report or OGE's analysis. First, with respect to the IGs' report, James Cottos noted that the IGs completed their investigation before Secretary Bentsen received the draft report. Cottos added that the report "substantively" was finished when Secretary Bentsen received the draft and that the only changes thereafter were "wordsmithing" and "minor."[342] Similarly, RTC–IG Counsel Patricia Black concluded that: "I do not believe that the way things worked out, that the provision of the draft to Mr. Bentsen had any impact."[343] Second, with respect to OGE's analysis, OGE Director Potts was even more definitive that conveyance of the draft report to Secretary Bentsen had no importance. He stated: "As far as our analysis that we provided to the Secretary, I'm positive that it didn't impact on that."[344]

Therefore, the record is clear that no harm resulted from the release of the deposition transcripts and draft report to the Treasury Department.

c. Francine Kerner's participation in the investigation was proper and appropriate

The majority has suggested that the IGs' investigation was tainted by the participation of Francine Kerner, Counsel to the Treasury Inspector General.[345] As a general proposition, the majority complains that Kerner had a conflict of interest because she was formally employed by Treasury's Office of General Counsel, and General Counsel Jean Hanson was involved in the White House/

Treasury contacts.[346] The charge also has been made that Kerner sought to protect her superiors from a probing inquiry. Neither charge is supported by the evidence. On the contrary, the evidence shows that Kerner's participation in the investigation was entirely proper and appropriate.

The criticism of Treasury's arrangement—wherein the IG Counsel is formally employed by OGC—is specious. As a preliminary matter, the arrangement is a common one. The Departments of Defense and Health and Human Services and the Environmental Protection Agency employ similar structures.[347] Pat Black, who criticized the arrangement, served under an analogous arrangement at the Department of Housing and Urban Development before joining the RTC. Moreover, Kerner took extraordinary steps to prevent any problems that might arise out of her dual reporting relationship. From the time she arrived at the Treasury, Kerner sought a memorandum of understanding guaranteeing her independence.[348] In addition, on June 27, 1994—before the OGE investigation began—Kerner procured a memorandum from General Counsel Hanson removing her from OGC's chain of command for the purposes of the OGE investigation.[349]

Moreover, the majority's criticisms are old hat, and were resolved long ago. From the outset of the investigation, Acting Treasury IG Cesca—Kerner's supervisor and client—was aware of her employment situation. Yet he had no concerns about her loyalty, professionalism or performance.[350] OGE reached the same conclusion shortly after the investigation when Congressman Charles Canady raised the issue in a July 1994 letter to OGE Director Stephen Potts. Potts responded in an August 4, 1994 letter that OGE had no problem with Kerner's participation in the investigation.[351] More recently, Potts added that OGE's views had not changed; OGE "had no reason to have a problem" with Kerner's role.[352]

4. Roger Altman did not receive a transcript of Harold Ickes' deposition prior to his Senate Banking Committee testimony on August 2, 1994

In a Senate Banking Committee deposition taken on July 24, 1994, Harold Ickes discussed a White House-Treasury meeting on February 2, 1994 attended by Roger Altman and Jean Hanson from Treasury and Ickes, Bernard Nussbaum, Neil Eggleston and Margaret Williams from the White House. The meeting concerned the RTC's inquiry "as to whether there was a basis for a civil claim against persons or parties involved in Whitewater/Madison."[353] According to Ickes, Altman indicated that the statute of limitations on such claims was about to expire, and said "at least in so many words, that it was his understanding that the investigation probably would not be concluded and that a determination could not be made by the RTC's general counsel as to whether there was a basis for a civil claim until after the expiration of the statute of limitations had applied to that particular investigation."[354]

At the time Ickes made the foregoing statements, he was not permitted to consult his contemporaneous notes from the meeting. Instead, he was urged to "guess" what Altman may have said.[355] Significantly, no one else who attended the February 2, 1994 meeting recalled Altman indicating that the RTC would not be able to act

before the statute of limitations expired on February 28, 1994. Moreover, Altman's talking points from the meeting are inconsistent with Ickes' testimony.[356]

On August 2, 1994, Altman told the Committee that he believed Ickes had provided an inaccurate recollection of the February 2, 1994 meeting. "I believe, and you can ask Mr. Ickes yourself when he appears before you, that he did not intend to say I had told the White House the investigation could not be concluded by February 28."[357] Altman further testified that he had not seen a copy of Ickes' deposition.[358]

The following day, on August 3, 1994, during Treasury Secretary Lloyd Bentsen's testimony before the Senate Banking Committee, Senator D'Amato stated that Deputy Secretary Roger Altman had testified that he read White House Deputy Chief of Staff Harold Ickes' Senate Banking Committee deposition prior to his own congressional testimony. In particular, Senator D'Amato stated: "We are asking Mr.—and we only found out about this because we are asking Mr. Altman questions, and the next thing you know he says, oh, that is not what Mr. Ickes said. How do you know that? Oh, I read his deposition. He's got his deposition there."[359]

Senator D'Amato was mistaken. As noted above, Altman clearly testified that he did not review Ickes' deposition. Moreover, the testimony of the other witnesses who appeared before the Committee is uniform; witnesses—including Altman—were not shown the transcripts of other witnesses.

Ironically, Senator D'Amato may have been the source of the information that he inaccurately asserted Altman learned from Ickes' deposition transcript. On July 30 1994,—before Altman testified before the Senate Banking Committee—the Los Angeles Times reported that:

> "Citing a deposition by White House Deputy Chief of Staff Harold M. Ickes as his source [Senator] D'Amato said that Altman had told a White House meeting that the RTC would not be able to complete its Madison Guaranty inquiry before the expiration of a deadline for filing civil claims at the end of February."[360]

It is not clear whether Altman read the Los Angeles Times article; however, it is clear that the substance of Ickes's deposition testimony was public several days before Altman testified. Thus, there is no reason to believe that Altman saw Ickes' deposition transcript before his congressional appearance.

ENDNOTES

[1] Doc. Nos. RIO 492—RIO 493 December 11, 1991 memorandum from Jean Brennan [Lewis] to Clark Walton re: "Referral Schedule."
[2] Lewis, 11/29/95 Hrg. p. 88; Iorio, 10/20/95 Dep. pp.167–168, 156–157.
[3] Pettus, 10/17/95 Dep. pp.99–100; Lewis, 11/29/95 Hrg. p.90; Irons, 12/5/95 Hrg. pp.143–144.
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[320] Adair, 10/26/95 Dep. p.141.
[321] Black, 10/12/95 Dep. pp.259–261.
[322] Blight, 10/10/95 Dep. p.128.
[323] Susan Schmidt, "U.S. Is Asked to Probe Failed Arkansas S&L; RTC Questions Thrift's Mid-'80s Check Flow," The Washington Post, October 31, 1993, p.A1.
[324] *See, e.g.,* Michael Isikoff and S. Schneider, "Clintons' Former Real Estate Firm Probed; Federal Inquiries Focus on Financial Activities of Other Arkansans," The Washington Post, November 2, 1993, p.A1; Michael Isikoff and Susan Schmidt, "U.S. Steps Up Investigations in Arkansas; Justice Dept. Names 3 as Prosecution Team," The Washington Post, November 10, 1993, p.A1; Susan Schmidt and Michael Isikoff, "Dealings of Clinton Partners Were Referred to Justice Dept. in 1992," The Washington Post, November 11, 1993, p.A3.
[325] Jeff Gerth and S. Engelberg, "U.S. Investigating Clinton's Links to Arkansas S&L," The New York Times, November 2, 1993, p.A20.
326 Kerner, 11/1/95 Dep. pp.245–246.
[327] Cesca, 10/13/95 Dep. p.165.
[328] Black, 10/12/95 Dep. p.243.
[329] Black, 10/12/95 Dep. pp.251–252.
[330] Black, 10/12/95 Dep. p.245.
[331] Kulka, 10/27/95 Dep. pp.67–68.
[332] Cesca, 10/12/95 Dep. p.197; Kerner, 11/1/95 Dep. pp.319–320.
[333] Kerner, 11/1/95 Dep. pp.318–319; Knight, 10/25/95 Dep. pp.100–101.
[334] Cottos, 10/18/95 Dep. pp.207–209; Potts 10/18/95 Dep. p.86.
[335] Black, 10/12/95 Dep. p.202.
[336] Black, 10/12/95 Dep. pp.215–216.
[337] Knight, 10/25/95 Dep. p.100–102.
[338] Kerner, 11/1/95 Dep. pp.338–339.
[339] Cesca, 11/12/95 Dep. pp.196, 237.
[340] Adair, 10/26/95 Dep. pp.138–139.
[341] Schmalzbach, 10/20/95 Dep. pp.342–344; McNamara, 10/24/95 Dep. pp.114–117; McHale, 10/19/95 Dep. p.85
[342] Cottos, 10/18/95 Dep. pp.216–217.
[343] Black, 10/12/95 Dep. p.227.
[344] Potts, 10/11/95 Dep. pp.100, 113.
[345] Chairman D'Amato, 11/7/95 Hrg. pp.169–170.
[346] Chairman D'Amato, 11/7/95 Hrg. pp.169–170.
[347] Kerner, 11/1/95 Dep. p.93.

[348] Kerner, 11/1/95 Dep. pp.90–96.
[349] Doc. No. 6890, June 27, 1994 memorandum from Jean Hanson to Robert Cesca.
[350] Cesca, 10/13/95 Dep. pp.241–243.
[351] August 4, 1994 letter from Stephen Potts to the Honorable Charles T. Canady, [Document Not Numbered].
[352] Potts, 10/11/95 Dep. pp.97–98.
[353] Ickes, 7/24/94, Dep. p.116.
[354] Ickes, 7/24/94 Dep. pp.121–122.
[355] Ickes, 7/24/95 Dep. pp.121–122.
[356] Doc. No. 000141, Talking Points for Roger Altman: informational interview with Mack McLarty, February 2, 1994.
[357] Altman, 8/2/94 Hrg. p.412.
[358] Altman, 8/2/94 Hrg. p.444.
[359] Chairman D'Amato, 8/3/94 Hrg. p.21.
[360] Michael Ross and Sara Fritz, "Altman Lied About Probe Contacts, GOP Senators Say," The Los Angeles Times, July 30, 1994.

III. The Arkansas Phase

The Special Committee devoted considerable attention and resources to investigating allegations of improprieties in Arkansas since 1978. The allegations fell into three broad categories: (1) allegations concerning the Clintons' personal finances; (2) allegations concerning Governor Clinton's conduct as Governor of Arkansas; and (3) allegations concerning Mrs. Clinton's work as a Rose Law Firm attorney. After months of exhaustive investigation into Arkansas-related matters—including more than 100 sworn depositions and 20 days of public hearings—the allegations of improprieties remain unsupported by the evidence. On the contrary, the evidence demonstrated that no improprieties occurred in connection with any of these areas of inquiry.

A. The loans used to purchase the Whitewater property

1. Background

On August 2, 1978, the McDougals and the Clintons purchased approximately 230 acres of undeveloped land in Flippin, Arkansas from a group of local investors known as the 101 River Development Corporation. The property was bounded on one side by Arkansas Route 101 and on the other side by the White River. Because the White River area was popular with sportsmen, James McDougal envisioned the property as a retirement and vacation development. He named it Whitewater Estates.

The McDougals and the Clintons paid $202,611 for the Whitewater property, slightly less than $900 per acre. They financed this purchase with two loans: a loan for $182,611 from the Citizens Bank and Trust of Flippin ("Citizens Bank") and a $20,000 loan from Union National Bank of Little Rock ("Union National"). It has been alleged that the Clintons and the McDougals received special treatment from Citizens Bank and Union National due to the fact that Clinton was the Arkansas Attorney General and a candidate for Governor when the loan was made. The evidence, however, demonstrated that the loans did not receive special treatment.

2. The Citizens Bank loan

As noted above, the Clintons and McDougals borrowed $182,611.20 from Citizens Bank on August 2, 1978 to purchase the Whitewater property. The loan was a six month demand note bear-

ing interest at 10%. This loan was renewed and extended nine times before being repaid in full on May 12, 1992.

Frank Burge, Robert Ritter and James Patterson—the most senior officials at Citizens Bank at or about the time the loan made—all testified that the loan received no special treatment.* Citizens Bank routinely made real estate loans for the development of unimproved land—such as Whitewater Estates. Patterson testified that Citizens Bank "was a heavy real estate lender"[1] and that the bank had made loans to other developers who bought tracts of land in the 200-acre range and then subdivided the land for resale.[2] In fact, the bank sometimes provided 100 percent financing for real estate investments similar to Whitewater Estates.**

There was no special treatment in the decision to approve the loan. Burge testified that:

> to be quite candid with you, I don't think Bill Clinton added one real big impact point in the approval of that loan. The approval of that loan was basically that * * * if the loan had problems, McDougal had ample resources, cash flow-wise, to service that debt for any purpose, that Clinton added to the loan the basic character, that I just didn't believe * * * that a sitting governor would let a loan go in default and be foreclosed on.[3]

Burge testified that the Clinton/McDougal loan was approved because, at that time McDougal was a "prominent" real estate developer who "had proven his ability to borrow money and repay the debt in a timely fashion," and who had had "success in remarketing property." Moreover, Burge testified that the Citizens Bank board believed that Attorney General Clinton had the financial ability to discharge the loan or service the debt.[4] Similarly, Patterson testified that, "We gave no preference to that loan" and "they were treated exactly like any other customer."[5] Patterson later added, "This was just the most ultimate, normal deal in the world."[6] Ritter was not told by his board of directors to handle the loan differently than he might have handled other loans.[7]

The evidence also established that the loan carried standard terms and conditions for Citizens Bank loans. First, the interest rate for the loan (and the subsequent renewals) was consistent with the market rate in Arkansas at the time. According to Ritter, "All of [the loans] were at the limit of usury at that time,"[8] which was 10 percent. Second, a six-month demand note was consistent with the Citizens Bank loan portfolio.[9] Ritter testified that the notes were short-term and demandable

> probably because of the opportunity to renew all of them at the time of usury changes in Arkansas. So when that would have occurred, and it did, then it was a matter of

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* Patterson was the president of Citizens Bank from 1972-1979. Burge was a senior vice president and later president of the bank from 1978-1979. Ritter was the president, chief executive officer and director of the bank from 1979–1983.

** Patterson testified that "if you-all go back and check everything that I and the bank had done, you'll probably find loans we lent 120 percent on, and you will probably find loans we didn't lend 50 percent on. And that's just community country banking." (Patterson, 2/22/96 Dep. p.39.) Patterson also testified that "I feel real sure that realtors like Wade and lots of other biggies in that region could not only get 100 percent financing, but they would get as much financing as was required to put water, streets or whatever was involved in it." (Patterson, 2/22/96 Dep. p.43.)

> renewing all those notes at a higher rate. Basically, the whole portfolio looked of that nature, with six-month renewal notes or six month notes or one-year notes.[10]

In other words, Citizens Bank insisted upon short term loans to maximize its potential interest income. Borrowers—including the McDougals and the Clintons—would have preferred longer terms, but the bank did not offer them.

Finally, there was nothing unusual about the performance of the loan. When asked if other loans performed better than the Whitewater loan, Burge said, "I wouldn't say it was better. I think it was difficult as well for those other people. During that period of time of those first few years, interest rates went to 21 percent and it was a struggle for all of them."[11]

Citizens Bank anticipated repayment of the loan from proceeds of Whitewater Estates land sales. According to Burge, "we anticipated that they would had ample cash sales and ample contract and deed sales to discharge the debt in a timely fashion."[12] Burge explained that, "I looked for the land sales to be the primary source of payment. And I would be safe to say that the secondary source of repayment would have been McDougal." He also noted that James McDougal was the borrower "with the deep pockets."[13] Moreover, Burge said that "I would assume that we would have made the loan to McDougal on a stand-alone basis."[14] Patterson also testified that the bank expected to be repaid out of the proceeds of subsequent resale of the property.[15] Burge testified that he believed "McDougal has ample resources, cash flow-wise, to service that debt for any purpose."[16]

In sum, according to Burge, the Citizens Bank loan to the McDougals and Clintons was "a normal deal"[17] made on the "exact same terms we made to every borrower."[18]

3. The Union National Bank loan

On June 19, 1978, Attorney General Clinton and James McDougal borrowed $20,000 from Union National. The loan was a one-year unsecured demand note with an interest rate of 10 percent. Union National extended the loan three times between June and December 1979. With each extension, the interest rate rose: first from 10% to 10.5% in June 1979; then from 10.5% to 11.5% in September 1979; and finally from 11.5% to 13% in December 1979. The loan was repaid in full on June 23, 1980.*

The allegation has been made that Attorney General Clinton solicited the loan and that he received special treatment. The evidence, however, does not support this allegation. Union National Vice President Paul Berry testified that he approached Attorney General Clinton about borrowing the money after Clinton stated that he was considering purchasing land near the White River. Berry testified that "I discussed whether or not [Clinton and James McDougal] were going to [buy the property] and I said if you make

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*Whitewater Development "dispersed $21,346.29 to Union Bank in repayment of the $20,000 earnest money loan taken out by Jim McDougal and Attorney General Clinton on June 19, 1978. Jim McDougal personally borrowed $20,000 on June 19, 1980 from the Bank of Cherry Valley and deposited these funds into a Whitewater account on June 20, 1980." (*A Preliminary Report on Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.,* Prepared for the Resolution Trust Corporation by Pillsbury, Madison & Sutro, April 24, 1995, p.30 (citations omitted).)

the decision to do so, we would like to—it would be my guess that we would like to make that loan."[19] Berry described this statement as a "routine remark" that he made to potential customers to generate business for the Union National.[20] In contrast to claims that Attorney General Clinton sought the Union National loan, Berry's testimony demonstrates that the bank solicited Clinton's loan business.

Berry further testified that Attorney General Clinton and James McDougal received no special treatment regarding the loan. Berry described the loan as "relatively small,"[21] and noted that Union National routinely provided similar unsecured loans under the "prestige banking" program, which served as a marketing device to encourage young professionals to conduct business with the bank.[22] Moreover, Clinton and McDougal already had accounts with the bank at the time of the loan, and Berry recalled that McDougal already was a loan customer.

Following his conversation with Attorney General Clinton, Berry went to the chief lending officer Don Denton to discuss a possible loan:

> I was in the main lobby at this point and Mr. Denton's office was in—just off the main lobby on the same floor and I routinely spoke to members of the loan department about customers that I had solicited their business (sic), and in the course of the conversation, if they mentioned a credit need, as part of my duties, I reported such credit needs for existing or potential customers to the loan department. And I mentioned this to Mr. Denton or—and I am sure I apprised him of this potential credit need.[23]

Denton has claimed that he was pressured by senior bank officials to make the loan to Clinton. Berry, however, testified that he did not order Denton—a high ranking official at the bank—to make the loan, nor did he convey any message from the bank's president about the loan.[24] Berry simply believed that making the loan was "good business" for the bank,[25] which then earned most of its profits from the loans. Finally, Denton's actions at the time of the loan are not consistent with his recent allegations. Denton never expressed any objections about the loan. Berry was unaware that Denton had any reservations about the loan, and Denton testified that he never voiced any concerns or objections about the loan to bank officials or during loan committee meetings.[26] Denton testified that if he had attended the officers' loan review committee meeting at which the McDougal-Clinton loan was discussed, he would have "raised some questions," but admitted that "I probably would have taken no action beyond asking questions."[27]

There is no question that Union National anticipated repayment of loan. Denton testified Union National wanted to make a profit and expected loans—including those made to top political officials in the state—to be repaid.[28] He assumed that the bank expected Clinton and McDougal to repay their Union National loan and he noted that the loan was in fact repaid in full.[29]

Union Bank was a national bank, and therefore not subject to state banking regulation.[30] Denton also testified that neither the Attorney General[31] nor the Governor[32] had any direct regulatory

role over the bank. Thus, Union National had no reason to fear retaliation from Clinton, as either Attorney General or Governor, for refusing to approve or renew the loan or requiring repayment.

4. The Clintons were passive investors in Whitewater

The testimony of Citizens Bank and Union National officials demonstrated that the Clintons were passive investors in the Whitewater project. The senior banking officials who authorized or managed the loan had little, if any, contact with the Clintons.

Burge testified that he dealt primarily with James McDougal and viewed him as the "primary partner * * * the one that seemed to be knowledgeable of all facets of each of the partners."[33] He added that "it was always my contention and understanding that McDougal was handling that transaction. He was the, if you will, point person or the conduit that all information and correspondence was channelled through."[34] Burge received all financial information from James McDougal.[35] Burge had no contact with Mrs. Clinton and dealt with Attorney General Clinton only on one occasion: when Clinton authorized Burge to answer media inquiries regarding the loan.[36]

Ritter dealt primarily with James McDougal because he was "a fellow banker" and was the easiest to reach of the group.[37] Ritter could not recall the Clintons ever calling him directly about the status of the loan.[38] Patterson could not recall ever meeting the Clintons, although he recalled that James McDougal had come to the bank on several occasions and was in the area while the land was being developed.[39] Denton dealt solely with McDougal and never communicated with Governor Clinton about the Union Bank loan.[40]

The bankers' testimony is consistent with the Clintons' interrogatory responses to the Resolution Trust Corporation in 1995. President Clinton, for example, recalled signing for the Citizens Bank and Union National loans.[41] He has testified, however, that the Clintons did not visit Whitewater Estates before they bought the property with the McDougals,[42] that "the books and records of the project were kept by the McDougals," that the Clintons "relied upon the McDougals to tell us when we needed to make a financial contribution to the venture,"[43] and that the Clintons "relied upon the McDougals to conduct or supervise sales and marketing" of the lots.[44] Similarly, Mrs. Clinton stated that:

> the McDougals exercised control over the management and operation of [Whitewater Development Corporation] for the period of its active existence. My husband and I did not receive annual reports or regular financial summaries and were not informed of all actions taken in the name of [Whitewater Development Corporation]. As was contemplated from the inception of the venture, we were passive investors and relied upon the McDougals to manage and operate it.[45]

The Pillsbury, Madison & Sutro report concluded that the Clintons did not play an active role in the activities connected with the real estate development. The report states in part that:

> For the relevant period (ending in 1986), the evidence suggests that the McDougals and not the Clintons managed Whitewater. The evidence does not suggest that the Clintons had managerial control over the enterprise, or received annual reports or regular financial summaries. Instead, and as the Clintons suggest, their main contact with Whitewater seems to have consisted of signing loan extensions or renewals.[46]

Moreover, after listing every document the Clintons had been provided in connection with the Whitewater investment, the Pillsbury report concluded that, "on this record, there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the sources of the funds used to make payments on the bank debt."[47] Bruce Ericson, a primary author of the Pillsbury report, accepted Mrs. Clinton's statement that the Clintons "'had little knowledge [of] and no control over the Whitewater project.'"[48]

B. The extensions of the loans

After the Clintons and McDougals incorporated Whitewater Development Company, Inc. ("WWDC") in June 1979, they transferred the land to the corporation, subject to the Citizens Bank mortgage. By the end of 1984 Citizens Bank had renewed or extended the loan six times. In 1985, however, Twin City Bankshares ("TCB"), a bank holding company that had purchased Citizens Bank, transformed it into First Ozark National Bank. Thereafter, Whitewater loan renewals were handled by First Ozark. First Ozark also renewed the loan several times. In all Citizens Bank and First Ozark renewed or extended the loan nine times before it was paid off on May 12, 1992.

The Committee devoted considerable attention to the First Ozark loan renewals in 1987 and 1988. In particular, the Committee explored: (1) whether the loan received special treatment; and (2) whether the loan renewals were connected in any way to banking legislation enacted by the State of Arkansas in 1987 and 1988 that may have benefitted First Ozark's parent company, Twin City Bankshares.

The evidence demonstrated that the Whitewater loan did not receive any special treatment. The loan was fully collateralized and was personally guaranteed by the Clintons and the McDougals. In addition, beginning in 1985, the bank received all income from lot sales. Also, although these two loan renewals (out of the total of nine renewals) occurred about the same time as the banking legislation, the evidence demonstrated that there was no connection between the loan renewals and the banking legislation.

1. Extension of loan by Citizens Bank

Citizens Bank Assistant Vice President Ron Proctor assumed responsibility for the Whitewater loan when he joined the bank in

1983.* By then, the loan already had been renewed or extended several times, and the loan balance had been reduced from more than $182,000 to approximately $125,000. The loan was structured as a single pay loan. No payments were due during the term of the loan; however, a balloon payment including accrued interest was due when the loan matured. This loan structure was common for commercial loans in Arkansas at that time.[49] Arkansas usury statutes capped interest rates below the market rate for long term commercial loans.[50] As such, banks commonly made short term loans that were renewed at new interest rates reflecting changes in market conditions.

From the time Proctor became involved, the Whitewater loan was secured by the land. In addition, the Clintons and McDougals were personally responsible for the loan. Proctor therefore considered First Ozark to be well protected.[51] As such, the loan was routinely extended in October 1983 and renewed in December 1984 (at which point the balance had been reduced to approximately $100,000).[52] The 1984 renewal was for two years, until December 3, 1986.

a. Ozark Air's purchase of the Whitewater property

On May 4, 1985, Chris Wade's Ozark Air Service purchased all the unsold Whitewater land. When Wade informed Proctor of the purchase, he asked Proctor to assign the loan to him and to release the Clintons and McDougals.* Proctor testified he was pleased that Wade had purchased the land. Wade was a local real estate businessman, and Proctor though he might be able to sell the lots faster than McDougal.[53] Wade also had served on the board of Citizens Bank. Proctor had the impression that the Clintons and McDougals wanted to withdraw from the Whitewater investment, and that Wade was helping them do so.[54] Proctor's first concern was the bank, however; accordingly, he refused to release the Clintons or the McDougals from their personal liability until the loan was paid in full.[55] This conflicts with any claim that the bank gave the Clintons special treatment. On the contrary, the bank declined to release the Clintons from personal liability for the loan even though Wade was prepared to assume that liability after he purchased the property.

b. The 1987 loan renewal

When the Whitewater loan matured in December 1986, the McDougals again sought to renew the loan. At this point, the loan balance had been reduced to approximately $53,000.[56] The Clintons were not involved in renewing the Whitewater loan at this time;* Proctor's primary contact on the loan was Susan McDougal.[57]

**Blood Sport,* by James Stewart, erroneously states that Proctor had turned over "much of the Whitewater [loan] file" to Vernon Dewey by 1986. Blood Sport, p.149. Actually, Proctor retained complete responsibility for the loan file until the loan was retired in May 1992. (Proctor, 5/2/96 Dep. pp.13–14; Strange, 5/2/96 Dep. pp.32, 107.) In his deposition, Dewey conceded that he *never* had responsibility for the Whitewater file. (Dewey, 5/3/96 Dep. p.55.)

*Although Proctor could not recall when this discussion occurred, the records show that Wade purchased the remaining Whitewater lots in May 1985.

*The Clintons did not become involved in loan renewals until at least 1988. Proctor did not communicate with Mrs. Clinton regarding the loan until 1990. "She wasn't really involved in the loan" until approximately 1990. (Proctor, 5/2/96 Dep. p.40.) Even then, Proctor never spoke with Governor Clinton about the loan. (Proctor, 5/8/96 Hrg. pp.94–95.)

As the loan officer responsible for the Whitewater loan, Proctor was required to review the loan renewal application and make a recommendation. As part of this review process, Proctor decided to reevaluate the collateral for the loan, the Whitewater property, which had not been appraised since the original loan was made in 1978.[58] To do so, Proctor visited the Whitewater property in January 1987. According to Proctor's file notes dated January 6, 1987, he valued the land at $750 per acre.[59] This was less than the original appraisal of $1,100 per acre, due in part to the ill-kept condition of the property.[**] The reduced valuation was Proctor's best informed estimate. He had no technical training in appraisal.[60] A formal appraisal was not prepared.[***]

Proctor testified that although he would have preferred that the value of the land had not declined over the life of the loan, he was not concerned about repayment because the loan did not really depend on the collateral.[61] The escrow payments that the bank was receiving were adequate and the loan also was guaranteed by the Clintons and the McDougals. Proctor therefore assigned the loan a risk rating of 3 (out of 6).[62]

It has been alleged that a risk rating of 3 was unusual, and meant "the bank should start preparing for a default, but still hoped the loan would perform."[63] Proctor and First Ozark President Wes Strange both testified that this was incorrect.[64] First, a 3 rating did not signify potential default. On the contrary, Proctor stated that a 3 rating signified a "standard loan with normal risk."[65] Strange agreed that a risk rating of 3 signified a "normal loan."[66] He explained that: "A 3-rated loan was a standard acceptable credit in the bank with no particular problem."[67] Even Vernon Dewey—the junior bank officer who made that allegation—ultimately conceded that a 3 rating was in the "middle of the rating scale," and did not signify a loan that was about to go into default.[68] Second, a risk rating of 3 was common, not unusual. Proctor estimated that 80% or 85% of the bank's loans were risk rated 3.[69] Strange described Proctor's estimate as "very close."[70] In fact, every commercial loan approved on January 8, 1987 (the day the Whitewater loan renewal was approved) was assigned a risk rating of 3.[71]

First Ozark's officers loan committee held its regular weekly meeting on January 8, 1987. The attendees included Proctor, Strange, and Dewey. Susan Sisk, TCB's representative on the loan committee, did not attend.[72]

Fourteen loans were considered at the meeting. The Whitewater loan renewal was one of eight commercial loans on the agenda. Based on Proctor's recommendation, the committee approved the loan renewal.[73] Once again, this demonstrates that the Whitewater loan did not receive special treatment. Although the minutes do not state who supported the renewal, a single negative vote would have

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[**] Also, many of the most valuable lots already had been sold, which naturally reduced the average value of the remaining lots.

[***] Proctor never conveyed his opinion regarding the value of the property to the Clintons or the McDougals. He did not believe that the Clintons or McDougals were aware of his analysis. Proctor, 5/2/96 Dep. pp.88–89.

caused the loan to be declined.[74] Therefore, the loan presumably received approval.*

Although the loan committee approved the loan on January 8, 1987, the actual renewal was subject to three conditions:

1. All sales proceeds (less commissions) applied to note.
2. All contracts to be maintained here at [First Ozark National Bank].
3. Need new financials.[75]

Although the loan's fundamentals were adequate for renewal, the bank would not finalize the loan until it was further protected.

The committee's conditions were met before the loan was formally renewed on March 26, 1987. First, the renewed loan included an assignment of escrow in the bank's favor. As such, payments from sales were made into an escrow account, and the proceeds of the escrow account were pledged and paid to the bank. Second, the sales contracts were provided to First Ozark. Finally, the Clintons submitted an updated financial statement on March 24, 1987, which First Ozark received on March 26, 1987.*

The loan had a twelve month term and carried an interest rate of 10.5%—the same rate carried by every other loan approved at the meeting on January 8, 1987.[76] As noted above, all eight of the commercial loans approved that day had risk ratings of 3.[77]

c. The Clintons' March 24, 1987 financial statement

The circumstances under which the bank obtained the Clintons' financial statement have been the subject of considerable attention. Proctor and Twin City Bank president Ed Penick both testified that they attended a First Ozark board meeting at which the bank's desire to obtain the Clintons' financial statement was discussed.[78] Proctor does not recall how the subject arose.[79] Penick recalls that the Whitewater loan was on a list of loans with file documentation deficiencies.[80] The board routinely reviewed such lists.[81]

During the foregoing discussion, Penick offered to help procure a financial statement.* Specifically, Penick said he would speak with Margaret Davenport (now Margaret Eldridge)—a Twin City Bank officer who was friendly with Mrs. Clinton—and ask her to speak with Mrs. Clinton.[82] Penick then wrote to Mrs. Clinton and enclosed a form financial statement.[83] Penick, however, does not recall speaking with Davenport.[84] Davenport similarly testified that she did not speak with Penick or with Mrs. Clinton.[85] However, a handwritten note on Mrs. Clinton's stationery references "Notes of Tk w/ M. Davenport." The note—which is dated "1987" in the upper right hand corner—recounts the status of the Whitewater loan as of October 1986.[86] Thus, Davenport may have spoken with

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*Although Dewey voted to approve the loan, he testified that he actually believed it should be declined. Dewey stated: "I thought it should be renewed because it was the Governor of the State of Arkansas, not that it was a good loan." However, Dewey conceded that no one pressured him to approve the loan; his vote reflected his own judgment.

*It was not significant that the loan was approved on January 8, 1987, pending receipt of the Clintons' financial statement. Proctor testified that the financial statement was helpful, but that even without the financial statement, the loan was justified because it was collateralized and the bank was being paid from an escrow fund. (Proctor, 5/2/96 Dep. pp.82–83.) In any event, the loan was not actually renewed until the financial statement was provided to the bank.

*Penick did not recall offering to ask Davenport to speak with Mrs. Clinton. (Penick, 5/9/96 Hrg. pp.147–148.) Strange also did not recall the conversation. (Strange, 5/9/96 Hrg. p.148.)

Mrs. Clinton regarding the Whitewater loan, but has since forgotten having done so.

In any event, on March 26, 1987, the bank received a financial statement for the Clintons. The statement—which is dated March 24, 1987—appears to be a form supplied by the bank.[87]

The Committee devoted considerable attention to the Clintons' financial statements. Much of the Committee's inquiry tracked allegations in *Blood Sport.* First, the book made much of the fact that the bank approved the 1984 Whitewater loan renewal without an updated financial statement for the Clintons, and that the bank gave preliminary approval to the 1987 renewal before it received a financial statement. In particular, the book cites Dewey for the proposition that the Whitewater loan was "the only one in the bank's portfolio" that lacked fully updated financial statements, and suggests that this represents special treatment for the Clintons.[88]

The evidence, however, simply does not support the suggestion of favoritism. As an initial matter, Proctor estimated that 40% of the loans in First Ozark's portfolio lacked fully updated financial statements from the borrowers.[89] Penick and Strange agreed that it was not unusual for a loan to lack fully updated financial statements.[90] Moreover, when confronted with Proctor's testimony, Dewey conceded that "it was not the only loan in the bank lacking financial information but this loan sticks out in my mind because of who the borrowers were."[91]

Similarly, *Blood Sport* reported that Dewey was so troubled by the lack of updated financial statements that he "insisted that the matter be brought to the bank's board of directors, and argued that the loan should be called."[92] Once again, this raises the implication that the bank afforded special treatment to the Clintons. This statement also was at odds with the evidence. Dewey testified that he never argued to the board of directors that the loan should be called; in fact, he never told a single director—during a meeting or elsewhere—that the loan should be called.[93] Proctor was the only person whom Dewey recalled telling that the loan should be called, and Proctor denied that Dewey did so.[94]

Moreover, Proctor testified that financial statements were less significant with respect to the Whitewater loan than many other loans.[95] Unlike many other loans at the time, the Whitewater loan was performing; the balance already had been reduced from $182,000 to $52,000. Also, the bank had ample security for the loan because it was receiving payments from an escrow fund and the loan was secured by the land itself (as well as the personal liability of the McDougals and the Clintons).[96] Thus, the bank did not need the Clinton's updated financial statement to analyze the loan.

Second, it was suggested in *Blood Sport* that the bank made repeated efforts to procure a financial statement, which were ignored by the Clintons. In particular, the book asserts that Dewey stated that he had "written the Clintons repeatedly asking, then demanding, that they provide a financial disclosure."[97] Under oath, however, Dewey conceded that he never wrote to the Clintons or communicated with them in any way on any subject.[98] Nor did Proctor contact the Clintons directly at this time.[99] In fact, the only person who recalls having contacted the Clintons directly was Penick, who

sent Mrs. Clinton a blank Twin City Bank financial form shortly before the Clintons submitted such a form on March 24, 1987.[100]

In any event, there was no reason for the Clintons to avoid submitting a financial statement to First Ozark. The Clintons previously had submitted financial statements to First Ozark and other banks that identified and valued their Whitewater investment. Governor Clinton also had submitted state-mandated financial disclosure forms that identified the Whitewater investment.

Finally, the Clintons' valuation of the Whitewater investment on their financial statement has been the subject of substantial discussion, particularly in *Blood Sport*. According to the book, Whitewater "[c]uriously" is not referred to by name in the assets portion of the document, but the Clintons listed two assets that may refer to Whitewater: $50,000 in accounts receivable and a partial interest in real estate valued at $50,000.[101] It therefore concluded that they valued their Whitewater investment at $100,000.*

The book then challenged the accuracy of this valuation. As noted earlier, in 1985, the unsold Whitewater lots had been conveyed to Chris Wade's Ozark Air. Wade still owed WWDC approximately $25,500 in that transaction, of which the Clintons were due half, or $12,750. In addition, the Clintons owned half of Whitewater's $60,000 in accounts receivable from before the sale to Wade; approximately $30,000. Thus, *Blood Sport* concludes that the Clintons' share of Whitewater was worth a total of approximately $42,750—less than half of the $100,000 value the Clintons supposedly assigned to the property.[102]

Apparently, Stewart reviewed only the first page of the two page financial statement.** The second page of the financial statement lists Whitewater as an asset valued at $100,000,[103] but it also lists the Clintons' portion of the Whitewater loan as a $70,000 liability. Thus, the *net* valuation of the Whitewater investment on the financial statement is actually $30,000—less than the $42,750 value that *Blood Sport* calculated. Consequently, it appears that the Clintons may actually have undervalued their Whitewater investment.[104] In any event, the whole issue is spurious because the bank already had complete information about both the value of the assets and the amount of the liabilities associated with Whitewater. They only needed a completed form for their loan files, and they were not looking to that form for information about a loan they had made which was collateralized by property they had inspected.

Moreover, there is no evidence to suggest that the Clintons intentionally misrepresented the value. David Kendall has described the valuations as the Clintons' "best estimate." In this regard, it should be noted that $100,000 is approximately half of the original purchase price for the Whitewater property. In any event, the Clintons were consistent in their valuation of Whitewater. As noted previously, in the First Ozark financial statement, the Clintons value their Whitewater investment at approximately $100,000.[105] A fi-

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*According to *Blood Sport,* Whitewater was the only "investment or holding" listed on Governor Clinton's state financial disclosure form.

**_Blood Sport_ never mentions the second page of the financial statement. Moreover, the financial statement is reproduced in an appendix to the book as a one page document. Taken together, these facts strongly suggest that a mistake was made in treating the financial statement as a one page document.

nancial statement that the Clintons provided to Security Bank of Paragould about the same time assigns a similar value to the Whitewater investment.[106] So does a financial statement submitted to the Bank of Cherry Valley in April 1983.[107] Thus, it appears that the Clintons simply assigned the same value to their Whitewater investment that they had always assigned to it.*

d. The 1988 renewal

On November 20, 1987, about midway through the term of the 1987 renewal, Proctor wrote to Susan McDougal to request an updated financial statement for the McDougals.[108] As the loan approached maturity, he repeated the request by letter dated February 24, 1988, this time requesting an updated statement for the Clintons also.[109] The McDougals apparently did not respond to either letter.**

On April 12, 1988, Wes Strange wrote to Mrs. Clinton about renewing the Whitewater loan.[110] This was a change in procedure; previously, the bank had worked through the McDougals. By this time, however, the McDougals had left Arkansas and moved to California.[111] First Ozark's efforts to locate them had proved unsuccessful. Strange thus sought Mrs. Clinton's help in contacting the McDougals.[112]

Mrs. Clinton made several attempts to contact the McDougals. On June 9, 1988, she sent them a certified letter recounting her efforts to reach Mrs. McDougal, and asking them to contact her to discuss the loan extension. In a "Blind P.S." to Strange, Mrs. Clinton added: "Wes, I do not know what else to do. If you have any suggestions, please give me a call. Thanks."[113] By July 13, 1988, Mrs. Clinton apparently had given up trying to reach the McDougals. She wrote to Strange: "I am enclosing the renewal note you sent for Bill's and my signature. Despite repeated efforts, I have been unable to reach the McDougals."[114]

On July 15, 1988, Proctor prepared a request for waiver of financial statements for WWDC and the guarantors—that is, the Clintons and McDougals. In his request, Proctor explained that statements were not necessary because:

1) Payments on loan are derived from escrow contracts controlled by [First Ozark National Bank]; and

2) Collateral is sufficient to cover the loan.

The request for a loan documentation waiver was approved by Strange.[115]

According to Proctor, his request for a loan documentation waiver was not unusual.[116] By this time, the loan balance had been paid down to approximately $36,000.[117] Moreover, the loan was supported by an income stream from the escrow account and was collateralized by the land. In addition, the waiver request reflected

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*The Clintons' apparent confusion regarding the status of the property and the balance on the loan tends to confirm that the Clintons were passive investors in Whitewater and that the McDougals managed the investment.

**Nevertheless, on December 12, 1987, the loan committee approved Proctor's request to waive the McDougal's financial statement requirement. (Doc. No. CBF0403, December 12, 1987 Minutes of First Ozark Officers Loan Committee Meeting.)

the bank's recognition that the McDougals could not be found.* In any event, First Ozark did not relieve the Clintons or McDougals of liability for the loan; the bank merely waived a paperwork requirement.[118]

Also on July 15, 1988, Proctor approved the renewal of the Whitewater loan for 39 months. Strange also approved the renewal.[119] Because the loan amount was only $36,000, the loan did not require further approval.

On July 19, 1988, Strange forwarded the renewal note to Mrs. Clinton for signing.[120] On July 27, 1988, Mrs. Clinton returned the renewal note signed by her and the Governor to Strange.[121]

2. Branch Banking Legislation

Until 1987, a state-chartered bank in Arkansas could operate branches only in the community in which it was chartered. Savings and loans had no such restriction. Legislation enacted in 1987 and 1988 broadened opportunities for state-chartered banks to operate branches outside their immediate communities. Twin City Bankshares ("TCB"), the parent company of First Ozark National Bank, supported the 1987 and 1988 legislation. It has been suggested that a relationship existed between First Ozark's renewal of the Whitewater loan in 1987 and 1988 and the Clinton Administration's support for branch banking legislation. There is no evidence to support this allegation. The only connection between the Whitewater loan renewals and the branch banking legislation was a coincidence of timing.

a. Act 539 of 1987

By 1986, opposition to the geographic restriction on state-chartered banks in Arkansas was growing. For example, on May 27, 1986, TCB's president Ed Penick met with State Bank Commissioner Marlin Jackson to discuss TCB's application to open new branches in North Little Rock, the community in which it was chartered.[122] According to Penick's file notes:

> The Commissioner also mentioned that, in his opinion, it was time for somebody to foster legislation to permit county-wide branching. The legislation could be restricted to counties with over 100,000 population so that only Pulaski County would be affected. He felt there was a good chance the legislation would be approved. * * *
>
> It would be interesting to casually feel out our state delegation to determine if there would be support for county-wide branching, but I'm not too optimistic here either knowing the influence of [State Senator] Max Howell and the close association he has with Pat Wilson.[123]

This memorandum demonstrates that the Clinton Administration supported branch banking legislation long before the 1987 Whitewater loan renewal. The memorandum also shows that the Clinton Administration proposed branch banking legislation to TCB; TCB did not propose the legislation to the administration.

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*The waiver occurred on the same day that Governor Clinton signed the 1988 Omnibus Banking Bill. However, there is no evidence that would connect these two events.

TCB may have favored the idea, but the Clinton Administration's interest preceded the maturity of the Whitewater loan by six months. Thus, it is implausible that the Governor's support for the legislation was connected to the loan renewal in any way.

In any event, on April 1, 1987, the Arkansas Legislature passed Act 539, which permitted state-chartered banks in counties with populations greater than 200,000 to operate branches virtually anywhere in their county. The only limitation was that a bank could not open a branch within 300 feet of the main branch of another bank.[124] Act 539 passed overwhelmingly: 80 to 10 in the House and 23 to 10 in the Senate.

At the time, only one Arkansas county had a population greater than 200,000; Pulaski County, which contains Little Rock and North Little Rock. Although the Act permitted any bank in Pulaski County to expand outside its immediate community, as a practical matter, there was less incentive for Little Rock banks to expand outside the city than for banks outside Little Rock to expand into the city.

Twin City Banks—which was owned by Twin City Bankshares—was the largest state-chartered bank in Arkansas. It also was the only major bank chartered in North Little Rock. It has been suggested that a connection existed between First Ozark's renewal of the Whitewater loan in March 1987 and the passage of Act 539 in April 1987.[125] There is no evidence to support this allegation. On the contrary, every single witness has denied any connection between the loan renewal and Act 539.* Ron Proctor saw "no connection at all between the two"[126], and Penick when it was suggested to him at a hearing that there was a "quid pro quo for support of the banking legislation" said "absolutely not."[127] Therefore, the evidence demonstrated no connection between the renewal of the Whitewater loan in 1987 and the enactment of Act 539.

b. The Omnibus Banking Bill of 1988

Notwithstanding the passage of Act 539, TCB's efforts to open new branches encountered opposition. Most significantly, TCB's main competitor, First Commercial Bank, sued to overturn five permits that Bank Commissioner Bill Ford granted TCB to open branches in Little Rock. First Commercial claimed that the Act constituted unconstitutional "local" legislation because it affected only Pulaski County.[128]

While the litigation was pending, a federal court in Mississippi overturned a regulatory system similar to that in Arkansas (in which S&Ls could branch statewide, but federally-chartered and state-chartered banks could not).[129] In essence, the court compelled Mississippi to permit federally-chartered banks to branch statewide, which gave them a significant competitive advantage over state-chartered banks—and threatened Mississippi's dual charter system.[130]

At the time, Arkansas also had a dual charter system. The Mississippi decision thus raised alarm among bankers and regulators

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* In *Blood Sport*, Dewey is quoted as connecting the legislation to "a few calls" made by TCB officials, but in his deposition, he testified at his deposition that he had no reason to believe that there was any connection between the Whitewater loan and branch banking legislation. (Dewey, 5/3/96, Dep. pp.71–72.)

that Arkansas would face a similar suit. To prevent judicial intervention, the banking community put together a comprehensive overhaul of the State's banking laws called the Omnibus Banking Bill of 1988.[131] This bill was introduced and enacted during a special legislative session that Governor Clinton called in July 1988. Among other reforms, the Omnibus Bill authorized statewide branching by state-chartered banks. This provision replaced Act 539 and rendered First Commercial's litigation moot.

Again, the only connection between the Omnibus Banking Bill of 1988 and First Ozark's renewal of the Whitewater loan is a coincidence of timing. The 1988 legislation was enacted on July 15, 1988, the same day that First Ozark waived the documentation requirement for the Whitewater loan and four days before the loan was renewed. However, no witness has testified to any knowledge of a connection between these events. In fact, every single witness has denied that a connection exists.

Wayne Hartsfield, President of the Arkansas Bankers Association and the person who coordinated the drafting of the 1988 legislation, testified that he had no reason to believe the 1988 legislation was unduly influenced by TCB or any other bank.[132] Hartsfield stated that the bill's provisions were the product of a consensus among bank chief executives, and that he had no reason to believe that TCB had any special influence with the Governor or his staff.[133] There is no evidence to the contrary.

C. Subsequent events related to the Whitewater property

1. The Lot 13 Loan

The Majority raised questions about a loan to Mrs. Clinton from Madison Bank and Trust ("MBT"), previously known as the Bank of Kingston, when she borrowed $30,000 to build a model home on Whitewater Estates lot 13. The Majority has alleged that this loan violated a Federal Deposit Insurance Corporation ("FDIC") restriction on MBT loans outside the bank's designated loan territory.* The evidence did not support this allegations.

MBT President Gary Bunch testified that there was nothing unusual about the terms of Mrs. Clinton's loan. The amount of the loan, $30,000, was not unusually large for the bank at that time.[134] Mrs. Clinton's loan was a demand note, like "90 percent or more" of MBT's loans at that time.[135] Moreover, MBT obviously was not providing Mrs. Clinton with special treatment by setting an interest rate of 20 percent for the loan.[136]

Bunch also testified that there was nothing unusual about the fact that Mrs. Clinton lived outside MBT's loan territory. MBT made numerous out-of-territory loans in addition to Mrs. Clinton's loan.[137] In addition, the FDIC, MBT's federal regulator, expressly permitted MBT to make out-of-territory loans under certain conditions.[138] There is no evidence that Mrs. Clinton's loan was not in

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*On April 27, 1983, MBT consented to the FDIC's entry of an order that required the bank to cease and desist from, among other things, extending credit outside Madison County or the western half of Newton County, Arkansas unless the loan was approved by the bank's board of directors. (Doc. No. DKSN 001157, In the Matter of Madison Bank and Trust, Order to Cease and Desist, April 27, 1983.) Mrs. Clinton took out her loan on December 16, 1980—over two years before the Cease and Desist Order was in effect. The loan was repaid in October 1993. The record is silent as to whether MBT's board of directors ever discussed Mrs. Clinton's loan. (Bunch, 5/2/96 Dep. p.92; Pockrus, 4/26/96 Dep. p.33.)

compliance with those conditions.[139] Moreover, even if Mrs. Clinton's loan were in violation of the FDIC order—which has not been demonstrated—there is no reason to believe that Mrs. Clinton knew or should have known of any regulatory violation.[140] The cease and desist order was a confidential agreement between the bank and the FDIC, and MBT officials did not disclose the terms of the order to the bank's borrowers.[141]

Furthermore, there is no evidence of irregularities in connection with the extension of credit to Mrs. Clinton. Bunch refuted allegations that the Clintons ever refused to provide any information to MBT.[142] According to Bunch, any absence of proper loan documentation in the loan file was the fault of the bank, not the Clintons.[143] In short, there is nothing to suggest that Mrs. Clinton ever received any special treatment with respect to this loan.

2. The Clintons' sale of their interest in Whitewater Development Corporation

On December 22, 1992, James McDougal bought the Clintons' remaining interest in WWDC for $1,000.[144] By this time, WWDC had sold all of its remaining lots and had no prospect of ever becoming a profitable enterprise.* Because McDougal had become destitute, Jim Blair, General Counsel for Tysons Foods, loaned McDougal $1,000 to his longtime friend to complete the transaction.[145] Blair did not inform the Clintons that he loaned this money to McDougal, and there is no evidence that the Clintons were aware of the loan at that time.[146]

D. Whitewater tax issues

The Special Committee conducted a limited review of matters pertaining to the Clintons' treatment of the Whitewater investment on their personal income tax returns and to the corporate tax filings of Whitewater Development Company, Inc. The Committee's review of these matters, while not exhaustive, was sufficient to establish that (1) the Clintons' tax treatment of the Whitewater investment on their personal tax returns was appropriate based upon the limited information about the investment that they received and (2) the information about the investment they received was, in many instances, incomplete or incorrect, which resulted in some unintentional errors in the Clintons' personal tax returns. As discussed below, these conclusions are consistent with findings of other investigations of the Whitewater investment, particularly the Pillsbury Madison & Sutro investigation (discussed in this report below) and the review of Whitewater accounting and tax matters conducted for the Clintons by Denver attorney James M. Lyons in March 1992.

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*On May 4, 1985, WWDC sold the remaining 24 Whitewater Estates lots to Ozark Air in exchange for an airplane and Ozark Air's assumption of $35,000 of the balance on the McDougals' and the Clintons' original Citizens Bank loan. According to the Pillsbury Report, "May 1985 * * * marked the end of Whitewater as a project. By the end of May, the land was gone; all that remained behind was debt and notes receivable that did not generate enough cash to service the debt. The Company would continue to exist but there was never again any prospect that it might turn a profit." (PM&S Report on Madison Guaranty, 4/24/95, p.123).

1. Background

As discussed above, the McDougals and the Clintons funded the August 1978 purchase of the Whitewater property with two bank loans. The $182,611.20 Citizens Bank & Trust loan was secured by a first mortgage on the Whitewater property and was executed by Mr. and Mrs. McDougal and Mr. and Mrs. Clinton, all four of whom were personally obligated to repay the loan.[147] The $20,000 Union National Bank loan was an unsecured personal loan to Mr. McDougal and Mr. Clinton.[148] The proceeds from these two loans were used to purchase the Whitewater property.[149] The property was deeded to the McDougals and the Clintons, as individuals, and a deed was recorded in the Marion County, Arkansas, land title records reflecting that the McDougals and the Clintons were the owners of the property.[150]

In June 1979 Charles James, the accountant who kept the books for Whitewater and other real estate developments controlled by James McDougal,[151] incorporated Whitewater Development Company, Inc. (hereinafter "WWDC" or "the corporation").[152] On September 30, 1979, the McDougals and the Clintons deeded all 230 acres of the Whitewater property to the corporation.[153] The bank loans that had been used to acquire the property were not assumed by the corporation. Those loans remained in the names of the McDougals and the Clintons, and they remained personally and individually obligated to repay those loans.[154]

2. The Clintons interest deductions for interest payments they made on the Whitewater loans

From 1978 until 1986 the business affairs of the Whitewater development were managed by James and Susan McDougal, assisted by Charles James.[155] The Clintons made some interest payments on the Whitewater bank loans out of their personal funds and claimed deductions on their personal tax returns for those payments.* The Clintons claimed the following deductions for interest payments on the Whitewater loans that they made out of their personal funds:

1978	*$10,131
1979**	11,753
1980	13,350

In addition to the interest payments on the land acquisition loans, the Clintons made interest payments on a personal loan relating to the model home on Whitewater Lot 13 that is discussed in section II.C, above. In December 1980, Mrs. Clinton borrowed $30,000 from the Bank of Kingston to pay for the model home.[156] In December 1981 Lot 13 and the model home were sold in an in-

*Until 1987 the tax laws permitted taxpayers to deduct the full amount of interest paid on personal loans. (Tax Reform Act of 1986, Pub. L. No. 99–514, 1986 U.S. Code Cong. & Admin. News) After 1986 the deductibility of interest on personal loans (other than home mortgage loans meeting certain requirements) was gradually "phased out" through 1991.

*According to a May 1996 review of Whitewater tax issues conducted by three tax experts for the Clintons' personal attorney, David Kendall (hereinafter "the May 1996 Review"), $1,000 of the $10,131 deduction in 1978 was for interest on a Union National Bank loan and the remaining $9,131 was for interest on the Citizens Bank loan.

**The Clintons' 1979 tax return was the subject of an Internal Revenue Service audit. (Doc. No. DKSN 000977 and Norton Hrg. p. 38) No adjustments were required as a result of that audit (Doc. Nos DKSN 000980–000981), and the tax return included the $11,753 deduction for Whitewater interest listed here (Doc. Nos DKRT 800007–800021).

stallment sale. The monthly payments by the buyer, while not sufficient to cover principal and interest payments on the Bank of Kingston loan, were used to service that loan, with additional payments by WWDC used to cover the debt service shortfall. The Clintons claimed no tax deductions for the interest payments on the Bank of Kingston loan.

In September 1983 Governor Clinton obtained a $20,800 personal loan from the Security Bank of Paragould.[157] The proceeds of that loan were applied towards paying off the Bank of Kingston loan.[158] The Security Bank of Paragould loan also was serviced with the monthly payments from the Lot 13 installment sale and additional payments by WWDC. From 1984–1988, the Clintons claimed *** the following interest deductions for the Security Bank of Paragould loan:

1984	$2,811
1985	2,322
1986	1,636
1987	2,561
1988	1,474

The deductions described above are the only tax deductions claimed by the Clintons for interest payments on Whitewater-related loans. During the time period in which these payments were made and the deductions were claimed, taxpayers were permitted to claim tax deductions for interest payments on personal bank loans. Thus the Clintons were legally entitled to claim tax deductions for interest payments they made, and they did not knowingly claim any tax deductions beyond their personal expenses related to the Whitewater investment (some unintentional errors, attributable to poor recordkeeping for the Whitewater investments, are discussed below).

The latter point is significant. Unlike many real estate investors during this time period, the Clintons did not claim personal tax deductions for corporate losses incurred by WWDC.* The Clintons' tax treatment of the Whitewater investment was conservative ** and reflected the economic substance of the transaction—they only claimed tax deductions when they made legally deductible payments with their own funds. Moreover, the Clintons' tax returns for the years in which they were investors in Whitewater were prepared by certified public accountants who had worked for the Internal Revenue Service before entering private practice.[159] Norton, who was the Clintons' tax preparer for the first six years of the Whitewater investment, testified[160] that the Clintons did not enter

*** Unbeknownst to the Clintons, some of these deductions were also claimed by WWDC. The Clintons corrected these inadvertent errors in 1993 and 1996, as discussed below.

* At the outset of the investment, the Clintons' tax preparer at the time, Gaines Norton, advised James McDougal that even if Whitewater was formed as a "Subchapter S" corporation (in which losses and gains are passed directly to the shareholders without taxation at the corporate level), such expenses likely could not be deducted on the individuals' personal returns. Norton recalls that McDougal disputed this point, and Mr. Clinton asked Mr. Norton not to pursue the matter further because Mr. McDougal was in charge of the investment. (Norton Hrg. pp. 6–9; Norton Dep. pp. 108–112) In any event, WWDC never filed its tax return as a Subchapter S corporation and, consistent with Norton's view, the Clintons never claimed deductions for WWDC losses on their personal tax returns.

** In fact, the tax treatment of the Whitewater investment may have been unduly conservative. The May 1996 Review concluded, inter alia, that: "With better tax advice, Mr. and Mrs. Clinton and the McDougals could legitimately have structured their Whitewater investment to fully utilize corporate losses, with substantially greater federal income tax benefits than they took or received." (May 1996 Review, p. 4)

into the Whitewater investment as a tax shelter.*** The Special Committee found no evidence that the Clintons ever sought to obtain any improper tax benefits from their investment in Whitewater.****

3. The Clintons have corrected past errors in their personal tax returns that resulted from inadequate information

As discussed above, the Special Committee's investigation of the Whitewater investment has confirmed what other investigations of Whitewater have found: Records for the Whitewater investment were not properly maintained by the McDougals during the years they managed the investment, and the Clintons did not receive regular and complete information about the investment from the McDougals. This poor recordkeeping and reporting resulted in some unintentional errors on the Clintons' personal tax filings. The Clintons have acknowledged and corrected those errors, even where they had no legal obligation to do so. The problems that led to those errors and the corrections the Clintons have made are discussed below

There is no question that from 1978 through 1986 the McDougals managed the Whitewater investment and the Clintons had no involvement in the day-to-day affairs of the enterprise.* It also is clear that the McDougals did not keep careful records for the Whitewater development. Charles James, the accountant who kept the books for Whitewater and the McDougals' other real estate projects through 1986, testified that at the end of a tax year James McDougal would sometimes bring him a box of loose records, including checks, receipts, and other documents, and ask him to prepare the WWDC tax returns.[161] There is no evidence that the Clintons ever received any regular reports or briefings on Whitewater, and the available evidence suggests that the Clintons knew very little about the investment before 1986.** James also testified that

*** Consistent with the testimony provided to the Special Committee, the May 1996 Review states that "the Whitewater investment does not appear to have been structured as a device to save federal income taxes." (May 1996 Review, p. 4)

**** The Majority raises questions about possible unreported income from the Clintons January 1977 purchase of 20 acres of land from Rolling Manor Inc., another real estate development managed by James McDougal. The limited evidence available with respect to this almost twenty-year-old transaction is not adequate to establish that any income beyond what the Clintons reported on their tax returns was in fact received. The available evidence does not demonstrate any improprieties, and the Majority's accusation, based on partial information and a series of unsupported assumptions, is inappropriate and irresponsible.

* Every study of Whitewater has reached this conclusion, including the "Lyons Report" prepared during the 1992 presidential campaign (Doc. Nos. JML 077–JML 083, March 23, 1992; see also Lyons, 6/5/96 Dep. p. 203) and the Pillsbury Madison & Sutro 1994–96 investigation (Madison Guaranty Savings and Loan and Whitewater Development Company, Inc., A Preliminary Report to the Resolution Trust Corporation, Prepared by Pillsbury, Madison & Sutro, April 24, 1995 (hereinafter "PM&S Preliminary Report"); Madison Guaranty Savings and Loan and Whitewater Development Company, Inc., A Supplemental Report to the Resolution Trust Corporation, Prepared by Pillsbury, Madison & Sutro, December 13, 1995, (hereinafter "PM&S, Supplemental Report")). Pillsbury, Madison & Sutro stated that personal tax issues were not within the scope its inquiry, however. (PM&S Preliminary Report, 4/24/95, p. 28 n.122.) Blood Sport, the book on Whitewater written by James Stewart, also portrays the McDougals as the sole managers of the investment until 1986. (See Part One of Blood Sport.)

** In 1987, after the McDougals left Arkansas and stopped attending to the affairs of Whitewater, Mrs. Clinton attempted to obtain information about the investment. She contacted James to obtain corporate records (James, 5/5/96 Dep. pp. 42–45; Redden, 5/30/96 Dep. pp. 50–51), and she asked Yoly Redden, who was then the Clintons' personal tax preparer, to review the records and try to determine how much money the Clintons had put into Whitewater and what the financial condition of the enterprise was at that time (Redden, 5/30/96 Dep. pp. 50–51). The testimony of Redden and James confirms that the Clintons were never well-informed about Whitewater.

he does not believe he provided copies of the WWDC corporate tax returns to the Clintons during the period in which he prepared the returns.[162] Consistent with James's recollection, there is no evidence that the Clintons signed the WWDC corporate tax returns in this time period.

It is not surprising, in light of the poor quality of the Whitewater records and the lack of information provided to the Clintons, that some unintentional errors were made in the preparation of the Clintons' personal income tax returns. Where the existence of errors has been established, the Clintons have corrected the errors and made payments for all past due amounts and interest.

In December 1993 the Clintons corrected errors in their 1984 and 1985 personal tax returns relating to deductions of interest payments on Whitewater loans. Based upon information first obtained in connection with the preparation of the Lyons Report, it appeared that an interest deduction of $2,811 claimed by the Clintons on their 1984 personal tax return,[163] that resulted in tax savings of $1,181, had also been claimed on the 1984 WWDC corporate tax return.[164] Even though they were under no legal obligation to do so, in December 1993 the Clintons paid over $2,700 in back taxes and interest to correct this error.

A similar error on the Clintons' 1985 personal tax return also was corrected in December 1993. An interest deduction of $2,322 claimed by the Clintons on their 1985 personal tax return,[165] that resulted in tax savings of $975, had also been claimed on the 1985 WWDC corporate tax return.[166] Again, even though they were under no legal obligation to do so, the Clintons paid over $2,000 in additional taxes and interest to correct this error.

Both of these errors resulted from inadequate communication of Whitewater financial information. The Clintons and their tax preparer were unaware in 1984 and 1985 that the same deductions had been claimed on the WWDC corporate returns.[167] James, who prepared the WWDC tax returns for those years, testified that he recalls providing WWDC tax information to McDougal, but he does not recall ever discussing Whitewater financial matters with the Clintons while he was the Whitewater accountant.[168] Better communication and coordination between the tax preparers for the Clintons and the corporation would have prevented these errors. The important point is that there is no reason to believe that the Clintons knew at the time that incorrect deductions had been included in their returns.

In May 1996, in response to questions about Whitewater tax issues in an August 1995 report prepared for the Republican staff of the House Committee on Banking and Financial Services, the Clintons made additional corrections of unintentional errors* relating to Whitewater in their personal tax returns. The three tax experts who conducted the May 1996 Review concluded that the evidence indicates that the vast bulk of the Clintons' Whitewater-related deductions were appropriate. The experts found that: (1) there is in-

*The May 24, 1996 letter to Chairman James A. Leach of the House Committee on Banking and Financial Services from David A. Kendall, the Clintons' personal attorney, transmitting the May 1996 Review states that the tax deficiencies alleged in the House report "are overwhelmingly erroneous or unsupported," and that "certain minor errors" had been corrected. That letter also points out that the Clintons had "made no adjustment for Whitewater-related tax benefits they could have but did not take." (May 24, 1996 letter from D. Kendall to Hon. J. Leach)

sufficient evidence to conclude that a $9,000 interest deduction on the Clintons' 1980 federal income tax return was improper; (2) the Clintons appear to have properly deducted $2,400 of interest on their 1979 tax return; (3) a $5,691 WWDC payment for a loan did not result, based on available evidence, in additional income to the Clintons in 1982; and (4) a $1,474 interest deduction on the Clintons' 1988 federal income tax return was proper. The experts also found minor erroneous deductions taken in 1984 and 1987 ($144 for real estate taxes in 1984 and $1,665 for 1987 interest), which resulted in additional federal income tax liability of $701. They also found an additional 1988 capital gain of $1,673 on the Lot 13 transaction that should have been reported. This capital gain resulted in additional federal income tax liability of $563. Finally, timing differences for interest deductions related to 1978 and 1979 result in an additional net federal tax liability of $19. The Clintons paid $2,910 in additional taxes and interest to correct these errors.

All of the corrections described above were to address unintentional errors in the Clintons' personal tax returns that resulted from inadequate information about the investment. The Special Committee found no evidence that either the Clintons or their personal tax preparers, both of whom were former Internal Revenue Service agents, knew or should have known of these errors at the time the returns were filed. In all cases where the existence of an error has been established, the Clintons have, at their own initiative, paid additional taxes and interest, even though they had no legal duty to do so.

4. The Clintons had no reason to report any personal income from the Whitewater investment

The Special Committee also reviewed whether or not the Clintons received actual or imputed income from the Whitewater investment that they had a legal obligation to report on their personal income tax returns. As has been the case with all other investigations of Whitewater, the Special Committee found that the Clintons received no return on their Whitewater investment. Simply put, Whitewater never made money.

At the Committee's public hearing on May 15, 1996, James and Norton confirmed that the Clintons never received any dividends or other income distributions from WWDC.[169] The WWDC tax returns report accumulated tax losses of $115,000 for the years 1980–1992. As is further discussed below, the Clintons never sought to claim any personal tax deductions for these losses. (The Clintons paid a total of about $510,000 in personal federal income taxes in this period.) In November 1986 James McDougal sent the Clintons a letter stating that up to that time Whitewater had lost approximately $90,000.[170] This letter is significant for a number of reasons,* but

*This letter shows that the Clintons relied upon the McDougals for information about Whitewater. It also shows that the McDougals did not provide the Clintons with important information about Whitewater. The previous month the McDougals had purchased a large property south of Little Rock from International Paper Co. in the name of Whitewater Development Corporation, without the knowledge of the Clintons. When they purchased the property the McDougals represented to International Paper that they were the sole owners of WWDC. (PM&S Preliminary Report on Whitewater Development, 4/24/95, pp.116–122; PM&S Report on Whitewater Development, 12/13/95, pp.62–64.) The Clintons have stated that they were unaware of the International Paper transaction. (Interrogatory Responses of Hillary Rodham Clin-

for present purposes the most important point concerning the letter is that it evidences the fact that the Clintons were told by the individual who was managing the development that the venture had lost a large amount of money. Accordingly, the Clintons had no reason to believe that they should have recognized any income from the Whitewater investment.

Some esoteric tax theories have been advanced for the proposition that the Clintons should have recognized income on their personal tax returns in connection with the transfer of the Whitewater property to WWDC and the subsequent payments on the land acquisition loans that were made with WWDC corporate funds or funds contributed by the McDougals.[171] These theories are not supported by the evidence obtained by the Special Committee. The two tax professionals who were responsible for the tax returns of WWDC and the Clintons during the early years of the investment rejected these theories. James testified that the formation of the corporation did not have any tax consequences, except that the corporation would be required to pay taxes if it was profitable (as noted above, it never was profitable).[172] Norton testified that he had no reason to report any personal income associated with the WWDC for the Clintons during the period in which he prepared their tax returns.[173]

James and Norton are not alone in rejecting the suggestion that, while Whitewater never was profitable, the Clintons nonetheless should have recognized income of some kind from their Whitewater investment. Leslie A. Patten, the certified public accountant who reviewed the entire accounting history of the Whitewater investment for the Clintons, in March 1992, testified that he considered that issue when he conducted his review and concluded that the Clintons need not have recognized income from Whitewater.[174] At his deposition, Mr. Patten was asked if the McDougals or the Clintons had any income that should have been recognized for tax purposes after the land was conveyed to WWDC. He answered, "No, and there should not have been."[175]

Consistent with the position of all the witnesses examined by the Special Committee, the three tax experts who conducted the May 1996 review of Whitewater tax issues for David Kendall, the Clintons' personal counsel, also concluded that the Clintons did not incur any income from the Whitewater investment. The experts considered whether the Clintons had "possible additional unreported income" from Whitewater because the Clintons contributed less than the McDougals (and McDougal-related entities) toward Whitewater expenses.[176] The tax experts rejected this theory: "Although [WWDC] may have had a negative net worth [arising out of the payments by the McDougals and entities they controlled]. . . this had no significance for Mr. and Mrs. Clinton as shareholders, because they were not entitled to deduct any portion of this loss and they did not realize any taxable gain on the disposition of their stock for federal income tax purposes (beyond the $1,000 [they received for the stock], which they reported in its entirety)."[177] In less technical terms, the contributions by the McDougals (or com-

ton, May 24, 1995, answer to Interrogatory No. 24(c), at 59–60; Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 24, at 46–47.)

panies controlled by the McDougals) to make payments of Whitewater expenses did not result in any taxable income to the Clintons as shareholders in WWDC.*

It is not surprising that the tax experts and the witnesses examined by the Special Committee come to the same conclusion on this issue. The theory that the Clintons should have recognized income from a money-losing investment flies in the face of logic and common sense. The Clintons put money into Whitewater, but never took any money out of the investment.** The proceeds of the Whitewater land acquisition loans were invested in the business, through the land purchase, and the Clintons did not use any portion of the proceeds of those loans for their personal benefit. Both logic and legal analysis support the conclusion that payments of principal and interest on those loans, whether using corporate funds or funds contributed by other shareholders (the McDougals), did not result in any taxable income to the Clintons.

5. The Clintons have not sought to take advantage of Whitewater losses that they might have claimed on their personal tax returns

As discussed in section II.D. above, in December 1992 the Clintons sold their stock in Whitewater to James McDougal for $1,000. The Clintons had invested about $40,500* in Whitewater and had never received any return on their investment. As a technical matter, the Clintons were entitled to recognize a capital loss on the sale of their stock, but because of the poor quality of the Whitewater records and the resulting difficulty of establishing their tax basis in the investment,** they reported the entire $1,000 as a capital gain.[178] The Clintons were entitled to recognize the capital loss they incurred when they sold their interest in the investment, but they chose not to do so, instead taking the most conservative possible approach and treating the entire $1,000 as a capital gain. Moreover, as discussed above, the Clintons never sought to use any of WWDC's losses to offset their personal income (at a time

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*Technical accounting questions, such as whether these payments should have been accounted for as additional contributions of capital to WWDC by the McDougals or loans to the corporation by the McDougals, need not be resolved here. The important point is that whatever the correct accounting treatment of these payments, they did not result in any taxable income to the Clintons.

**The Clintons did recognize a small gain of $3,313 on the Lot 13 transaction, but that gain is not relevant to this issue.

*This amount represents the Pillsbury, Madison & Sutro finding that the Clintons invested $42,191 in Whitewater, adjusted for a $1,673 correction described on page 13 of the May 1996 Review. (See PM&S Preliminary Report, 4/24/95, p.130.)

**This difficulty was considered by Deputy White House Counsel Vincent Foster, consulting with James Lyons and Yoly Redden, in 1993. (Lyons, 6/5/96 Dep. pp. 108-109; Redden, 5/30/96 Dep. pp. 128-133, 236-238) Foster's handwritten notes relating to this issue were produced to the Special Committee by the White House. The notes include an entry referring to the Clintons' tax basis in Whitewater as a "can of worms" that should not be opened. (Doc. Nos. DKSN 000517-DKSN 000519, Handwritten notes of Vincent Foster.) This reference has been mischaracterized in the press and during the Special Committee's hearings. First, the term "can of worms" in the notes does not refer to the Whitewater investment generally, as has been stated in newspaper articles and elsewhere: "In the note, Mr. Foster describes the Clintons' role in the Arkansas Whitewater Development Corp. as a "can of worms you shouldn't open." ("Foster's Death Center of Probe; Whitewater Review Starting in Senate", The Washington Times, July 18, 1995; see also statement of Special Committee Chairman Alfonse D'Amato, press conference of Jan. 18, 1996). Instead, the reference is to the technical issue of the documentation required to establish the Clintons' tax basis. (Redden, 5/30/96 Dep. pp. 237-238.) In addition, Redden testified that it was she who told Foster that the basis issue was a can of worms that should not be opened, contrary to the newspaper articles and statements that have attributed that statement to Foster.

when the tax laws would have permitted them to do so and many real estate investments were structured for that purpose). These actions demonstrate the conservative approach taken by the Clintons throughout the entire period of the Whitewater investment.

Finally, and perhaps most significant, as noted above, by the time the Clintons sold their interest in the corporation, WWDC had accumulated tax losses of $115,000. During the period that the Clintons were investors in Whitewater they paid about $510,000 in personal federal income taxes. The Clintons did not seek to claim personal tax deductions for any of the WWDC tax losses during this period, even though, as the tax experts who prepared the May 1996 Report noted, with better tax advice they could have claimed some of these losses. This fact alone demonstrates that the Clintons were conservative in their tax treatment of the Whitewater investment and were not trying to minimize or avoid taxes with the investment.

In short, the Special Committee found no evidence that the Clintons entered into the Whitewater investment as a tax shelter or ever sought to use the investment as a means to avoid paying their personal income taxes.

E. Madison Guaranty Savings & Loan

1. Reports on Madison Guaranty Savings & Loan make no finding of improper or illegal activity by President or Mrs. Clinton

Madison Guaranty Savings and Loan has been the subject of extensive investigations over the past decade. These investigations include examinations by the Federal Home Loan Bank Board (FHLBB) in 1986; reviews by an independent third party real estate consultant in 1987 and 1988 pursuant to a Cease and Desist order by the FHLBB; indictments issued by the U.S. Attorney for the Eastern District of Arkansas in 1989; a Resolution Trust Corporation (RTC) civil investigation in 1990; an RTC criminal investigation in 1991; and a report by the law firm Pillsbury Madison & Sutro retained by the RTC to investigate potential civil claims against Madison by the RTC. None of these reports made any finding of illegal or improper activity by the President or Mrs. Clinton relating to Madison Guaranty Savings and Loan.

The Federal Home Loan Bank Board conducted an extensive examination of Madison Guaranty Savings and Loan Association in March 1986.[179] The examination found conflicts of interest among members of the board of directors of Madison, failure of management to operate Madison in a safe and sound manner, investments in questionable land development projects, excessive growth in liabilities, questionable accounting practices, incomplete and inaccurate records, inadequate internal controls, and excessive compensation to executives.[180] While the examination cites by name members of the board and management of Madison for engaging in improper practices, then Governor and Mrs. Clinton are not mentioned in the report. Pursuant to the findings of the FHLBB examination, the board of directors of Madison consented to a Cease and Desist order which became effective on August 15, 1986 and addressed most of the problems cited in the examination.[181] The

Cease and Desist order specifically required the board of directors to engage an independent third party real estate consultant, subject to the prior approval of the FHLBB's Supervisory Agent, to review and evaluate the association's real estate and loan and investment portfolio.[182] The scope and content of the review and evaluation was also subject to the approval of the Supervisory Agent.[183]

The law firm of Borod and Huggins was engaged to conduct the review and evaluation. Jeffrey Gerrish, an attorney with the firm, served as lead counsel in conducting the review. The preliminary investigative report issued on March 3, 1987 found that for the period 1982 through 1986 covered by the report, numerous regulatory violations and breaches of fiduciary duty on the part of directors and officers of Madison Guaranty occurred, and that criminal violations may have occurred as well.[184] However, the report makes no mention of then Governor or Mrs. Clinton.

The board of Madison Guaranty commissioned a continuation of the initial investigation into the factual basis for certain of the losses incurred by Madison Guaranty. The board requested that its scope be expanded in anticipation of litigation against several of the insiders, friends, and associates of insiders at Madison.[185] The lead counsel on this investigation was again Jeffrey Gerrish, now with the law firm of Gerrish and McCreary.

The report, submitted on August 31, 1988, set forth six potential causes of action involving, in one or all of the claims, fourteen specified individuals. The claims include potential claims for directors liability, RICO, and fraudulent or negligent misrepresentation.[186] Then Governor and Mrs. Clinton are not mentioned in the report.

In November 1989, Charles Banks, U.S. Attorney for the Eastern District of Arkansas, brought indictments against James McDougal, the major stockholder in Madison Guaranty, David Henley, an employee of Madison Financial Corporation, and Jim Henley, a salesman on commission for various Madison Financial developments, for alleged violations of law in regard to Madison Guaranty.[187] An indictment was also brought against John Latham, Chairman of the Board of Directors and Chief Executive Officer of Madison Guaranty, in February 1990.[188] None of the indictments mention then Governor and Mrs. Clinton.

When the RTC placed Madison Guaranty into conservatorship in 1989, it inherited an accounting malpractice case which Madison had brought against the accounting firm of Frost and Company.[189] Frost had audited Madison's financial statement in 1984 and 1985. When the Federal Home Loan Bank Board's 1986 examination of Madison found significant accounting deficiencies, Madison sued Frost for malpractice.[190] In February 1991, April Breslaw, a Senior Attorney for the RTC, wrote a memo proposing to settle the pending accounting malpractice case. The memo reviewed the facts of the case and argued that the settlement offered was as much as the RTC was likely to recover by going to court.[191] The memo made no mention of the Clintons.

In addition, the RTC undertook a civil investigation of Madison Guaranty to determine if there was ground to bring a civil action against the directors and officers of Madison Guaranty. April Breslaw drafted a memo recommending that the RTC terminate the directors' and officers' liability investigation for Madison Guar-

anty. The memo listed nine individuals who might be held culpable for the failure of the association, but concluded that the potential recovery was insufficient to make a liability claim economically justifiable and recommended a close-out of the investigation.[192] The memo also contained no references to the Clintons.

In September, 1992, L. Richard Iorio, a Field Investigations Officer for the RTC, sent to Charles Banks, U.S. Attorney for the Eastern District of Arkansas, criminal referrals relating to Madison Guaranty . The referral was prepared by Jean Lewis, Criminal Investigator for the RTC. It listed three individuals as suspected of criminal violations—James McDougal, Susan McDougal, and Lisa Anspaugh. Among the suspected violations were check kiting, bank fraud, and forgery.[193]

The referral also listed 12 companies each of which maintained a checking account at Madison Guaranty. One of those companies was Whitewater Development Corporation. It also listed seven individuals, including Bill and Hillary Clinton, who were principals in one or more of those companies. The report also listed the Clintons as witnesses who might have information about the suspected violation.[194] No allegation of wrongdoing was made toward the Clintons.

Finally, the RTC retained the law firm of Pillsbury Madison & Sutro in January 1994 to investigate potential civil claims on behalf of the RTC relating to Madison Guaranty and Whitewater Development Corporation. In April 1995, Pillsbury Madison & Sutro released a preliminary report on Whitewater that described the history of the venture and its relationship to Madison Guaranty. In regard to the involvement of the Clintons as investors in Whitewater, the report stated:

> The available evidence shows only that the Clintons knew of the existence of at least some of the bank debt incurred by Whitewater and its shareholders, signed some promissory notes and loan extension, and on occasions made payments on bank debt or taxes out of their personal checking account. The evidence also suggests that the Clintons had little direct involvement in Whitewater's's financial management until 1988, by which all of the lots had been sold and McDougal had suffered a nervous breakdown.[195]

The report also found that 'So far as can be determined from the available documentary evidence, little Whitewater financial information was transmitted to the Clintons.'[196] The report recommended that no further resources be expended on the Whitewater part of this investigation.[197]

In December 1995, Pillsbury Madison & Sutro released a supplemental report on Whitewater. In regard to the role of the Clintons as investors in Whitewater, the report stated:

> Putting aside for the moment the legal significance of the phrase 'passive investor,' the evidence is essentially consistent with this assertion. For the relevant period (ending in 1986), the evidence suggests that the McDougals and not the Clintons had managerial control over the enterprise, or received annual reports or regular

> financial summaries. Instead, as the Clintons suggest, their main contact with Whitewater seems to have consisted of signing loan extensions and renewals.[198]

The report further stated that:

> There is no basis to assert that the Clintons knew anything of substance about McDougal's advances to Whitewater, the source of the funds used to make those advances or the source of the funds used to make payments on bank debt.[199]

The report concluded that:

> There is no basis to charge the Clintons with any kind of primary liability for fraud or intentional misconduct. This investigation had revealed no evidence to support any such claims. Nor would the record support any claim of secondary or derivative liability for the possible misdeeds of others.[200]

In addition to the report by Pillsbury, the House Banking Committee held four days of hearings on August 7, 8, 9, and 10, 1995. The Committee undertook a review of the matters relating to Madison Guaranty and Whitewater and released numerous documents to the public.

The Office of Independent Counsel has also been investigating Whitewater and its relationship to Madison Guaranty. It has entered into a number of plea agreements with individuals who were targets of its investigation. A well-publicized trial was recently completed in Arkansas which dealt with matters relating to Madison Guaranty. One of the prosecutors in the trial for the Office of Independent Counsel, W. Ray Jahn, in his closing statement at the trial, said that: "The man occupying the position of the Office of the Presidency is not on trial here. There's been no allegations of wrongdoing on the part of David Hale directed toward even the President."[201]

2. Madison Guaranty in the context of the nationwide S&L crisis

Given all of the attention that has been directed toward the failure of Madison Guaranty Savings and Loan Association, it is worthwhile to consider the failure of Madison in the larger context of the national crisis that confronted the savings and loan industry in the 1980's.

According to the Federal Deposit Insurance Corporation ("FDIC"), over 1300 federally insured savings and loans failed in the United States between 1980 and 1995 with total assets of over $600 billion.[202] In the state of Arkansas during that same period, according to the Office of Thrift Supervision ("OTS"), the federal agency responsible for supervising federally insured savings and loans, 22 savings and loans failed with total assets of over $6.8 billion.[203] Madison Guaranty, with assets of $114 million, was the eleventh largest failed Arkansas savings and loans.[204]

The most intensive analysis of the failure of Madison Guaranty, entitled "The Condition and Regulation of Madison Guaranty Savings and Loan Association in the 1980's and Its Seizure in 1989",

was prepared for the House Banking Committee by James Barth and Dan Brumbaugh, Jr.[205] That report points out that Madison Guaranty Savings and Loan Association was a stockholder owned, state-chartered Arkansas savings and loan whose deposits were insured by the Federal Savings and Loan insurance Corporation ("FSLIC"), whose successor agency is the FDIC.[206]

The report points out that Madison was only one of 12 federally insured savings and loans in Arkansas that was seized in 1989.[207] Further, although Madison had been reporting insolvency since the end of 1987, ten of the eleven other institutions seized in 1989 had been reporting insolvency longer.[208] The report also points out that:

> According to the most recent estimates of the RTC, Madison cost an estimated $73 million to resolve. Four other Arkansas Savings and loans that were insolvent in 1989 were resolved at greater—and in some instances substantially greater—cost, and they are all federally chartered institutions. First Federal of Arkansas cost $833 million, Savers Savings Association $645 million, Independence $314 million, and Landmark Savings $91 million. Overall * * * Madison cost only 3.3 percent of the total estimated resolution cost of institutions, which like itself, were open but insolvent in Arkansas in part of 1989 before being seized.[209]

In order to place the failure of Madison Guaranty further into perspective, it is worth noting that Madison was located in the Ninth District of the Federal Home Loan Bank System, which encompasses the five states of Arkansas, Louisiana, Mississippi, New Mexico, and Texas.[210] According to the report, by 1986 50 percent of the savings and loans (a total of 246 institutions) in that district were reporting losses, and 65 percent (a total of 311 institutions) did so in 1987.[211] As the report states:

> At year-end 1987, there were 186 institutions in the Ninth district reporting insolvency based on Generally Accepted Accounting Principles (GAAP). The institutions had $60 billion in assets and were reporting negative tangible of $16 billion and negative income of $7.3 billion. At this time, Madison's $111 million in assets represented two one hundredths of one percent of the total assets of insolvent institutions in the ninth district, and its $12 million negative capital represented eight one thousandths of one percent of the total negative capital reported in the district.[212]

The report pointed out that 36 percent of the nation's insolvent institutions with 33 percent of the assets were in the ninth district.[213] The report also stated:

> A conclusion that Madison was somehow unique in its collapse and the costs that it imposed on federal taxpayers because it received special treatment or leniency from state regulators does not appear to be supported by the information we have reviewed.[214]

F. The treatment of the McDougals and their business enterprises by Arkansas State agencies

The McDougals operated several business enterprises in Arkansas during the 1980s, including Madison Guaranty Savings & Loan, Madison Bank & Trust, and various real estate developments.* The activities of these business enterprises brought the McDougals into frequent contact with state regulatory agencies.

The allegation has been raised that the McDougals and their business enterprises obtained favored treatment from state regulators due to the McDougals' relationship with Governor Clinton. In particular, it has been alleged that Governor Clinton influenced state actions to benefit the McDougals. It also has been suggested that the McDougals provided financial benefits to the Clintons in return for the allegedly favorable treatment.

The record, however, is at odds with the allegations. The evidence demonstrated that the McDougals did not receive favored treatment from state agencies; state officials treated the McDougals and their business enterprises properly and appropriately, in the normal course of business. The evidence further demonstrated that Governor Clinton did not intervene with state officials in the McDougals' behalf, or assist the McDougals in their dealings with state agencies. Finally, the record does not support the allegation that the McDougals provided improper financial benefits to the Clintons.

1. Treatment of the Whitewater investment

James McDougal was not involved in any state-related business until he purchased a majority interest in the Bank of Kingston in 1980.[215] Prior to that time, McDougal had worked as a Senate aide and a real estate developer.[216]

2. There is no evidence that Arkansas State agency leases of offices from Madison Guaranty were improper

Between April 1984 and November 1985, the State of Arkansas entered into three leases for office space in Little Rock buildings owned by Madison Financial Corporation ("MFC"), a subsidiary of Madison Guaranty. On April 10, 1984 the Arkansas Housing Development Agency ("AHDA") leased office space in the Madison Guaranty Building at 1501 Main Street. On August 13, 1985, AHDA's successor agency—the Arkansas Development Finance Authority ("ADFA")—leased additional space in the same building. Finally, on November 7, 1985, the Arkansas Department of Finance and Administration leased a small building at 1520 Main Street from MFC.

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*Madison Bank & Trust should not be confused with Madison Guaranty Savings & Loan Association. They were two different financial institutions that James McDougal controlled and operated at different times. The potential for confusion stems from the fact that in each instance McDougal changed the name of the institution to "Madison" after he acquired control. While the "Madison" in Madison Bank & Trust may have been selected because the bank was located in Madison County, Arkansas, Madison Guaranty Savings & Loan (formerly Woodruff County Savings and Loan Association) was not in Madison County—it was in a different part of the state altogether. The use of a profile of President James Madison on Madison Guaranty's stationary suggests that McDougal may have selected the name of the bank because he admired President Madison. Madison Bank employee Gary Bunch confirmed that point when he testified before the Special Committee (Bunch, 5/16/96 Hrg. p.42.)

The Special Committee has investigated whether any of the leases were signed because of Governor Clinton's relationship with James McDougal, Madison Guaranty's owner. In particular, the Committee has sought to determine whether the leases were related to a fundraiser that McDougal held for Governor Clinton at Madison Guaranty on April 5, 1985. The evidence collected by the Committee establishes that the leases were entirely proper and appropriate, and were entered into in the normal course of business. There is no evidence that Governor Clinton or anyone acting on his behalf caused or directed the leases to be signed, or that Madison Guaranty received any special consideration. Moreover, the State first leased space at Madison Guaranty at least a year before the fundraiser took place. Thus, there is no basis to connect the fundraiser with the leases, and no reason to believe that the leases entailed a quid pro quo of any kind.

a. The AHDA lease at Madison Guaranty

The Arkansas Housing Development Agency was created in 1977 to issue bonds and use the proceeds to make housing loans to lower and middle income families. At the time, AHDA was authorized to issue $15 million in bonds. In 1979, as part of a broad economic development effort, AHDA's bond issuance authority was increased to $600 million—which caused the agency to grow dramatically.

In 1979, AHDA moved into the Donaghey Building at 7th and Main Streets in Little Rock. By 1983, however, the Donaghey Building space had become inadequate. AHDA was forced to occupy noncontiguous offices that were separated by 75 yards.[217] Also, the space was too small to house the agency, which had grown as its bond issuance authority increased.[218] Although AHDA tried to obtain additional space within the Donaghey Building, this proved impossible.[219] Accordingly, in June 1983, AHDA's Board authorized Executive Director Linda Trent to take steps to relocate the agency.

AHDA's efforts to move continued when Wooten Epes became Executive Director in September 1983. Epes placed Deputy Director C.E. Anderson in charge of the search process. Anderson contacted Arkansas State Building Services ("SBS").[220] This was standard procedure; SBS oversees leasing for all Arkansas state agencies, schools and universities.[221]

Upon receiving AHDA's request, SBS publicly announced AHDA's space requirements, advertised for bid proposals, and began accepting solicitations.[222] SBS received a number of proposals. Even so, Epes recalled that "there just weren't that many options" that satisfied AHDA's most basic requirements.[223] He noted:

> I couldn't find what I wanted, and that was within our price range anyway. We needed a pretty good chunk of space in one block and that was generally the problem, finding that and finding it in a low cost building.[224]

In addition, AHDA preferred a downtown Little Rock location, near other State agencies and support services.[225]

SBS considered nearly 20 possible locations for AHDA, but it proved difficult to find suitable space. Old World Plaza, for example, was in North Little Rock and was not handicapped accessible.

The Executive Building, Evergreen Place, and Plaza West were located five miles outside downtown Little Rock. The Continental Building was unrenovated. The Spring Building, the Pyramid Building, Commercial National Bank Building, and the Heritage Center could not provide sufficient space on a single floor. The Tower Building was too expensive. In addition, many of the buildings could not provide sufficient parking for AHDA employees.[226]

Although none of the available choices was ideal, AHDA needed to move as soon as possible because its current location was inadequate. Accordingly, on October 31, 1983, AHDA asked SBS for authority to negotiate a lease at 1300 Brookwood Drive (which was located three or four miles from downtown). At the time, AHDA anticipated leasing 5800 square feet of office space at a rate of $6.50 per square foot—a total cost of $37,700 per year. However, efforts to negotiate a satisfactory lease with the Brookwood building's owner proved unsuccessful. The "final proposal" from the Brookwood building's owner was $8.60 per square foot—a total cost of $49,880 per year. In light of the higher than expected cost, AHDA and SBS "concurred in the rejection" of the Brookwood proposal.* The Governor's office played no part in the rejection of the Brookwood proposal.

Meanwhile, in January or February 1984, Madison Guaranty submitted a proposal to SBS. Shortly thereafter, Susan McDougal visited SBS to propose the Madison Guaranty Building as a potential site for AHDA. McDougal met with Mallard and Leasing Supervisor Helen Herr in his office.** This was not unusual; as Mallard observed: "You have meetings with everybody that you lease buildings from or lease buildings to."[227] Herr confirmed that building owners regularly visited SBS to promote their properties, and agreed that the meeting with Susan McDougal was "just a regular part of [SBS's] business."[228]

Following the meeting, Mallard asked Herr to look into the Madison Guaranty Building as a site for AHDA. Once again, this was common practice. Herr stated:

> People contacted [Mallard] a lot about different buildings that they had available, and he would bring it to [the leasing officials'] attention.[229]

Herr testified that Mallard did not ask her to treat the Madison Guaranty proposal any differently from any other proposal and that she did not do so.[230]

As Mallard requested, Herr visited the Madison Guaranty Building with AHDA Deputy Director Anderson.[231] Anderson raised two principal concerns about the Madison Guaranty Building as a site for the agency.[232] First, the building was located in the Quapaw Quarter, an older section of downtown Little Rock adjacent to the Governor's mansion. Although the Quapaw Quarter was under-

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*Although AHDA's rejection of the Brookwood space is documented in a letter dated March 5, 1984, the actual rejection likely occurred earlier. The letter seems to reference an earlier agreement with SBS to reject the Brookwood space.

**It is unclear how this meeting came about. Mallard has no specific recollection; he speculated that McDougal might have been in the building and Herr brought her to his office. (Mallard, 2/14/96 Dep. pp. 21–22.) Herr recalled that McDougal was in Mallard's office and he called her in. (Herr, 2/13/96 Dep. p. 16.) In any event, Mallard testified that it was common for building owners to visit him to pitch their buildings. (Mallard, 2/14/96 Dep. p. 74.)

going redevelopment, some AHDA employees worried that the neighborhood was unsafe.[233] Second, AHDA had grown and expected to grow further. AHDA thus wanted to ensure that the Madison Guaranty space was large enough to accommodate the expected growth.[234]

Anderson's first concern—the location of the Madison Guaranty Building—actually provided an inducement to lease there because State policy called for using State agencies to revitalize downtown Little Rock. This was especially significant for AHDA, the agency with primary responsibility for economic development.[235] As such, the decision to move AHDA to the Madison Guaranty Building was consistent with both State policy and the mission of the agency.

Bob Nash, Governor Clinton's senior economic development adviser, testified that the State actively promoted development in "deteriorating" parts of the State such as the Quapaw Quarter.[236] Betsey Wright, Governor Clinton's chief of staff, confirmed that the State had a policy "that all things being equal and where economically feasible, that we would help keep downtown Little Rock alive."[237]

Similarly, SBS Director Mallard testified that SBS had a longstanding policy to promote development downtown, which predated his service at SBS.[238] In fact, SBS' governing board had made this policy explicit. He stated:

> It was an official policy of and it was a set policy when I [came] on board as director, that we try to lease any of the space in the downtown buildings that we could. And that had been concurred with by a state building service council, which council * * * I served under.[239]

As a practical matter, this policy predisposed Mallard and SBS to lease space in the Quapaw Quarter whenever possible. In this regard, Mallard testified that:

> It had been a bad area at one time, just like all of Downtown Little Rock was fast becoming, and we [were] encouraged by our council and all of the downtown real estate community to lease all those buildings we could lease. And we tried, every time we made a lease, we tried to—we tried to lease from downtown areas.[240]

SBS Leasing Supervisor Herr also testified that the State's revitalization policy played a role in the site selection for AHDA. Herr testified:

> Quapaw Quarter was a historic area and there was a separate agency charged with maintaining the integrity of the area, so I was well aware of the push and the need to develop that area.[241]

Moreover, Herr agreed that the policy was "a good thing."[242]

Even AHDA Director Epes acknowledged that Governor Clinton rightfully was concerned about improving the Quapaw Quarter, which encompassed a 10 block radius around the governor's mansion. He stated:

> [Governor Clinton] felt like the state needed to try to have a presence in this part of town because there was an ongoing effort to revitalize and redevelop that part of Main

> Street in Little Rock. It was only a few blocks from the Governor's mansion, and it was kind of a part of town that needed redeveloping, and he felt that this might help that process.[243]

In addition, witnesses uniformly testified that safety concerns regarding the Quapaw Quarter were exaggerated. For example, Mallard testified that the neighborhood was improving.[244] Helen Herr, the SBS leasing manager, stated that the employees were "overreacting."[245] AHDA Director Epes testified that he felt obligated to present his employees' security concerns to SBS and the Governor's office, but did not share those concerns. He stated: "[M]y own concerns were not that strong because I didn't live very far from there."[246] Bob Nash—the member of the Governor's staff to whom Epes raised the concerns—worked in the Quapaw Quarter for seven years before joining the Governor's staff.[247] He considered the concerns "sincere but unfounded."[248] Nash explained:

> I figured that it was just a lack of understanding or a perception that because an area was low-income that it automatically was not as safe as other areas, and I just don't believe that. * * * I did not think that it was a security problem in that area, because again, the governor's mansion is in that area and a lot of other people have moved into that general area and restored old homes. It was coming back.[249]

Betsey Wright shared Nash's assessment, adding that such concerns commonly were "racist in [their bearing," and that the State had an obligation not to accommodate them.[250]

In any event, any reasonable security concerns were alleviated when Madison Guaranty agreed to fence in the parking lot and to hire a security guard.[251] Notably, during AHDA's three and one half year tenancy in the Madison Guaranty Building, not a single serious crime was reported.[252]

Anderson's second concern—the physical layout of the Madison Guaranty space—also proved to be a positive factor. Glen Cox, an SBS architect, toured the space and drafted floor plans that demonstrated that the Madison Guaranty building had sufficient space for AHDA's needs.[253] This assessment was confirmed sixteen months later when Madison Guaranty made additional space in the building available to AHDA. As such, the Madison Guaranty space was not only large enough to accommodate AHDA's current needs, but offered space for expansion.

Moreover, much of the office space offered to AHDA was old and in poor condition. The Madison Guaranty Building, by contrast, was undergoing a complete renovation at the time. The renovation assured ADHA of high quality space that it could design to its own specifications. In the end, therefore, AHDA received newly renovated, custom-designed office space.

After satisfying himself that AHDA's concerns had been addressed, SBS Director Mallard decided to move AHDA to the Madison Guaranty Building. Mallard testified that he made the decision solely on the merits, without any pressure from the Governor's office.[254] The record supports Mallard's testimony that he made the leasing decision unilaterally. For example, Epes recalled that SBS made the decision to move the agency to Madison, and testified

that he was not aware of any pressure from the Governor's office.[255] AHDA Board Chairman Mort Hardwicke stated similarly that no one from the Governor's office tried to influence him or any other AHDA official.[256] Finally, Bob Nash, Governor Clinton's liaison with AHDA, testified that, to his knowledge, no one in the Governor's office was involved in the decision.[257]

In a March 5, 1984 letter, Epes advised Herr that AHDA "rejected" Mallard's decision to move the agency to the Madison Guaranty Building.* The letter raised three concerns: (1) the Madison proposal was $7,000 more expensive than the Brookwood proposal, in part because Madison included a flat charge for utilities, which AHDA could not control; (2) AHDA preferred to stay "in a downtown location, preferably within walking distance of our attorneys;" and (3) the Madison space did not provide for anticipated personnel growth. The letter made no mention of employee security or the neighborhood.[258]

Although it is not clear exactly how SBS evaluated AHDA's expressed concerns, it is clear that the concerns were meritless. First, with respect to price, the Madison Guaranty space actually cost less than the Brookwood space on a per square foot basis—the higher total price arose because Madison Guaranty offered AHDA 6852 square feet of space, whereas Brookwood offered only 5,780 square feet. In addition, SBS negotiated a provision in the Madison Guaranty lease which permitted an annual adjustment in the cost of utilities based on actual usage, thus giving AHDA control of a significant cost component. Second, Madison Guaranty was downtown (albeit not in the central business district where the cost of a lease would have been prohibitive in any event). AHDA's concerns regarding Madison Guaranty's location are puzzling in light of the agency's efforts to move to Brookwood Drive. According to Epes, the Brookwood Drive building was in West Little Rock, three or four miles from downtown, which would not have been a convenient location for AHDA. Third, the Madison Guaranty space plainly permitted further growth, because AHDA leased 1,500 additional square feet from Madison in August 1985. In any event, it is clear that SBS was not convinced by AHDA's arguments. Shortly thereafter, SBS advised AHDA that it would have to move into the Madison Guaranty Building despite the objections stated in the March 5, 1984 letter.

Following SBS' decision, AHDA made a final effort to avoid moving to Madison Guaranty. At Epes' request, Mallard met with Bob Nash, Governor Clinton's liaison with AHDA.[259] Although Epes initiated the meeting, he did not attend; Deputy Director Anderson and two Board members represented AHDA.* Mallard did not recall precisely when the meeting occurred, but believed it to have been "fairly close" to the time the lease was signed in early April 1984.[260]

According to Mallard—the only witness who testified about the meeting—the meeting was brief. AHDA restated its concerns about

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*Epes testified that he did not sign the letter. He speculated that it must have been authored by Deputy Director Anderson, and sent over his signature. Epes did not take issue with the contents of the letter.

*Mallard could not identify the AHDA Board members. However, he was certain that Governor Clinton, Betsey Wright and Sam Bratton did not attend.

the neighborhood around the Madison Guaranty Building. Mallard responded that:

[W]e felt that this building was more suitable to their needs and we were trying to keep all the agencies in the downtown area. And we were just trying to help downtown Little Rock stay viable and stay alive. At that time there was so many vacant buildings.[261]

Mallard then "declined again" to reverse his decision "and that was the end of the meeting."[262] Nash did not express any opinion about the Madison Guaranty lease, either on behalf of himself or the Governor's office.[263]

Sometime later, AHDA Board Chairman Hardwicke approached Epes and offered to set up a meeting with Governor Clinton to press their case. Epes agreed, and a meeting ensued.[264] Epes recalls that he was accompanied by Hardwicke and that a gubernatorial staffer also may have attended the meeting. (Hardwicke did not remember the meeting; he could not even confirm that it took place.)[265]

Only Epes remembered anything that was said at the meeting, and his recollection was limited and general. In sum, Epes testified that he apprised Governor Clinton of his staff's safety concerns,* but that Governor Clinton believed the concerns could be addressed.[266] Epes added that Governor Clinton said the State needed to have a presence in the downtown area, and that he was interested in revitalizing the area.[267] (As noted above, Betsey Wright and Bob Nash both testified that revitalization of downtown Little Rock was a priority for Governor Clinton and that state agencies were an integral part of the Governor's revitalization efforts.)[268] Ultimately, Clinton declined to overrule the decision of the Director of Building Services.[269] Significantly, the McDougals were not discussed.[270]

On April 10, 1984, AHDA and Madison Guaranty executed a lease for 6,852 square feet of space at a price of $8.50 per square foot—a total of $58,242. The leased commenced in July 1984, when, as scheduled, AHDA moved into custom-renovated offices in the Madison Guaranty Building.*

SBS Leasing Administrator Helen Herr described the price as "competitive" and testified that "the quality of space as presented was good, and did justify the cost per square foot."[271] She added that the floor plan was entirely "workable."[272] Mallard stated that AHDA was satisfied with the Madison space after AHDA moved in. "I know after [Epes] got there, he was happy, and, you know, I would see him from time to time and he expressed himself that he was happy there."[273] Epes agreed.

> [O]nce we determined that that's where we were moving, there was a construction period where they built out our space for us. It was an old warehouse that had been converted so it was raw space and we were able to put up the

*As noted previously, Epes lived near the Madison Guaranty Building and did not share his staff's safety concerns. (Epes, 4/24/96 Hrg. pp.64, 68; Epes, 2/5/96, Dep. pp.172-173, 180.)

*As promised in the lease, Madison initially employed a security guard to address AHDA's security concerns. Over time, Madison apparently halted this arrangement, perhaps because the security concerns raised by AHDA proved unfounded. However, there is no dispute that Madison complied initially.

walls and the offices in an arrangement that was best for us.[274]

Moreover, the AHDA lease apparently had the intended catalytic effect on the Quapaw Quarter. Herr observed that the neighborhood improved after AHDA moved into the Madison Guaranty building and that "[t]here was a lot more activity in that area, business activity in that area."[275]

b. ADFA'S Expansion of the AHDA Lease

During April 1985, legislation was enacted transforming the Arkansas Housing Development Agency into the Arkansas Development Finance Authority. ADFA's responsibilities were significantly broader than AHDA's. ADFA also had authority to hire several additional employees. This, in turn, created a need for additional office space.

On April 9, 1985, AHDA Director Epes wrote to SBS Director Mallard. Epes advised Mallard of the ADFA legislation, and noted that AHDA expected to hire "three to four additional employees for Development Finance efforts." Epes added that AHDA had hired two additional employees since it moved into the Madison building. He therefore requested SBS to seek additional space to accommodate the new employees.[276]

Fortunately, the Madison Guaranty Building had additional space available at a competitive price.[277] Thus, ADFA could increase its office space without the expense and dislocation of moving.[278] In this regard, SBS Leasing Manager Herr testified that "it would not have made any fiscal sense to relocate [AHDA] at that time, if space was available at a reasonable rate right next door."[279] Mallard agreed that it was "reasonable" to expand into the adjoining space. He added that: "We always tried to keep [agencies] in the same space if we could."[280]

Accordingly, on August 13, 1985, ADFA leased 1,456 square feet of additional office space at Madison Guaranty. The new space was adjacent to ADFA's existing space. The price was slightly higher—$9.32 per square foot as opposed to $8.50 for the existing space—but this amount included significant renovations. The base rent remained the same. According to Herr, the price was reasonable considering the construction entailed in customizing the new space for the agency.[281]

There is no evidence of impropriety in connection with the lease expansion.

c. The revenue office lease at 1520 Main Street

The Arkansas Department of Finance and Administration ("DFA") operates approximately 140 "revenue offices" throughout the State. Among other things, Arkansans can renew their drivers licenses and automobile registrations at revenue offices. DFA makes a concerted effort to spread revenue offices out in such a way as to make them accessible to all Arkansans.[282]

As of 1985, DFA occupied a revenue office on Wealth Street in downtown Little Rock. However, the Wealth Street office was infested by rodents and insects.[283] In addition, the office had been broken into and robbed several times.[284] Accordingly, Revenue De-

partment Administrator John Cox decided to move the office to a safer location in the same neighborhood.[285] In particular, Cox decided to move to a former service station located at 1520 Main Street—across the street from the Madison Guaranty Building—that was owned by Madison Financial. The service station was about five blocks from the Wealth Street location.

Only one witness recalled anything substantive about this lease. SBS Leasing Manager Morris Patterson—who handled all revenue office leases—offered the only pertinent testimony. Patterson stated that Cox found the property on his own, then called Patterson directly and asked him to negotiate and draft a lease for the property.[286] A letter from John Cox* to Patterson confirms that DFA found the space.[287] Patterson had no contact with the Governor's office regarding the move or the lease, and Cox did not mention any such contact to Patterson during the leasing process.[288] Mallard had a general recollection that Cox found the space and contacted Patterson directly, but could not recall any details.

According to Patterson, the building was reasonably priced—2,315 square feet at $7.50 per square foot—and was well renovated to DFA's specifications. Patterson added that the building remains in use as a revenue office today.[289]

The record concerning the revenue office lease is clear. This was a run-of-the-mill, unremarkable transaction. The Governor's office had no involvement at all. In fact, there is no evidence that anyone outside DFA and SBS played any part in the lease negotiations.

d. ADFA's move to the Technology Center

On September 1, 1987, ADFA moved from the Madison Guaranty Building to the Technology Center at 100 Main Street in Little Rock. The new lease encompassed 10,800 square feet of space at a price of $11.00 per square foot, for a total of $118,800 per year. As of March 1, 1992, ADFA occupied 15,040 square feet.

There are two noteworthy aspects to this move. First, although the move took place before ADFA's lease at Madison expired, this did not result in any cost to the State. The owners of the Technology Center assumed financial responsibility to Madison Financial for ADFA's breaking the lease. Second, the Technology Center was owned by an investment group headed by Tom Ferstl, a prominent Republican opponent of Governor Clinton's. This is totally inconsistent with the suggestion that the Governor's office was manipulating the leasing process to benefit Governor Clinton's friends or political supporters.

e. Neither Governor Clinton nor his staff pressured anyone to lease office space from Madison Guaranty

Not one witness was contacted by the Governor or anyone acting on his behalf. In fact, the Governor's only involvement in the leasing process came *after* SBS Director Mallard already had decided to move AHDA to the Madison Guaranty Building. Even then, Governor Clinton did not initiate the meeting. AHDA Director Epes and Board Chairman Hardwicke sought a meeting to discuss the

* Cox is deceased.

agency's move to Madison Guaranty. The Governor merely acceded to their request.[290]

In any event, the evidence indicates that the meeting was perfunctory and insubstantial. Epes described the meeting as "fairly brief."[291] Hardwicke could not even recall whether a meeting took place.[292] Most important, Governor Clinton refused to get involved in the dispute between AHDA and SBS. He simply restated his policy of promoting development in low income areas, noted Madison Guaranty's proximity to the Governor's mansion, and declined to overrule the director of SBS.[293] Neither Governor Clinton nor anyone acting on his behalf took any action as a consequence of the meeting.

The Committee has taken extensive sworn testimony regarding the State leases at Madison Guaranty. That testimony is consistent and clear. Every single witness has testified that SBS acted unilaterally in selecting the Madison Guaranty Building for AHDA's offices. There is no evidence that Governor Clinton or his staff sought to influence the selection process.

Despite the overwhelming weight of the evidence, the majority has seized on the deposition testimony of Helen Herr to suggest that SBS did not act unilaterally.[294] According to Herr, Mallard advised her that:

> [T]he Governor's office wanted us to lease that space, that they were interested in—as I recall, he said they were interested in helping the development in the quarter area, South Main, and that the McDougals were friends [of the Clintons].[295]

Mallard denied making the statement that Herr attributed to him.[296] However, even assuming he made the statement and forgot, it does not suggest any impropriety and, in fact, is consistent with the other evidence. As discussed previously, Epes and Hardwicke met with Governor Clinton in March or April 1985, but could not persuade him to overrule Mallard's decision or to intervene in the leasing process.[297] Herr testified that her conversation with Mallard took place after that meeting and that Mallard was merely apprising Herr that the Governor would not interfere with the decision Mallard made before the meeting.[298]

Additional testimony further undermines any claim that Herr's testimony suggests improper conduct in connection with the Madison Guaranty lease. First and foremost, SBS Director Mallard testified that he made the decision to lease space from Madison Guaranty for state agencies.[299] Neither Governor Clinton nor anyone acting on his behalf exerted any influence on Mallard to lease space from Madison Guaranty or any other lessor.[300] Mallard stated:

> The Governor never said anything to me at all about this lease or any other lease that we made while I was at state building service, 4½ years or whatever length of time I was there.[301]

Mallard summarized that: "I had no pressure at all."[302] Nor did Mallard select the Madison Guaranty space based on McDougal's relationship with Governor Clinton. Mallard flatly denied that he

was influenced by the fact that McDougal was a friend and supporter of the Governor.[303]

Morris Patterson—the SBS leasing manager who drafted the AHDA lease—confirmed Mallard's testimony. Patterson stated plainly that "[n]obody" tried to pressure him, and that he was "not aware of any pressure whatsoever" from the Governor's office to lease space from Madison Guaranty.[304]

AHDA Board Chairman Mort Hardwicke gave similar testimony. Hardwicke stated that no one from the Governor's office tried to influence him regarding the move to the Madison Guaranty Building, and that he had no reason to believe that any other AHDA official was pressured.[305]

Finally, Bob Nash, Governor Clinton's liaison with AHDA, testified that neither Governor Clinton nor anyone acting on his behalf sought to influence SBS to lease space from Madison Guaranty.[306] On the contrary, Nash testified that SBS decided unilaterally to lease from Madison Guaranty.[307] In fact, Nash first learned that SBS was considering the Madison Guaranty space after the decision to lease the space had been made.[308] Nash summarized that he had "no reason to believe that [the selection of the Madison Guaranty Building] was not proper and appropriate."[309]

f. It was common for state agencies to object to the space chosen for them by SBS

Much has been made of the fact that AHDA initially objected to the Madison Guaranty space. In fact, ADHA's objections have little significance. State agencies routinely raised concerns about the office space assigned to them by SBS.[310] It would have been more surprising if the move were met with silence. Moreover, AHDA's legitimate concerns were addressed and resolved before the agency moved into Madison Guaranty. In the end, the Madison Guaranty space proved well-suited to AHDA's needs, and the agency was entirely satisfied.

SBS officials uniformly testified that it was common for state agencies to raise objections to the space selected for them by SBS. For example, SBS Director Mallard stated:

> [E]very time we moved an agency, usually someone within that agency objected. I mean, this was nothing unusual. You would have someone within the agency would have to drive a few miles further. You would have someone in the agency that would lose a parking place. You would every time you moved someone, if you didn't let them go exactly where they wanted to go, and then there were some dissatisfied if you let them go where they wanted to go.[311]

Similarly, Helen Herr agreed it was common for state employees to raise complaints when their agencies were slated to move.[312]

Nor was it unusual that AHDA Director Epes made a direct plea to SBS regarding the Madison Guaranty space.* Mallard stated: "[Y]ou would always have agency directors that would—a lot of

*Although Epes did not share the concern of his staff, he "didn't want [his] staff members to think that I didn't care about their concerns." (Epes, 2/5/96 Dep. p.173.)

times I had them calling me saying they wasn't going to move. They couldn't, wouldn't move."[313]

Betsey Wright confirmed that agencies commonly objected to SBS decisions, and that the Governor's office frequently was called upon to mediate those objections. She added that efforts to move agencies to downtown locations were particularly likely to engender opposition, and not always for legitimate reasons.[314] Wright stated:

> Sometimes agencies didn't particularly want to be in downtown Little Rock, and I would have conversations with the agency directors or department directors about what the problems were, and state building services would be working with the owners to see if they could be accommodated.
>
> Quite frankly, in many cases, the concern was racist in its bearing, and it was in part my responsibility to try to determine and ascertain where that was the barrier, because that was one we weren't going to allow to be a barrier.[315]

In any event, in the end, AHDA's objections proved unfounded. When asked his opinion of the agency's new offices, Epes testified: "I liked it. It was—it was laid out well, and we got to design our space in a manner that was suitable for us."[316] Morris Patterson, the career SBS official who drafted the lease confirmed Epes' testimony. He recounted that "[Epes] readily worked with me on this to do the floor plan, like he was happy to go there."[317]

g. The April 5, 1985 Madison fundraiser

On April 5, 1985, James McDougal hosted a fundraiser for Bill Clinton at the Madison Guaranty Building. The event raised approximately $33,000. It has been alleged that one or more of the state agency leases at Madison Guaranty was a quid pro quo for the fundraiser. As discussed above, this claim conflicts with the unanimous testimony of the State officials who conducted the leasing process. Moreover, the initial AHDA lease at Madison Guaranty—which was the only lease that even came to the Governor's attention—was signed a full year before the fundraiser.

Questions also have been raised about certain contributions that the campaign received during the fundraiser. Although Charles Peacock III apparently made $6,000 in unlawful contributions at the fundraiser, the record demonstrates that the campaign did not know the contributions were unlawful and had no reason to suspect that the contributions were anything but proper.

(1) Background

Charles Peacock III was the largest minority shareholder in Madison Guaranty, and served on the board of directors when James McDougal ran the institution. He and his companies also were substantial borrowers from Madison; Peacock's total debt to Madison ultimately exceeded $1 million.[318] Included in that amount were two loans that Peacock received at the time of the fundraiser. On April 4, 1985, Peacock received a $50,000 personal loan; on April 5, 1985 Dixie Continental Leasing, a company owned

by Peacock, received a $297,000 loan. Most of the funds Peacock and Dixie Continental borrowed in April 1985 were used to purchase a 30 acre parcel of land from Madison Financial.[319] Approximately $11,000 of the loan proceeds, however, cannot be traced.

At the April 5, 1985 fundraiser, Peacock made two $3,000 contributions to Governor Clinton in the names of others—his son, Ken Peacock, and his business partner, Dene Landrum.[320] Both contributions were for legally permissible amounts, and on their face, were entirely proper.[321] However, Arkansas campaign finance law prohibits making a contribution in the name of another person.[322] Thus, the contributions violated the Arkansas election code. Peacock admits that he made the contributions, but denies knowing that making contributions in the name of another was illegal.[323] Peacock also denies that he used the proceeds from the April 1985 loans to fund the contributions.[324]

In any event, after McDougal was removed from control of Madison, Peacock defaulted on his loans. As a consequence, by 1987, Madison Guaranty was engaged in collection and bankruptcy litigation against Peacock and several of his companies.

Patricia Heritage [Hays] was the collection officer who coordinated the Peacock litigation for Madison Guaranty. On April 21, 1987, Peacock's lawyer, Greg Hopkins, appeared unexpectedly at Hays' office. Hopkins made a series of "very angry" allegations about Madison's lawyers, the Mitchell, Williams firm, and its conduct of the Peacock litigation.[325]

Hays viewed the allegations as the kind of "huffing and puffing that a litigator will do to gain an advantage for his client."* Hopkins was faring poorly in the Peacock litigation, and apparently hoped to pressure Madison to reach a settlement.[326] Also, Hays knew that Hopkins was angry at Lance Miller, one of the Mitchell firm attorneys who represented Madison in the Peacock litigation.[327] During a recent appearance in bankruptcy court, Miller had questioned the source of Hopkins' legal fees. In particular, Miller suggested that Hopkins was paid with the proceeds from one of Madison's loans to Peacock.[328] Hays also thought that Hopkins was embarrassed because Miller had forced Peacock to dismiss with prejudice the bankruptcy petition that Hopkins had filed on Peacock's behalf—a major defeat for Peacock and Hopkins.[329]

As soon as Hopkins left her office, Hays telephoned Miller and recounted Hopkins' allegations. Miller took contemporaneous notes of his conversation with Hays ("phone notes").[330] Miller also discussed the allegations with two lawyers at the Mitchell firm, Tim Grooms, a more senior associate, and Jim Guy Tucker, a partner in the firm.[331] In addition, at Tucker's suggestion, Miller drafted a memorandum to John Selig, the senior partner at the Mitchell firm ("memorandum").[332] The three page memorandum, dated April 23, 1987, was intended to apprise Selig of Hopkins' allegations.[333] Both documents were based entirely on Miller's April 21 conversation with Hays; Miller did not conduct any independent research or investigation.[334]

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*(Hays, 2/23/96 Dep. p.106.) Apparently Hays was correct. Years later, in approximately July 1995, Hopkins told Hays that he was "just posturing" and "blowing smoke" during their April 1987 conversation. (Hays, 2/23/96 Dep. pp.127-28.)

The bulk of Hopkins' allegations concerned Tucker's relationship with Madison Guaranty and the Mitchell firm's conduct of the Peacock litigation. For example, Hopkins threatened to seek to disqualify the Mitchell firm from the Peacock litigation based on a conflict of interest arising out of Tucker's business dealings with Madison Guaranty and McDougal.[335] Hopkins also attacked the Mitchell firm's conduct of the litigation as "churn[ing] the files" to generate legal fees.[336] Finally, Hopkins criticized the Mitchell firm's conduct of the litigation as "too dirty" and stated that he was considering resigning his representation of Peacock as a consequence.[337] These allegations are not directly relevant to the Committee's investigation.

One of Hopkins' allegations is pertinent to the Committee's inquiry. According to Miller's phone notes and memorandum, Hopkins claimed that funds from a Madison Guaranty loan to Dixie Continental were used to make contributions to the Clinton campaign and that the state lease with Madison was related to the contributions.[338]

Hopkins' allegation is recounted in Miller's phone notes and his subsequent memorandum. First, Miller's phone notes state:

> Dixie loan went to Clinton Campaign
> Signed lease to state,
> alot of people going to prison.[339]

In his memorandum, Miller expanded upon his phone notes. The memorandum states:

> Mr. Hopkins stated that a portion of the loan proceeds made to Dixie Continental Leasing went to Bill Clinton's campaign and that in return for the substantial campaign contribution, Bill Clinton assured Jim McDougal that a state agency would lease space from Madison at its headquarters on Main Street in Little Rock.[340]

These statements—which were reported in the press in July 1995—appear to have provided the impetus for the Committee's investigation into the supposed relationship between the April 5, 1985 fundraiser and the State leases at Madison Guaranty.

(2) There was no connection between the State leases at Madison Guaranty and the April 5, 1985 fundraiser

On its face, Hopkins' allegation is certainly troubling. However, upon examination, the record simply does not support the allegation.

First and foremost, the timing of events is inconsistent with the allegation of a connection between the leases and the fundraiser. As discussed above, the AHDA lease at Madison Guaranty was signed in April 1984. The fundraiser was not held until April 1985, a full year later. It strains credulity that Governor Clinton directed state agencies to lease space at Madison in the hope that sometime later—much later as it turned out—McDougal would hold a fundraiser for him. Nor is there any basis to argue that the fundraiser was planned earlier but delayed. Pillsbury, Madison reported that the fundraiser was not scheduled until a week before it took place.[341]

Second, every single person involved in the leasing process rejected the notion that Governor Clinton influenced the selection of Madison. Three SBS officials—Paul Mallard, Helen Herr and Morris Patterson—all testified that Mallard made the decision unilaterally. Wooten Epes, the Director of AHDA and ADFA, testified that Governor Clinton stayed out of the leasing process, even when Epes tried to draw him into it. Nor did Betsey Wright or Bob Nash of the Governor's staff get involved. John Latham, the president of Madison Guaranty, testified that "I know of no link" between the leases and the fundraiser.[342] Moreover, Hays made inquiries at Madison but did not discover anything.[343] In this regard, on April 27, 1987, Hays advised Marcy Taylor, a Mitchell, Williams lawyer that: "No one here knows anything about it."[344]

The majority apparently recognizes the implausibility of a connection between the fundraiser and the AHDA lease. Instead, the majority has noted that ADFA Director Epes wrote to SBS Director Mallard on April 9, 1985 to request additional space, and has suggested that the resulting August 13, 1985 lease expansion at Madison must have been in recompense for the fundraiser.[345] However, the facts simply do not support this claim. The record clearly establishes that the agency needed the additional space, that it was cost-effective and efficient to seek additional space at Madison, and that there was no connection with the fundraiser.

There can be no dispute that ADFA required additional office space. From the outset of the leasing process, the agency stressed that it expected to expand, and needed office space that would accommodate expansion.[346] Moreover, the timing of the expansion was entirely due to factors outside AHDA's control. As noted previously, in April 1985, the Arkansas legislature enacted a wide ranging economic development package. Part of this legislation transformed AHDA into ADFA. Because ADFA's responsibilities were significantly broader than AHDA's, the new agency was authorized to hire several additional employees. This, in turn, created a need for additional space.[347]

In light of the new legislation, Epes wrote to Mallard on April 9, 1985 to request additional office space.[348] This request had no connection with the fundraiser; in fact, Epes had no idea that the fundraiser had been held.[349] Rather, Epes apprised Mallard of the new legislation, and noted that AHDA expected to hire "three to four additional employees for Development Finance efforts."[350] Epes further noted that AHDA had hired two additional employees since it moved into the Madison Guaranty building. He therefore requested additional space to accommodate all the new employees.[351]

As SBS had anticipated when it obtained the initial lease, Madison Guaranty had additional space available at a competitive price.[352] Thus, ADFA could expand without the expense and dislocation of moving.[353] Helen Herr testified that this was the only sensible decision. She stated succinctly:

> it would not have made any fiscal sense to relocate [AHDA] at that time, if space was available at a reasonable rate right next door.[354]

Accordingly, on August 13, 1985, ADFA leased 1,456 square feet of additional office space at Madison Guaranty. The new space was contiguous with ADFA's existing space. Although the price was slightly higher—$9.32 per square foot compared to $8.50 for the existing space—this amount included significant renovations. The base rent remained the same. According to Herr, the price was reasonable considering the work entailed in customizing the new space for ADFA.[355]

(3) Hopkins' allegations of wrongdoing were directed at Madison Guaranty insiders, not at Governor Clinton or anyone associated with him.

As noted above, Hopkins told Hays that "a lot of people [would be] going to prison" as a consequence of wrongdoing at Madison.[356] The Committee's investigation established that this statement referred to the operation of Madison Guaranty by the McDougals and other Madison Guaranty insiders, not to the Governor or people associated with his administration or his campaign. Hays and Miller both testified that Hopkins' reference pertained only to Madison insiders, and did not pertain to Governor Clinton or anyone associated with him.[*]

Miller's phone notes are silent as to whom Hopkins accused of wrongdoing.[357] However, Miller's memorandum clarified that Hopkins' allegation was directed at McDougal and other Madison insiders. Miller wrote:

> Mr. Hopkins went on to explain that there was substantial wrongdoing regarding the prior administration of Madison, that several people were 'going to prison,' and that our firm will be severely embarrassed when a full disclosure is made and our firm is disqualified with potential sanctions imposed.[358]

Thus, the people who Hopkins' warned might be "going to prison" were "the prior administration of Madison"—not Governor Clinton or anyone associated with him.[359]

Hays confirmed Miller's interpretation. As a preliminary matter, Hopkins' statement regarding McDougal and the Madison insiders came as no surprise to Hays. It was common knowledge that James McDougal had been forced out of Madison Guaranty, amidst allegations of rampant fraud. As a Madison employee, Hays was acutely aware of these events. She noted:

> It's just that a lot of what he was saying, it wasn't news to me. And maybe the particulars that statements like that people are going to prison, I mean that was widely known. That was widely talked about and speculated about.[360]

Thus, Hays had no doubt that Hopkins' references to "wrongdoing" and "prison" applied to Madison insiders, not to Governor Clinton or anyone associated with his administration or campaign.[361] Hays explained:

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[*] Hopkins did not recall the conversation with Hays, and could not explain Miller's phone notes and memorandum. (Hopkins, 2/14/96 Dep. pp.86–87.)

> He was strictly talking about Madison related insiders * * * who had been running Madison. That's who I understood him to be talking about, definitely. * * * Jim McDougal, one or more of the Henley brothers, John Latham. That's essentially it.[362]

(4) There was no impropriety by Governor Clinton or the Clinton campaign in connection with the Peacock contributions

As noted previously, the contributions that Charles Peacock made at the April 5, 1985 fundraiser were legal on their face. However, Arkansas campaign finance law prohibited contributions in the name of another person.[363] Thus, the contributions violated the Arkansas election code.

Peacock admits that he made the contributions, but denies knowing that the contributions were illegal.[364] He also denies that his contributions had any relation to state leases.[365] Rather, Peacock claims he made the contributions for "a selfish reason"—to help Ken obtain a state job after graduating from law school and to help the son of Landrum's friend procure a state scholarship.[366] Neither event actually occurred.*

Although Peacock now admits that he made the contributions, at the time, there was no reason for Governor Clinton or anyone associated with his campaign to doubt that the contributions were made by Ken Peacock and Dene Landrum. On the contrary, the campaign had every reason to believe that Ken Peacock and Dene Landrum did make the contributions. The contribution checks identified Ken Peacock and Dene Landrum as the makers; no other names appeared on the checks.[367] Moreover, Peacock wanted the campaign to believe the contributions came from his son and Landrum.[368] Thus, the only person who could identify the actual contributor sought to conceal that fact.

The evidence shows that the campaign believed that the contributions came from Ken Peacock and Dene Landrum. In a letter dated April 24, 1985, McDougal's secretary Sue Strayhorn provided Linda Dickson of the Governor's Office, with "addresses for checks you received through Madison for the Governor."[369] The Ken Peacock and Dene Landrum contribution checks are among those listed in the letter. This indicates that the Clinton campaign believed the checks were drawn by Ken Peacock and Dene Landrum, the individuals identified on the face of the checks.[370] Shortly thereafter, the Clinton campaign sent Ken Peacock and Dene Landrum thank you letters at the addresses provided by Strayhorn.[371] These letters were identical to the thank you letters that all the other contributors received.[372] Charles Peacock did not receive a thank you letter.

In interrogatory responses dated May 24, 1995, President Clinton stated that he had no knowledge regarding the source of funds for the contributions made in connection with the fundraiser.[373] After a two-year review, on December 13, 1995, Pillsbury, Madison reported that it could not find any evidence to the contrary.[374] The evidence provided to the Committee also is entirely consistent with

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*No charges have been brought against Peacock by the Independent Counsel in connection with the contributions. Nor has Peacock been granted immunity. (Peacock, 4/24/96 Hrg. pp.157–58.)

the President's statement. There is no reason whatsoever to believe that the President or anyone associated with him knew the source of funds for the Ken Peacock and Dene Landrum contributions.

h. Conclusion

After extensive examination, the record is clear; Governor Clinton and everyone associated with his administration and his campaign acted entirely properly with respect to the State leases at Madison Guaranty. The leases were signed in the normal course of business by the State officials responsible for leasing office space. Governor Clinton did not influence the leasing process in any way. The record indicates that only one lease—the April 1984 ADHA lease—even came to the Governor's attention. Even then, he refused to intervene in the leasing process, and deferred to the decision of SBS Director Mallard.

The record further shows that there was no connection between the State leases and the April 5, 1985 fundraiser at Madison Guaranty. The AHDA lease was signed in April 1984, a full year before the fundraiser. Thus, as a matter of timing, it is incredible to connect these events. Nor could there have been any connection to the August 1985 ADFA lease expansion. ADFA Director Epes—who proposed the lease extension—did not know that the fundraiser had taken place. He simply requested space to house additional employees authorized during the legislative session. The record also demonstrates that the revenue office lease signed in November 1985 was handled solely by the Department of Finance and Administration and SBS, without any involvement from the Governor's office. Thus, there is no basis to connect the fundraiser with the leases.

Finally, there is no evidence that Governor Clinton or anyone associated with his administration or his campaign was aware of the source of funds for the contributions Charles Peacock made in the names of Ken Peacock and Dene Landrum. On the contrary, the record shows that the campaign treated the contributions like all other contributions.

In sum, therefore, there is no evidence of impropriety by Governor Clinton or anyone associated with him in connection with the State leases at Madison Guaranty or the April 5, 1985 fundraiser.

3. There is no evidence that McDougal received special treatment from the Alcoholic Beverage Commission

It has been alleged that Governor Clinton pressured the Arkansas Alcoholic Beverage Control Division ("ABC") to provide favored treatment to James McDougal. First, it has been alleged that Governor Clinton interceded with the ABC in support of McDougal's efforts to develop a microbrewery and brew pub on the IDC property. Second, it has been alleged that Governor Clinton caused the ABC to promulgate a regulation permitting breweries to operate "tasting rooms." The evidence, however, demonstrated that Governor Clinton never contacted the ABC with respect to the IDC brewery proposal. The evidence further demonstrated that Governor Clinton played no part in the approval of the tasting room regulation.

a. No evidence that McDougal received special treatment in connection with his efforts to develop a brewery on the IDC property

From 1982–86, William Lyon operated a small microbrewery in Little Rock, producing Riley's Red Lyon Beer.[375] As discussed in section II.E, below, during the fall of 1985, McDougal tried to persuade Lyon to move his microbrewery to the IDC property.[376] Specifically, McDougal asked Lyon to purchase a warehouse on the IDC property and convert it into a brewery.[377] Lyon testified that he had little interest in McDougal's proposal, but agreed to consider it because Madison Guaranty had loaned him approximately $368,000 to finance the construction and expansion of the brewery.[378]

In considering McDougal's proposal, Lyon first visited the IDC property with Seth Ward.* Lyon then contacted the ABC to inquire about the proposed move.[379] The ABC advised Lyon that the IDC property was situated in a "dry" section of Pulaski County—which meant that alcohol could not be produced or sold on the IDC property.[380] Plainly, this precluded placing a brewery on the IDC property.

According to Lyon, when he informed McDougal that the IDC property was dry, McDougal responded that "he could take care of that * * * [t]hrough his many years in government, state government, his friendship with Bill Clinton . * * *."[381] To the best of Lyon's knowledge, McDougal never followed up on his assurances. Lyon testified that McDougal "did not take any steps, as far as I know, to take care of [the wet/dry problem]."[382]

However, in a memorandum to Seth Ward dated November 20, 1985, McDougal wrote:

> Subject to approval by the ABC, Bill [Lyon] will place his brewery in the shell building, along with a tasting room. I have spoken with the Governor on this matter and expect that it will be approved.[383]

Based on this memorandum, it has been suggested that Governor Clinton agreed to intercede with the ABC to help McDougal obtain approval to move Lyon's brewery to the IDC property. The evidence, however, demonstrated that Governor Clinton did not contact the ABC.

McDougal's memorandum was replete with inaccuracies. As an initial matter, Lyon testified that he never agreed to move his brewery to the IDC property.[384] He merely considered the possibility out of deference to McDougal, his creditor. Thus, the basic factual premise of the memorandum was erroneous.

In addition, the ABC had no authority to approve the move; the prohibition on the sale or manufacture of alcoholic beverages on the IDC property was statutory, not regulatory.[385] Thus, the suggestion that Governor Clinton interceded with the ABC to help McDougal makes no sense; there was nothing that Governor Clinton could have influenced the ABC to do.

Moreover, Lyon stated that McDougal was a "salesman-type" who tended to "exaggerate" and to "brag" about his relationship

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*Ward owned part of the IDC property. However, it is unclear whether Ward was acting as a principal, a real estate agent, or both when he showed Lyon the property.

with Governor Clinton.[386] With respect to influencing Governor Clinton, Lyon added that: "[McDougal] thought he could do anything. Whether he could or not—well, I guess history has proven that he couldn't."[387]

Even if McDougal did speak with Governor Clinton, moreover, there is no evidence that the Governor took any action to assist McDougal. On the contrary, the evidence demonstrated that Governor Clinton did not assist McDougal. Charles Singleton, the Director of the ABC,* confirmed that Governor Clinton "never contacted" him on any matter, and that no one at all contacted him regarding a possible brewery on the IDC property.[388] ABC attorney Treeca Dyer also testified that she "didn't talk to the Governor's office."[389] Nobody pressured Dyer or, to the best of her knowledge, her colleagues.[390] Even Lyon did not believe that anyone in the Clinton administration interceded with the ABC in his behalf.[391]

In the end, the IDC property remained dry, and Lyon did not move his brewery to the IDC property. As such, there is no evidence that anything improper occurred in connection with McDougal's efforts to develop a brewery on the IDC property.

b. Governor Clinton had no involvement in the ABC's approval of a regulation permitting breweries to operate tasting rooms

In late 1984, Lyon's microbrewery in Little Rock experienced financial problems. To generate additional income, Lyon sought to operate a brew pub* at the microbrewery.[392] Arkansas law, however, prohibited the retail sale of alcoholic beverages on the premises of manufacturing plants.

Lyon lobbied his friend and state senator Jim Scott to introduce legislation to carve out an exception that would permit brew pubs.[393] Senator Scott introduced the legislation during the 1985 legislative session.[394] However, he withdrew the bill on February 18, 1985, after determining that the legislation would not pass.[395]

At the same time he sought legislative relief, Lyon contacted the ABC to seek regulatory relief.[396] On February 20, 1985, the ABC approved a regulation permitting "tasting rooms," in which beer manufacturers could give away free samples. However, breweries still could not engage in retail beer sales.

It is unclear why McDougal would have been concerned with brewery regulations during this time; he did not purchase the IDC property until a year later.** Nonetheless, on December 12, 1984, McDougal had sent Scott's proposal to Betsey Wright.[397] In the accompanying letter, McDougal wrote that "Governor Clinton has made a commitment concerning this bill. * * *"[398] Based on this letter, it has been alleged that Governor Clinton influenced the ABC to enact the tasting room regulation to help McDougal. This allegation is quite a stretch. At most, the letter showed that Governor Clinton may have favored legislation—like that enacted in Arkansas and several neighboring states over the next few years[399]—to permit brew pubs. The letter made no mention of the ABC or a tasting room regulation.[400] In any event, the evidence

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*Singleton was appointed by Republican Governor Frank White.

*Lyon hoped to sell sandwiches and beer on the premises of his brewery.

**McDougal did not even consider purchasing the IDC property until the summer of 1985, well after the tasting room regulation was promulgated. (Ward, 2/12/96 Dep. pp.6,10.)

showed that Governor Clinton played no part in the approval of the regulation.

ABC Director Singleton—who drafted and promulgated the tasting room regulation—testified that the regulation was part of a routine process of updating and modernizing outdated regulations.[401] He stated:

> It's just one of a group of regulations that we considered and adopted. At the same time there had probably been 15 or 20 others, that other people would have been interested in and would have communicated about. This one does not stand out in my mind over any of the others.[402]

Singleton further testified that the impetus for the regulation came from the alcoholic beverage industry.[403] No one from the Clinton Administration pressured him, or even contacted him, about this regulation.[404] Moreover, Singleton would have recalled if the Governor or his staff had intervened. He noted that:

> I rarely had any contact with the governor's office when I was over there. We pretty much did our own thing as far as adopting regulations, and I don't recall ever being contacted by the governor's office about a regulation.[405]

Therefore, the evidence showed that Governor Clinton and his office played no part in the approval of the tasting room regulation.

In addition, it should be noted that the tasting room regulation did not provide Lyon with the relief he sought. The regulation permitted him to give away samples of his beer, but did not permit him to sell beer and food on the premises of his brewery, as he wished.[406] Thus, the regulation did nothing to help Lyon generate additional income. Lyon explained: "It was less than I had [before the regulation was approved]. It just allowed me to give the beer away."[407]

Finally, it has been suggested that the approval of the tasting room regulation was related to Senator Scott's decision to withdraw his bill two days earlier—although it has not been demonstrated why this would cause concern. In any event, Singleton expressly denied any connection between the bill and the regulation.[408] He added that the ABC began crafting the regulation six months before it was promulgated—in the fall of 1984.[409] Thus, the alleged connection between the bill and the regulation rests on a coincidence of timing, and cannot withstand scrutiny.

4. No evidence that Governor Clinton handled the sewer legislation impropery

In 1987, Governor Clinton signed legislation to deregulate small sewer and water utilities. The Majority has alleged that the legislation was designed to provide special treatment to the Castle Sewer and Water company ("CSW") and to protect the Rose Law Firm from exposure to civil liability. The Arkansas Public Service Commission ("the Commission") and the entire Arkansas legislature supported the legislation. Furthermore, passage of the legislation was fully justified on the merits.

Sam Bratton, the current chairman of the Commission, served as Governor Clinton's liaison to the Commission from 1979–1980 and

from 1983–1989. Bratton first heard of CSW during Arkansas's 1987 legislative session, when Clinton vetoed House Bill 1780. Bratton had recommended the veto because he and Commission General Counsel Doug Strock considered the bill to be "special and local legislation" that violated the state constitution by specifically exempting CSW from Commission regulation. To overcome this objection, the sponsors of House Bill 1780 introduced during the 1987 special session House Bill 1047, which exempted all small utilities throughout the state from regulation by the Commission. Virtually identical to a bill that Strock had proposed in 1985 and 1986, the legislature passed the new bill unanimously. Governor Clinton then followed the recommendations of Bratton and the Commission by signing the bill into law.

a. The impact on small utilities

During the 1987 legislative session, Arkansas Representatives William Walker and Mike Wilson introduced House Bill 1780, which stated in relevant part that:

> Notwithstanding any other provisions of the laws of this State regulating public utilities, the provision of this Act shall govern the registration, accounting, and rates only of a privately owned public utility providing sewer and/or water services to one or more customers at a location within the (10) miles of the corporate limits of a City of the First Class which as a population in excess of 140,000 persons.[410]

In 1987, the only city in Arkansas with a population of 140,000 was Little Rock and CSW was apparently the only privately owned sewer and water utility within 10 miles of Little Rock. Thus, the effect of House Bill 1780 would have been to exempt CSW from regulation by the Commission.

Representative Walker apparently believed that the deregulation of CSW would have resulted in lower utility rates for his constituents. According to Bratton:

> Bill Walker's interest in this matter apparently arises from the fact that this utility company could sell water to the City of Wrightsville at wholesale at a price substantially less than Wrightsville in currently purchasing water from the City of Little Rock.[411]

Wrightsville residents were paying "fairly high" rates to buy their water from Little Rock and to have it transported to their municipality. These higher rates were especially burdensome because Wrightsville had a "low socioeconomic base."[412] Walker therefore wanted "to find an alternative water supply source for the city of Wrightsville and apparently Castle Water and Sewer was one of the alternatives that was potentially available."[413] House Bill 1780 was thus an attempt to provide Wrightsville residents with access to less expensive sources of water. The Clinton Administration had no role in initiating or drafting this legislation.[414]

House Bill 1780 passed both houses of the Arkansas Legislature without a dissenting vote.[415] According to Bratton, Governor Clin-

ton's top aide on matters involving the Commission, Clinton received no pressure to support or oppose the bill.[416] Because Arkansas had no pocket veto provision, House Bill 1780 would have become law automatically even if Governor Clinton had taken no action.[417] Nevertheless, Bratton advised Clinton to veto the bill. Bratton considered the law to be "special legislation" because it applied only to CSW despite the existence of similarly situated utilities.[418] The Walker-Wilson bill therefore "contravened a provision in the state constitution that prohibited special local legislation and therefore it was constitutionally defective."[419]

Commission General Counsel Strock shared Bratton's concerns about the constitutionality of the Walker-Wilson bill. In an internal memorandum stating his opinion on the merits of House Bill 1780, Strock concluded:

> The bill is obviously designed to apply only to some utility/ies within ten miles of Little Rock. It is really a kind of special legislation, phrased with an eye to meeting constitutional prohibitions against special legislation. It may possibly be vulnerable to a constitutional challenge as special legislation, however.[420]

Governor Clinton adopted Bratton's and Strock's reasoning with respect to the Walker-Wilson bill. On April 8, 1987, Clinton vetoed House Bill 1780, and released the following statement:

> Amendment 14 to the Arkansas Constitution prohibits the enactment of special or local legislation. By its terms, House Bill 1780 would partially deregulate only certain sewer and water services located within ten (10) miles of the City of Little Rock. There appears to be no rational basis for a classification which singles out for deregulation such utilities and does not apply to other privately owned sewer and water services located within the State of Arkansas.

After the veto, several individuals contacted Bratton. R.D. Randolph, a prominent Arkansas contractor, voiced his displeasure to Bratton and Nancy Hernreich,* the Governor's scheduler, noting that the bill had faced little or no opposition in the legislature.[421] Tucker and McDougal also contacted Bratton. In addition, Tucker sent a letter to Governor Clinton dated April 24, 1987, which stated that "R.D. Randolph, Madison Guaranty Savings & Loan, and I were all very disappointed that this non-controversial bill was vetoed. If a special session does become necessary, we ask that your call include this legislation."[422]

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*There have been allegations that Randolph's reference to $33,000 during a conversation with Nancy Hernreich was an allusion to the 1985 fundraiser James McDougal hosted for Governor Clinton at Madison Guaranty's main office—which raised roughly $32,000. Randolph's intent in making the statement was not clear to Hernreich and Bratton. In her memorandum to Governor Clinton, Hernreich noted Randolph's reference to the money and then declared, "This was pretty cryptic." (Doc. No. DKSN 018008, April 14, 1987 memorandum from Nancy Hernreich to Governor Clinton.) Clinton's only substantive response to Hernreich's memorandum was to "see if Sam [Bratton] will call him." (Doc. No. DKSN 018008.) Bratton, who was not present during the conversation between Randolph and Hernreich, had "no idea what Mr. Randolph was trying to communicate" with his comment. (Bratton, 2/13/96 Hrg. p.17). Bratton did not discuss the matter with Governor Clinton. (Bratton, 1/5/95 Dep. pp.51–52.) Whatever Randolph may have meant, there is no evidence that campaign contributions in April 1985 had any influence on the legislation enacted in June 1987.

In the summer of 1987, Clinton called a special session of the legislature to revise legislation that provided an income tax credit for contributions to institutions of higher education.[423] During the special session, Representative Wilson introduced House Bill 1047, which corrected the constitutional defect contained in House Bill 1780 by exempting all small water and sewer utilities from Commission regulation.[424] The bill passed in the state House of Representatives by a vote of 97–0 and passed in the state Senate by a vote of 33–0. According to Bratton, no party expressed opposition to the legislation.[425] On June 12, 1987, Governor Clinton signed the bill into law, which then became known as Act 37.

Act 37 was virtually identical to a bill Strock had proposed in January 1985 and had drafted in June 1986 for the 1987 legislative session.* Strock summarized his 1986 proposal as a bill that

> redefines 'public utility' to exclude small water and sewer companies not meeting the criteria for Class A companies. The bill allows the customers of such utilities to condemn the facilities, if necessary, by forming a suburban improvement district, to compensate for whatever protection is afforded currently by [Commission] jurisdiction, assuming the [Commission] has jurisdiction.[426]

Strock's recommendation to deregulate small sewer and water utilities preceded Madison Financial's purchase of the Castle Grande property by eight months and preceded the formation of CSW by eleven months.[427] Strock's recommendation preceded Clinton's support for House Bill 1047 by more than two years. Given these circumstances, the legislation ultimately enacted was not intended to provide any special benefit to CSW or to its owners.

b. Potential litigation involving the Rose Law Firm

It has been alleged that Governor Clinton "reversed" his veto and signed House Bill 1047 to shield Mrs. Clinton and the Rose Law Firm from liability for providing Madison Guaranty with questionable legal advice. The evidence does not support this allegation.

The Rose Law Firm represented Madison Guaranty on public utility matters arising out of the IDC/Castle Grande transaction. In this regard, Richard Donovan, a Rose Law Firm attorney, drafted a February 17, 1986 memorandum to Mrs. Clinton which concluded that "Madison Guaranty/IDC, in all likelihood, meets the statutory and common law definition of a 'public utility,'" but that many small utilities are regulated by the Commission only if they formally seek regulation or if a patron lodges a formal complaint against the utility. "The risk of non-compliance with [Commission] regulations," Donovan wrote, "is civil sanctions." Therefore, "costs saved by non-regulation may make the risks palatable."[428] After this memorandum was provided to Madison Guaranty, Madison Financial decided not to register the Castle Grande sewer and water

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*In 1985, Strock noted that small utilities in the state were having some difficulty raising money to finance "health and safety related improvements." He proposed several methods for addressing the problem, including a partial deregulation of small utilities. In a January 17, 1985 memorandum, Strock proposed addressing regulatory difficulties faced by "small water companies" by eliminating the Commission's jurisdiction over them. "This," he wrote, "would leave them unregulated, at least for rate purposes, but would allow the company to increase rates whenever it needed money. The Department of Health would continue to have jurisdiction over the health and safety aspects of the company."

system as a public utility. Tucker later threatened to sue Madison Guaranty to rescind CSW's mortgage due to the failure to register CSW with the Commission before conveying the underlying property to CSW.

There is no evidence, however, that Bratton knew that Tucker's threatened litigation might have implicated the Rose Law Firm. Tucker did not mention the Rose Law Firm or Mrs. Clinton in his conversation with Bratton about the potential litigation.[429] Bratton's May 19, 1987 memorandum to the Governor corroborated his recollection. Written almost contemporaneously to the conversation with Tucker, the memorandum stated,

> According to Tucker, if the legislation exempting certain water and sewer companies from [Commission] regulation is not enacted in the special session, litigation will probably be initiated between Madison Guaranty and the company owning the utility * * *.[430]

Tucker did not mention that the legislation was essential to the consummation of CSW's purchase of the sewer and water system at Castle Grande in February 1986.* Nor did Tucker give Bratton any "reason to think there was any tie between [the sewer and water utilities] legislation and the Rose Law Firm."[431]

Robert Shults, the attorney Tucker hired to represent CSW, similarly testified that the "Rose Law Firm never figured into anything I was involved in this matter."[432] It does not appear that the law firm billed Madison Guaranty for Mrs. Clinton's time in reviewing the memorandum. Most importantly, the evidence indicates that Governor Clinton signed House Bill 1047 not to shield the Rose Law Firm from potential liability—assuming he was aware of any such risk—but to enact legislation that was supported unanimously by disinterested parties like the Commission and both houses of the state legislature. Approximately one year before the Rose Law Firm rendered its legal opinion and before the Castle Grande property transaction occurred, Doug Strock proposed, in essence, the legislation that Governor Clinton ultimately signed. As such, the evidence demonstrated that potential litigation involving the Rose Law Firm had no influence on the decision to sign House Bill 1047.

5. No evidence that Arkansas health department sanitarians were reassigned improperly

a. Background

In 1983 Madison Financial Corporation was selling tracts of land in a residential development called Maple Creek Farms in Saline County, Arkansas.[433] The State Health Department had conducted a preliminary review of the project and determined "that the soil

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*Tucker and Randolph had formed CSW in December 1985 for the purpose of buying the sewer and water system at Castle Grande from Madison Financial for $1.2 million. The purchase was financed by a $1,050,000 non-recourse loan from Madison Guaranty and a $150,000 loan from David Hale's Capital Management Services. After the Federal Home Loan Bank Board ousted Jim McDougal from Madison Guaranty in July 1986, Madison Guaranty's board of directors questioned Tucker about his dealings with McDougal. Tucker claimed that he and McDougal had an oral agreement in connection with the acquisition of the sewer and water system whereby McDougal promised Tucker 110 utility hookups annually at $500 per hookup. When the Madison Guaranty board told Tucker it would not honor this agreement, Tucker hired Robert Shults and threatened to rescind the original purchase of the utility system unless Madison Guaranty agreed to renegotiate its loan to CSW.

was unsuitable for supporting subsurface individual sewage disposal systems" such as septic tanks.[434] The Health Department initially recommended installation of a public sewer system for the entire development, but because of cost considerations the Department agreed not to require a public sewer system if all tracts in the development were larger than three acres.[435] Arkansas law did not require large tract developments, defined as developments with lots of three acres and larger, to perform preliminary soil studies or obtain approvals from the State Health Department before selling the lots.[436]

On June 23, 1983 the Health Department entered into a Memorandum of Agreement with Madison Financial Corporation to memorialize "the understanding of the Saline County Health Department that all lots contained in Maple Creek Estates are to be a minimum of three acres" and that each lot would be individually evaluated for an acceptable septic tank disposal system.[437] An accompanying transmittal letter to McDougal from Saline County Sanitarian Lex A. Dobbins suggested that an approved individual sewage disposal permit be obtained prior to any construction to allow for proper planning of the plumbing and sewage disposal system for each home.[438]

The Memorandum of Agreement permitted the lots in Maple Creek Farms to be sold, but it did not resolve the soil quality and sewage disposal problems at the development. As noted above, under the Memorandum of Agreement the Health Department was required to review each individual tract when a purchaser began construction and to work with the purchaser to develop a satisfactory sewage disposal system.[439] The poor soil quality continued to cause problems as lot purchasers built homes and installed individual sewage disposal systems. It also appears that some homes were constructed and plumbing was installed before individual sewage disposal permits were obtained, creating problems for "proper installation of the sewage disposal systems."[440] In a letter dated February 21, 1984, Dobbins brought this problem to McDougal's attention, suggested that permits be obtained prior to construction, and asked "that you consider an over-all plan of development that would provide public sewerage for any area in Maple Creek in which the malfunction of individual sewage disposal systems may occur and thus constitute a public health hazard."[441]

In 1984 McDougal created a new subdivision within Maple Creek that was to be served by a community sewer system—"a subdivision within the development" that would include lots smaller than three acres.[442] According to Health Department records, "[t]he Department felt that a workable agreement could be reached by both parties as to an acceptable plan of development for the future utilization of public sewers" at Maple Creek.[443] The Health Department entered into a Memorandum of Understanding with Maple Creek Farms, Inc. on April 26, 1984,[444] in which the Health Department agreed to issue temporary individual sewage disposal permits* and

*Dobbins testified that the temporary permits were obtained by Madison Financial on behalf of the purchasers of Maple Creek lots. (Dobbins, 12/4/95 Dep. pp. 28,32). Dobbins suspected that the buyers often did not see the permits, which contained stipulations indicating that the soil was marginal and that septic systems might not function properly. (Dobbins, 12/4/95 Dep. pp.

Continued

Madison Financial agreed to initiate steps for the formation of a sewer improvement district to provide a community sewerage system.[445] McDougal executed the Memorandum of Understanding on behalf of Maple Creek Farms, but it appears that he was not happy about being required to provide a community sewer system for a portion of the development. William A. Teer, Director of the Health Department's Division of Sanitarian Services, recalls attending the meeting at which the Memorandum of Understanding was executed and observing that McDougal "was extremely brash, disrespectful, [and] arrogant, and that after signing the document "he [threw] it back across at me * * * and said, as far as he's concerned, it wasn't worth the paper it was written on."[446]

On July 3, 1984, Teer wrote to McDougal about the "past problems that we have encountered at Maple Creek in regard to malfunctions of individual on-site sewage disposal systems."[447] Teer's letter recommended site protection and site drainage procedures to alleviate future problems "until community sewers are made available."[448] On July 17, 1984, McDougal wrote back to Teer and, after apologizing for not responding to Teer more promptly because he had been away for a vacation, advised Teer: "We are in agreement on your recommendations as to site protection and site drainage and are in the process of the continued implementation of these recommendations."[449] Another letter from McDougal to the Health Department, dated July 6, 1984, advises the Department that Bob Holloway (a consulting engineer for Madison Financial)[450] would "prepare the preliminary engineering data on the proposed pumped affluent sewer system for Maple Creek Farms."[451]

b. McDougal's worsening relations with the health department

Documents and testimony obtained by the Special Committee indicate that Madison Financial's posture may not have been as cooperative as the July 1984 letters from McDougal to the Health Department described above suggest, however. An August 31, 1984 letter to McDougal from an attorney for Madison Financial named Larry Crane reports that Crane had visited the Health Department, reviewed files relating to Maple Creek, and "told them that while your company did not intend to file suit immediately on anything, you had become concerned enough about the continuing changes in requirements that it was necessary to retain me to educate myself about the situation in case litigation were necessary."[452] Teer recalls a meeting with Crane at that time at which Crane told Teer that Dobbins had been harassing McDougal.[453]

Dobbins recalled Crane visiting the Saline County Health Department offices to review documentation on Maple Creek, which were public records. Dobbins could not recall a discussion with Crane about statements by Dobbins to potential lot buyers about the sewage disposal problems, but he acknowledged that he had told some potential buyers about the problems. Dobbins testified

28–30,32). Dobbins believed that if the buyers had seen the temporary permits they might not have purchased the property, but under Arkansas law the Health Department had no authority to require that the buyers be provided the permits in advance of sale. (Dobbins, 12/4/95 Dep. pp. 33–34). As discussed below, Dobbins was the primary target of McDougal's charges of unfair treatment by the Health Department when McDougal met with Governor Clinton and senior Health Department officials in March 1986.

that he did so "in the course of business" and that if a buyer asked him about Maple Creek Farms he "would give them my opinion, my professional opinion."[454] Dobbins also acknowledged that he "may have had a similar discussion with another lending institution."[455] These actions by Dobbins may have influenced McDougal to retain an attorney and, ultimately, to request a meeting with the Governor to complain about Dobbins, as discussed below.*

In December 1984 McDougal copied Health Department Sanitarian Services Division Director Teer on a letter to Holloway which stated that "the earliest practical time to undertake construction [of a pressure sewer system at Maple Creek Farms] is after cessation of the spring rains in 1985."[456] That letter also states that Madison Financial intended to begin construction of the sewer system at that time.[457] The Health Department did not set a deadline for construction of a community sewer system, and discussions regarding technical specifications continued into 1985.[458] In 1985 development activity at Maple Creek "was slowing down quite a bit" and both the Health Department and McDougal apparently took a "wait-and-see" attitude about the sewage disposal problems, with the Health Department continuing to issue temporary permits.[459]

It appears that relations between Dobbins and McDougal worsened during 1985, however. A July 1985 memorandum to McDougal from Bruce Watson of Maple Creek Farms reports on a meeting at the development with Dobbins's supervisor, J. P. Jones, at which Jones apparently overruled Dobbins and approved two septic tank systems that Dobbins had previously refused to approve.[460] The memorandum also states that Watson believed "the outcome of this meeting helped readjust Lex's attitude towards Maple Creek."[461] Dobbins testified that he does not recall that particular meeting, but does recall that Jones made more than one trip to Maple Creek "to mediate discussions" between Dobbins and representatives of Madison Financial.[462] Dobbins testified that throughout the balance of 1985 disagreements continued to arise concerning him issuing further temporary permits, and he "wasn't really pleased with the way the development was going anyway, with the lack of information being given to the buyers [and their] method of installing sewage disposal systems."[463]

These disagreements apparently came to a head in January 1986, causing McDougal to request a meeting with Governor Clinton.

c. McDougal requests a meeting with Governor Clinton

McDougal requested a meeting with Governor Clinton on January 14, 1986. A January 14 memorandum[464] to Governor Clinton from his scheduling secretary, Nancy Hernreich, reports a request

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*While an in-depth review of the regulatory actions of the Health Department and the complaints voiced by McDougal was beyond the scope of the Committee's investigation, it does appear that the Health Department sought to work with McDougal and that McDougal may not have fulfilled all of his undertakings in the two written agreements he entered into with the Health Department. The Committee did not examine, however, whether McDougal's complaints against Dobbins had merit. The focus of the Special Committee's inquiry was the role of the governor's office in the matter, not the underlying dispute between McDougal and the Health Department.

from McDougal for a meeting* with the governor. Handwritten notations on the memorandum indicate that the meeting was scheduled for Saturday, January 18, 1986. Copies of the governor's schedule for Saturday, January 18, 1986, show a meeting with McDougal scheduled for 11:00 a.m. at the Governor's Mansion.[465] A January 15 telephone message for McDougal from Nancy Hernreich says "can see Governor Sat. a.m. at 11:00—go by Mansion."[466]

McDougal prepared a memorandum on the Health Department matter in advance of the January 18 meeting with Governor Clinton. A memorandum dated January 17, 1986, from Jim McDougal, with no addressee, lists the names of Teer, Dobbins, and two other state sanitarians and requests approval of two subdivisions in Pulaski and White counties.[467] The memorandum also requests: "Strict written instructions from Teer to county sanitarians to not discuss our subdivision with our customers."[468] The latter request appears to relate to Dobbins's contacts with prospective purchasers of Maple Creek Farms lots, discussed above.

It seems that McDougal gave the January 17 memorandum to Governor Clinton at the meeting on Saturday, January 18, and the memorandum then was misplaced for a time. A January 30, 1986 memorandum to Governor Clinton from Janice Choate (then the governor's office liaison with the Health Department)[469] titled "Jim McDougal" reports on a telephone conversation Choate had with McDougal in which: "He told me to look for the memo he gave you that had all the complaints outlined and that I could find that memo in the coat pocket of the jacket you had on when he saw you Sat. morn."[470] (A later reference in the memorandum to "Tuesday of this week" indicates that the Saturday morning meeting referenced in the memorandum is the January 18 meeting.)

It appears that a second version of the memorandum was prepared after the first memorandum was misplaced. A version dated January 18, 1986, which does not include the "From: Jim McDougal" heading, also was produced to the Special Committee.[471] In addition to the omission of the heading, the wording of the January 18 memorandum differs slightly from the version dated January 17, and a handwritten note on the January 18 version states "Rasco—this is McDougal's memo." (Carol Rasco was another aide to Governor Clinton at that time.)[472] Finally, a January 28 [1986] telephone message to McDougal from Choate reads "copy of memo"[473] and suggests that Choate may have been trying to obtain another copy of the memorandum from McDougal. In any event, the two versions of the memorandum described above were produced to the Special Committee, and there are no material differences between the two versions.

Choate and Rasco looked into McDougal's complaint and the matters set out in the January 17/January 18 memorandum. A February 25 memorandum to Rasco from Choate reports that Choate had spoken with Tom Butler (the Deputy Director of the

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*The memorandum states that McDougal "needs to see you [Governor Clinton] before Tues. to get you to sign some personal business papers," and the notes on the memorandum show that a meeting was scheduled for Saturday, January 18. (Doc. No. DKSN 013266, January 14, 1986 memorandum for Nancy Hernreich to Governor Clinton). It appears that McDougal used that meeting as an opportunity to complain to Governor Clinton about the Health Department and provide a copy of his January 17 memorandum, which is discussed below.

Health Department) and Butler had met with the four sanitarians listed in the McDougal memorandum.[474] According to Choate's February 25 memorandum, Dobbins told Butler that "he had no recollection of any kind of difficulty between him and McDougal," and Butler advised Choate that "the Health Dept. has not badgered McDougal about this."[475] Another February 25, 1986 memorandum to Choate from Rasco indicates that a meeting was scheduled for Tuesday, March 4, at 2 p.m. with Butler,* Teer, Jerry Hill (Teer's supervisor), and Dr. Ben Saltzman (who was then the director of the State Health Department).[476]

Choate prepared a memorandum to Governor Clinton on the "Jim McDougal/Health Department" matter, dated March 4, 1986, the day the governor met with McDougal and the Health Department officials. That memorandum reports that Choate had spoken with Health Department officials "in regard to the memo you received from McDougal" and was assured that "they have made a concerted effort to be courteous to Mr. McDougal and his employees."[477] Choate's memorandum closes by noting that the Health Department officials were "puzzled by Jim McDougal's memo," and that Choate had no reason to doubt what they were saying.[478] McDougal's position on the treatment he had received from the Health Department was very different, however, as he made clear at the March 4 meeting.

d. McDougal meets with Governor Clinton and health department officials

Governor Clinton met with McDougal and the Health Department officials on March [4], 1986. Choate attended the meeting as the governor's staff liaison with the Health Department. Butler recalls that at the outset of the meeting Governor Clinton suggested that the group "lay the problem out" and try to come to an agreement on how to solve the problem, "at which time McDougal went ballistic."[479] Butler testified that McDougal's "tirade" lasted about five minutes and included personal accusations against Dobbins, Butler, and Dr. Saltzman.[480] Choate's contemporaneous notes of the meeting confirm Butler's recollection of McDougal's conduct. Choate's notes read "Mar. 4—McDougal agitated—nothing but duplicity & trickery from the Hlth. Dpt.—you're here to gang [up] on me—Lex Dobbins has made a concerted effort of intimidation."[481] The notes go on to recount more personal attacks on Dobbins and McDougal's assertion that he had been "stabbed in the back." Choate testified that she recalls McDougal "was real upset and agitated."[482]

Butler and Choate both testified that Governor Clinton became angry with McDougal's conduct and reprimanded him. Choate testified that "[a]fter McDougal got through ranting and raving," the Governor told McDougal that the way he was talking to professional staff was "inexcusable," and that Governor Clinton "de-

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*Butler remembers that Governor Clinton called him and said there was a problem with a constituent, that the Health Department was "possibly messing over him [the constituent]," and asked Butler if he would be willing to meet with McDougal. (Butler, 12/5/95 Dep. pp.15-16). Butler told Governor Clinton he would be glad to meet. Clinton then told Butler that "the reason I think some of your staff is messing with this development is because this gentleman has been a supporter of mine since I ran for Congress and he has never asked me for anything." (Butler, 12/5/95 Dep. pp.15-16).

fended us and them [the Health Department staff]."[483] Choate recalled that Governor Clinton told McDougal "we are not cutting you any slack—those may not be the exact words, but something to that effect—that these people are professional and they will revisit this with you and get it straightened out, do what you are supposed to do."[484] Butler remembers that the Governor "got real red," which indicated he was angry, and: "From that time, McDougal calmed down. I think it was pretty obvious he had said the wrong thing. The meeting then calmed down to a normal meeting."[485]

At the conclusion of the meeting the Health Department officials agreed to take another look at the McDougal real estate developments. Butler recalled:

> The end result was I told him we would be willing to go back out and take another look at the property, because we are not beyond making a mistake. That was the agreement at the time, and the Governor said, I think we can live with this, and you go back out and look at the property.[486]

Butler also testified that in a private discussion with Butler immediately after the meeting Governor Clinton made clear that McDougal was to receive no special treatment:

> He said, I apologize for the way the man acted, I had no idea he would act this way. He said, you go do what you have to do and you will never hear another word from me. That was my last conversation with the Governor on the matter.[487]

No decision was made at the meeting* to reassign Dobbins or the other sanitarians.[488]

e. The Reassignment of the sanitarians

After the March 4 meeting Butler decided to reassign the four sanitarians whose names were listed in McDougal's memorandum. Butler testified that he consulted with Saltzman and Hill, then met with Teer and the sanitarians,* and informed them that the sanitarians were being reassigned.[489] Butler testified that the decision to reassign the sanitarians was consistent with the Health Department's usual practice when particular employees were the subject of complaints:

> We have done it in the past and we have done it since then. If we get to a point in time where we are not dealing with the problem, we rotate sanitarians, we move one on

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*When Butler was asked if any decision was made about Dobbins in the private conversation with Governor Clinton, Butler testified: "No, Dobbins's name never came up with me and the Governor ever." (Butler, 12/5/95 Dep. pp.24-25).

*A March 5, 1986 memorandum from Choate to Governor Clinton reports that Butler had met with the sanitarians and reassigned them. The memorandum also reports that Butler instructed the sanitarians not to talk about McDougal's subdivisions "because they don't want to give credence to any of McDougal's allegations." The memorandum goes on to describe the frustration of Butler, Hill and Saltzman at McDougal's conduct at the meeting, and to report that "they kept silent yesterday out of respect for you, but their silence was not tacit approval of Jim's accusations." (Doc. Nos. DKSN 013404-DKSN 013405). Finally, consistent with Butler's recollection of the telephone call he received from Governor Clinton (described above), the memorandum states that Governor Clinton referred to McDougal at the meeting as "a friend of 20 years who had never asked for a favor." (Doc. Nos. DKSN 013404-DKSN 013405).

> one program and move one back in. Then if they come back and tell us our sanitarian has it out for us, that won't hold water at that point in time, because we have moved another one in.[490]

The other witnesses examined by the Special Committee also testified that the reassignment of the sanitarians was consistent with normal Health Department practice and was not the result of any direction or influence from the governor's office.

Teer confirmed that Butler made the decision to reassign the sanitarians.[491] He also confirmed that Butler was the Health Department official who normally makes decisions on reassignments.[492] Teer testified that the sanitarians who had been responsible for the various McDougal developments, including Maple Creek Farms, were reassigned "in order to show that we were trying to be fair with Mr. McDougal and . . . trying to show that we're not being impartial [sic] or anything like that."[493] The Health Department's normal practice is that "[i]f an accusation comes up against a sanitarian or us being against a person, trying to harass them, trying to be arbitrary, he [Butler] will reassign somebody in the hope that the reassignment will show that we are trying to be fair."[494]

Teer also testified that the same policy had been followed by the Health Department since the 1970's and has been followed since, with one such reassignment occurring in 1995.[495] It does not appear that Teer, who concurred in the decision to reassign the sanitarians, was influenced in any way by the meeting with Governor Clinton, which he did not attend.[496] In fact, Teer recalled that he did not learn what had been said at the meeting with Governor Clinton until after the sanitarians had been reassigned.[497] Moreover, Teer testified that "if it [the decision to reassign the sanitarians] had come from the governor's office, as much as we talk shop * * * I think we would have heard it after this much time."[498]

Even Lex Dobbins, the sanitarian who was the subject of McDougal's ire at the March 4 meeting, testified that "[i]t was standard operating procedure any time a developer complained to the state Health Department about unfair treatment, the sanitarian would be reassigned."[499] Dobbins described this policy as an effort by the agency to establish "a level playing field to show no bias in the way we regulated the developers."[500] Dobbins testified that the policy of reassigning sanitarians was followed whether or not senior Health Department officials agreed with the positions taken by the sanitarian who was the subject of a complaint by a developer.[501] Dobbins also testified that while McDougal or his representatives told him "they were friends of the governor," they "never threatened me with the governor or their relationship with the governor in any way."[502] Finally, Dobbins confirmed that the outcome would have been the same—reassignment of the sanitarians—if McDougal had complained only to the Health Department and had not requested a meeting with or otherwise involved the Governor: "The decision to remove us would have been the same if Socks had been sitting in the chair."[503]

f. Conclusions

The documents and testimony collected by the Special Committee show that the Maple Creek Farms project had recurring sewage disposal problems and there was extensive contact between Health Department officials and James McDougal and his associates. The evidence also shows that, with or without justification, McDougal developed a strong personal animus against Dobbins and eventually complained to Governor Clinton. The evidence also shows that Governor Clinton followed up on McDougal's complaint and arranged a meeting at which McDougal could communicate to Health Department officials the concerns he had about unfair treatment.

Governor Clinton did not take any action on McDougal's behalf, however, either at the meeting with the Health Department officials or thereafter. To the contrary, Governor Clinton reprimanded McDougal for his behavior at the meeting, defended the Health Department's professional staff, and told McDougal to work with the Health Department to resolve the problems. Most important, immediately after the meeting Governor Clinton made a special effort to let Butler know that McDougal was not to receive any special treatment and that Clinton would support whatever action the Health Department decided to take.

There is no evidence that Governor Clinton played any role in the decision to reassign the sanitarians. All of the evidence supports the conclusion that Butler made the decision to reassign the sanitarians and that his action was consistent with standard Health Department practice in such situations. There is no evidence that Governor Clinton or anyone else in the Governor's office played a role in the reassignment of the sanitarians. The matter appears to have been handled routinely, and the meeting with Governor Clinton does not appear to have affected the Health Department's subsequent handling of the matter.

The record on this matter is clear on the key issues: Nothing suggests that Governor Clinton or anyone else in the Governor's office took any action on McDougal's behalf, and nothing suggests that McDougal ever received any special treatment from the Health Department. Governor Clinton supported his staff and took special care to make sure that they understood that McDougal should not receive any favorable treatment.

6. No impropriety in connection with Williams Lyon's appointment to the banking board or his subsequent resignation

From approximately 1978–86, William C. Lyon owned Pine State Bank, which he described as the smallest bank in Arkansas.[504] On January 2, 1980, Governor Clinton appointed Lyon to the Arkansas Banking Board ("Banking Board"). Four years later, Lyon resigned at Governor Clinton's request. Lyon's resignation became effective following a Banking Board meeting on January 17, 1984.

Lyon has suggested that the circumstances surrounding his resignation were improper. In particular, Lyon testified that James McDougal offered to secure his appointment to the Arkansas Savings & Loan Board ("S&L Board") in exchange for his resignation from the Banking Board. According to Lyon, McDougal wanted him to join the S&L Board in order to approve a preferred stock offering that Madison Guaranty was pursuing at the time. However, the

other evidence collected by the Special Committee contradicts Lyon's testimony because Madison Guaranty did not pursue a preferred stock offering until more than a year after Lyon resigned from the Banking Board. Even if Lyon's testimony were accurate, moreover, there is no evidence that anything improper occurred in connection with Lyon's resignation from the Banking Board. Governor Clinton did not appoint Lyon to the S&L Board—or anything else—following his resignation from the Banking Board.

a. Background

According to Lyon, in late 1979, during Governor Clinton's first term in office, James McDougal approached him and inquired whether he would be interested in an appointment to the Arkansas Banking Board.[505] At the time, McDougal served on Governor Clinton's staff, and would have been acting in his official capacity when he approached Lyon.[506] Lyon viewed the Banking Board as a "plum appointment," and readily agreed to serve.[507] Shortly thereafter, Governor Clinton appointed him to the Banking Board.[508]

In late 1983, during Clinton's second term, McDougal again approached Lyon. This time, however, McDougal asked Lyon to resign from the Banking Board. Lyon testified that McDougal told him that Governor Clinton wanted to give Lyon's seat on the Banking Board to "somebody [who] had contributed a large sum of money" to the Governor's 1982 campaign.[509] In return for his resignation, Lyon testified, McDougal promised to arrange his appointment to the S&L Board. In addition, McDougal told Lyon that, upon his appointment to the S&L Board, McDougal wanted him to vote to approve a preferred stock offering by Madison Guaranty. Lyon recalled that McDougal "was trying extremely hard to get a stock issue, a preferred stock issue through the State of Arkansas" at the time.[510]

Lyon testified that he refused to resign at McDougal's request. He told McDougal he would resign if Governor Clinton asked him directly, but not otherwise.[511] Lyon added that he responded "hell no" to McDougal's suggestion that he vote to approve the preferred stock offering.[512]

Lyon recalled that sometime in the next "month or two," Governor Clinton called him at his office at Pine State Bank and asked him to resign.[513] The Governor thanked Lyon for his service, but told him that he "needed the appointment."[514] He was "very nice" and "a gentleman" during this conversation.[515] Nonetheless, Lyon resented being asked to resign.[516]

Governor Clinton did not tell Lyons why he wanted to replace him or discuss whom he planned to appoint in Lyon's place.[517] He made no mention of campaign contributions or contributors.[518] Nor did Governor Clinton mention the possibility of appointing Lyon to the S&L Board or a proposed stock offering by Madison Guaranty.[519] Lyon was not appointed to the S&L Board.

b. Lyon's testimony conflicts with the evidence

In his testimony, Lyon was emphatic that McDougal wanted him to join the S&L Board to approve a preferred stock offering from Madison Guaranty, and that the preferred stock offering was a high priority for McDougal. Lyon stated that:

> [McDougal] was trying extremely hard to get a stock issue, a preferred stock issue through the State of Arkansas. It was quite an unusual issue. He came over and asked me to resign and to serve on the savings and loan board, that he was bound and determined to get the stock issue through so that he could get his capital increased. It was a preferred stock deal.[520]

However, this testimony conflicts with all the other evidence collected by the Committee regarding the timing of the preferred stock offering.

Banking Board records show that Lyon left the Banking Board following the January 17, 1984 meeting.[521] Lyon testified that he spoke with McDougal two months before Governor Clinton called to request his resignation.[522] As such, Lyon's conversation with McDougal would have occurred in late 1983 or early 1984. There is no evidence that Madison Guaranty was considering a preferred stock offering in late 1983. On the contrary, the evidence establishes that Madison Guaranty did not explore a preferred stock offering until early 1985.

The earliest evidence that Madison Guaranty took steps to issue preferred stock is a memorandum dated April 3, 1985 from Charles Handley of the Arkansas Securities Department to Securities Commissioner Beverly Bassett.[523] The memorandum—which recounts a phone call from Davis Fitzhugh of Madison Guaranty to another Securities Department staff member—indicates that Madison Guaranty had just begun its consideration of a preferred stock offering.[524] A second memorandum dated April 3, 1985, prepared by a Federal Home Loan Bank Board ("FHLBB") official, confirms the timing. That memorandum describes a meeting between Madison Guaranty personnel and FHLBB officials in Dallas, and states that the Madison Guaranty personnel advised the FHLBB that Madison Guaranty planned to issue preferred stock to satisfy more stringent net worth requirements imposed by an FHLBB regulation that took effect on March 31, 1985.[525] The timing is further confirmed by a memorandum dated April 16, 1985 from Fitzhugh to Madison Guaranty's President, John Latham, which describes Fitzhugh's preliminary research on preferred stock offerings by S&Ls.[526] Thereafter, in late April 1985, Madison Guaranty retained the Rose Law Firm to work on the preferred stock offering.[527]

As noted above, Lyon testified that McDougal was aggressively pursuing a preferred stock offering by the end of 1983. There is no evidence whatsoever to support that claim. On the contrary, the evidence shows that Madison Guaranty did not consider issuing preferred stock until April 1985, nearly a year and a half later. In this regard, Pillsbury, Madison & Sutro concluded that "[i]n the spring of 1985, Madison Guaranty became interested in issuing preferred stock."[528] Consequently, Lyon's testimony directly conflicts with the evidence.

c. No evidence that Governor Clinton had knowledge of Lyon's conversation with McDougal or did anything improper

Even if Lyon's testimony were accurate, it would only establish that McDougal schemed to benefit Madison Guaranty. There is no

evidence that Governor Clinton was aware of McDougal's supposed machinations.[529] Even Lyon conceded, "I don't know if Bill Clinton knew anything about it or not."[530] In fact, the evidence shows that Governor Clinton had no such knowledge, and that he acted completely properly.

As an initial matter, Governor Clinton had every right to seek Lyon's resignation. Governor Clinton had appointed Lyon to the Banking Board in the first instance, and there was no legal or ethical impediment to Governor Clinton's replacing Lyon if he saw fit. Moreover, the Governor handled the matter in an appropriate way. Although Lyon testified that Governor Clinton angered him by seeking his resignation, he conceded that the Governor acted entirely properly during their conversation.[531] Governor Clinton simply thanked Lyon for his service and for his willingness to step aside.[532] He gave no indication that he knew about Lyon's alleged conversation with McDougal.[533] He never mentioned the S&L Board or the preferred stock offering.[534] Nor did he appoint Lyon to the S&L Board, or anything else.

Therefore, the record establishes that Governor Clinton took no action to further McDougal's alleged scheme to obtain approval for a preferred stock offering. On the contrary, the evidence strongly suggests that Governor Clinton was not even aware of McDougal's scheme, if in fact it existed—and the evidence suggests it did not.

7. No Evidence of impropriety in regulation of Madison Bank and Trust by the Arkansas State Banking Department

In October 1980 James McDougal and a group of investors purchased a controlling interest in the Bank of Kingston, a small bank in Kingston, Arkansas. McDougal then changed the bank's name to Madison Bank & Trust Company ("Madison Bank").* As a state chartered institution, Madison Bank was regulated by both the Arkansas State Banking Department (the "ASB") and the Federal Deposit Insurance Corporation (the "FDIC").[535] In 1983 Marlin Jackson was the State Bank Commissioner.[536]

In 1983 Jackson informed Governor Clinton of regulatory problems at Madison Bank. Jackson testified that he told the Governor about Madison Bank's problems as "a litmus test" to see if Governor Clinton would seek to influence Jackson and obtain favorable treatment for a political supporter. (Jackson was aware that McDougal had been a member of Governor Clinton's staff during Clinton's first term in office, 1979–80.) Governor Clinton passed Jackson's litmus test. Jackson testified that Governor Clinton responded:

> You do whatever you need to do to be a good * * * no, to be a great Bank Commissioner and don't worry about

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*Madison Bank & Trust should not be confused with Madison Guaranty Savings & Loan Association. They were two different financial institutions that James McDougal controlled and operated at different times. The potential for confusion stems from the fact that in each instance McDougal changed the name of the institution to "Madison" after he acquired control. While the "Madison" in Madison Bank & Trust may have been selected because the bank was located in Madison County, Arkansas, Madison Guaranty Savings & Loan (formerly Woodruff County Savings and Loan Association) was not in Madison County—it was in a different part of the state altogether. The use of a profile of President James Madison on Madison Guaranty's stationary suggests that McDougal may have selected the name of the bank because he admired President Madison. Madison Bank employee Gary Bunch confirmed that point when he testified before the Special Committee (Bunch, 5/16/96 Hrg. p.42).

> the political consequences. It doesn't matter who is involved. I'll take the political heat. You just do whatever you need to be a great Bank Commissioner.[537]

The evidence collected by the Special Committee confirms that Governor Clinton never interfered with Jackson or the ASB in their regulation of Madison Bank. After his discussion with Governor Clinton, Jackson and the ASB joined with the FDIC in a cease-and-desist order against Madison Bank that curtailed the bank's ability to make out-of-territory loans and, among other things, required the bank to increase its operating capital.[538] Governor Clinton never attempted to intercede on James McDougal's behalf. In fact, other than the one conversation described above—which was initiated by Jackson—Governor Clinton never discussed Madison Bank or James McDougal with Jackson.[539]

G. Dan Lasater and Bond Underwriting Contracts involving Lasater & Company

Senate Resolution 120 authorized the Special Committee to investigate "the bond underwriting contracts between Arkansas Development Finance Authority and Lasater & Company." In addition, the Special Committee examined a bond underwriting contract between the Arkansas State Police Commission and Lasater & Company. The Committee's inquiry focused on allegations that Lasater & Company's selection as bond underwriter for State agencies resulted from improper political pressure.

The evidence obtained by the Committee showed that the Lasater firm began participating in bond underwritings in 1983 pursuant to a State policy to expand the number of underwriters receiving State business and to include more local underwriting firms. The firm won additional bond business through a competitive proposal process. The Lasater firm received the same share of State bond issues as other local firms and received no special treatment. Witnesses from the State agencies that awarded underwriting business to Lasater & Company, from Governor Clinton's office, and from the Lasater firm uniformly testified that no political pressure was applied to include Lasater & Company in State bond underwritings.

The Majority relies on circumstances separate and apart from the bond underwritings themselves to suggest impropriety in the participation of the Lasater firm. The Majority seeks to link the Lasater firm's bond underwriting to Dan Lasater's political support of Governor Clinton, friendship with Roger Clinton, even to the use of Lasater-owned aircraft. The Majority seeks to call bond contracts to the Lasater firm in 1983 and 1985 into question due to unrelated criminal charges that Mr. Lasater later faced personally, in 1986. The Majority relies on the recollection of a single witness to argue that a member of Governor Clinton's staff intervened with a State agency in 1983 to ensure that the Lasater firm was included as a bond underwriter, when no other witnesses recall any intervention by the Governor's office in the selection of underwriters.

The Majority's contentions, however, cannot alter the facts developed by the Committee regarding the bond underwritings themselves. All Arkansas underwriting firms participated in State business regardless of their political identification; notably, the Ste-

phens firm continued to receive State bond underwriting business under Governor Clinton despite opposing him politically. All local underwriting firms participated equally, sharing the portion of the bond issues that was not allocated to one of several large national underwriters. The Lasater firm received only a small share of State bond underwriting business, and received a similar share as other local firms. The participation of the Lasater firm was supported by both Democratic and Republican State officials. The allegation that Lasater & Company's participation in State bond issues was due to political favoritism is not supported by the evidence.

1. Background

a. Dan Lasater

Although he received no formal education past high school, Lasater was a well-known figure in Arkansas and a successful entrepreneur.[1] In the 1960s, while still in his twenties, Lasater founded the Ponderosa Steak House chain.[2] In 1972, before turning 30, Lasater sold his interest in Ponderosa for approximately $20 million.[3] He continued to invest in restaurant chains until 1985 when he liquidated his interests.[4]

Following the sale of his interest in Ponderosa, Lasater turned his attention to horse breeding and racing.[5] He operated thoroughbred racehorse farms in Kentucky and Florida, which were very successful.[6] Lasater also invested in a ski resort in New Mexico known as Angel Fire.[7]

In the fall of 1986, Lasater was indicted on Federal charges of cocaine distribution; he pleaded guilty and served time in prison.[8] Lasater is currently involved in real estate development, management of commercial real estate, timber and saw mills.[9]

b. Lasater & Company

During the 1970s, Lasater became acquainted with George Locke, a former Arkansas state senator, through their mutual interest in thoroughbred racing.[10] Through Locke, Lasater met securities salesman David Collins.[11] In 1980 or 1981, the three men each put up approximately $70,000 and founded a securities firm called Collins, Locke & Lasater.[12]

Initially, Collins, Locke & Lasater primarily traded Government securities (issued by the U.S. Treasury and Federal agencies) and municipal securities (issued by State and local governments).[13] However, in late 1982 or early 1983, Collins hired Michael Drake, an investment banker with expertise in municipal securities, to build the firm's capability to underwrite securities as well as buy and sell securities.[14] In June or July, 1983, Collins withdrew from the firm and the firm's name was changed to Lasater & Company.

c. The Arkansas Housing Development Agency and the Arkansas Development Finance Authority

The Arkansas Housing Development Agency ("AHDA") was created during the administration of Governor David Pryor to promote economic activity in Arkansas and to help citizens of moderate means purchase their own homes. AHDA raised money by issuing

bonds backed by residential mortgages, then loaned that money to Arkansas institutions, which in turn used the funds to provide home mortgages to Arkansas residents. AHDA was run by an Executive Director, who reported to a Board appointed by the Governor. AHDA was similar in structure and purpose to housing development agencies in other States.

In April 1985, as part of Governor Clinton's economic development package, AHDA was transformed into the Arkansas Development Finance Authority ("ADFA"), in an effort to make low-cost funding available to promote a wider range of economic development purposes. ADFA issued bonds in connection with a wider range of activities than AHDA, including industrial development, public infrastructure, and education. ADFA was run by a President, again reporting to a Board appointed by the Governor. (Some AHDA Board members continued to serve on the ADFA Board after 1985.) ADFA was similar in structure and purpose to economic development agencies in other States.

d. The Arkansas State Police Commission

The Arkansas State Police Commission is comprised of seven members appointed by the Governor. The Police Commission generally supervises the State Police. It approves significant administrative decisions, including budget and personnel matters, but does not participate in or receive information concerning police activities such as investigations. In 1985, the Arkansas State Legislature passed legislation authorizing the State Police to acquire a new police radio system and to issue bonds to pay for the system. The Police Commission coordinated the selection of the new communications system. The Commission also coordinated the selection of a financing proposal and a team of underwriters to implement that proposal.

2. Clinton administration policy favored participation by Arkansas firms in State bond underwriting

Under Governor Clinton, the number of firms doing underwriting business with the State of Arkansas expanded.[15] From 1980–82, under Republican Governor Frank White, Arkansas State bond underwriting business had been the preserve of a small number of firms. During that time, AHDA used underwriters E.F. Hutton, Stephens, Inc. and T.J. Raney almost exclusively.[16] Those three firms underwrote four of AHDA's five issues of single family bonds prior to 1983, and shared the fifth issue with Merrill Lynch.[17] The owners of Stephens, Inc. were known as political supporters of Governor White.[18]

After 1983, the Clinton Administration promoted participation in State bond underwriting by all qualified Arkansas firms, regardless of which political candidates they supported.[19] Betsey Wright, former Chief of Staff to Governor Clinton, testified that the Clinton Administration policy was to open the State bond underwriting business to more firms.[20] Sam Bratton of Governor Clinton's staff added that in the fall of 1983, Governor Clinton's goal was to make the State bond underwriting business "as open and available to all companies in the State as possible."[21]

Linda Chandler—who served as AHDA's director in 1983—testified that AHDA Board members also favored opening AHDA bond underwriting to a greater number of firms.[22] Chandler testified that expanding the number of AHDA bond underwriters benefitted the State by causing the firms to submit more competitive proposals:

> We'd had the same local underwriters for three years and the same elite underwriter for four years. If underwriters know that they are going to get the next bond issue that we decide to sell, then how competitive are they going to be? So if you include other underwriting firms, you get lower bids.[23]

This, in turn, allowed AHDA to devote more of the money raised to its mission of providing affordable housing.

AHDA Board Member Mort Hardwicke testified that he proposed that AHDA use a larger number of local underwriting firms, and that no one from the Governor's office asked him to do so:

> I just thought that the more money you could keep at home the better off you were. And somebody explained to me that you just about had to have a national underwriter to get other bond people to participate. So—but that's the reason I made it, is to—not to help Raney or Stephens or anybody else, just more or less to cut the pie into equal parts.[24]

Hardwicke believed that it would benefit AHDA and the State of Arkansas for more local underwriters to participate in AHDA bond issues.[25] AHDA Board Member George Wright agreed that it made sense for AHDA to include more local underwriters.[26] He recalled that "several [AHDA] board members" expressed the view that the agency should use more local underwriters, so long as doing so did not increase the cost of issuing securities.[27]

In keeping with the views of Governor Clinton and the AHDA Board Members', the agency used a greater number of underwriters after 1983. In 1981–82, AHDA used just 4 underwriters: E.F. Hutton, Stephens, Inc., T.J. Raney & Sons, and George K. Baum & Company In 1983–84, AHDA used twelve underwriters, including local firms Stephens, Inc., George K. Baum & Company, T.J. Raney & Sons, Simmons First National Bank, and Lasater & Co.[28] Pursuant to these policies, Collins, Locke & Lasater began underwriting AHDA single family bonds in 1983. On February 17, 1983, AHDA selected the following underwriters for the agency's single family bonds: Paine Webber and George K. Baum (sharing 60%) and T.J. Raney, Stephens, Inc. and Collins, Locke & Lasater (sharing 40%—13⅓% each). The Lasater firm thus received a share smaller than one local firm (George K. Baum) and equal to the share of two other local firms (T.J. Raney and Stephens, Inc.). No participating firm received a smaller share than Lasater. Two of the three AHDA Subcommittee Members who voted to include Collins, Locke & Lasater were appointed by Governor Frank White (Charles Stout and Fred Dacus). The third, Mort Hardwicke, was appointed by Governor Bill Clinton. Stout did not recall these events.[29]

Collins, Locke & Lasater received an even smaller share of AHDA's next bond offering. Minutes of an August 31, 1983 AHDA Special Board Meeting state that the Subcommittee selected the following underwriters for a $125 million offering of single family bonds: Paine Webber (25%), First Boston (20%), Prudential-Bache (15%), and George K. Baum, T.J. Raney, Stephens Inc. and Collins, Locke & Lasater (10% each). All the local firms, including the Lasater firm, received the same share of the bond issue—10%.

The Lasater firm also participated in offerings of AHDA multifamily bonds. At the April 12, 1983 AHDA Board meeting, Hardwicke proposed that Merrill Lynch, Stephens Inc. and T.J. Raney form the underwriting team for multifamily bond issues. At the April 19, 1983 meeting, George Wright moved to add Collins, Locke & Lasater to the multifamily bond underwriting team. Neither Hardwicke nor Wright recalled these events.[30]

Linda Chandler, AHDA's Executive Director at the time, recalled that Charles Crow from Stephens, Inc. visited her after Collins, Locke & Lasater was added as an underwriter. He asked her to convince the AHDA Board to remove Collins, Locke & Lasater from the issue or Stephens, Inc. would resign. He indicated Stephens, Inc. did not want Collins, Locke & Lasater included because they were "a little unscrupulous."[31] Stephens may have had self-interested motivations. According to Chandler, the inclusion of Collins, Locke & Lasater decreased Stephens, Inc.'s allocation of bonds in the issue, and thereby decreased the amount of money Stephens, Inc. might make.[32]

Chandler relayed Crow's concerns to Charles Stout, then Chairman of the AHDA Board. Stout told Chandler that he would handle the matter. Chandler does not know what actions Stout took, if any.[33] She considered it inappropriate for Stephens, Inc. to try to convince a State agency to fire another underwriter.[34] She is not aware of other firms taking similar action.[35]

Stephens, Inc. subsequently resigned from this bond issue and was replaced by another local firm, the Dabbs Sullivan Division of George K. Baum & Company. In an April 28, 1983 letter, Stephens, Inc. complained that, "subsequent to our selection, the Board decided, without discussion, to add to the underwriting group a firm which did not submit a proposal under the Agency proposal procedures which invited individual firm proposals." According to Chandler, the letter is inaccurate; no underwriters were hired without submitting proposals.[36] Nor did Chandler see any "erosion of the independence of the Board," as alleged in Stephens, Inc.'s letter.[37] Furthermore, Stephens, Inc. continued to participate with the Lasater firm in other bond issues after that time.

3. Lasater & Company received no special treatment in connection with AHDA/ADFA bond underwriting contracts

The evidence demonstrates that the Lasater firm was treated the same as other local firms. Other local firms underwrote as many state bonds as did the Lasater firm. The Lasater firm never served as the sole underwriter of an AHDA/ADFA bond issue; it always was part of a team of underwriters, including other local firms. Moreover, although Lasater & Company sought to become a lead underwriter of an AHDA/ADFA bond issue—which would have al-

lowed the firm to make more money from the offering—the firm never was selected to serve as a lead underwriter for the agency.[38]

The evidence further demonstrates that the firm did not exercise unusual influence over the agency. For example, when Michael Drake of Lasater & Company asked ADFA to replace PaineWebber with E.F. Hutton as lead underwriter of a particular bond issue—presumably because Lasater & Company had a better working relationship with E.F. Hutton—the agency ignored the requests and proceeded with PaineWebber.[39]

Lasater believed that his firm was entitled to a larger share of the AHDA bond underwritings based on its size:

> It is my position that we had the second largest capitalized firm in the State of Arkansas and we didn't receive the pro rata share of the bond business that I thought we were entitled to because of the size.[40]

However, when Lasater lobbied Governor Clinton for a larger share of AHDA bond underwritings, Governor Clinton refused to get involved. Lasater explained:

> [O]n the one occasion when I complained to Governor Clinton that Lasater & Company was not receiving its fair share of state bond underwriting business, he simply told me that we should present our case to the appropriate staff if we felt we were not being treated fairly. He did not take any action on our behalf. And, our position among the firms that were underwriting state bond business never improved.[41]

This directly contradicts the allegation that Governor Clinton sought special treatment for Lasater and Company.

In sum, Lasater & Company qualified for inclusion in ADFA underwriting teams pursuant to ADFA policies. As described by Epes:

> We would usually select co-managers based on two criteria. One would be whether they had a presence in the state because we wanted to get a good effort to sell bonds within the state as well as out of the state, and get an understanding of what types of bonds needed to be—how they needed to be structured so we could sell some in the state.
>
> And then we would usually bring in additional national firms to help us with either bond distribution, or maybe we thought that they had—ran a close second in their proposal and had some expertise to offer. * * *[42]
>
> [T]here were a lot more firms there than there are now. And many were what we refer to as bucket shops that didn't have very good reputations and they were strictly sales-oriented, didn't have underwriters that would structure bond issues. And so we limited our involvement to firms that actually had underwriters assigned or that were employed at the firm. And that's the main limiting factors—those two things, coverage for sales and also having an underwriter.[43]

Epes testified that the Lasater firm met these criteria; it was a local firm with an underwriting capability. He added that Lasater

& Company deserved to be treated the same as other local underwriting firms, based on the firm's performance as an underwriter.

> My recollection is that they performed as well or better than the other local firms. They—I was told by the senior manager on more than one occasion that they sold more bonds than most of the other local firms. In some cases, they sold more than any of the other locals and others they were among the top two.[44]

Moreover, there was no guarantee that Lasater & Company would profit from its participation in the AHDA/ADFA bond underwritings. On the contrary, the Lasater firm was at risk on the AHDA/ADFA bonds it underwrote: it bought the bonds from the agency and in turn had to find investors to purchase the bonds. The Lasater firm received fees from the State in connection with these underwritings, but most of the firm's profits depended on its ability to find investors to purchase the bonds. Drake testified that "the majority of the income to the firm was derived from sales commissions."[45]

Among Collins, Locke & Lasater's brokerage clients were a group of insurance companies that were placed in receivership by the Arkansas Insurance Commissioner in 1983. The companies were Mount Hood Pension Company, National Investors Life Insurance Company, and National Investors Pension Insurance Company. The Lasater firm approached the Insurance Commissioner, Linda Garner, about serving as a manager of companies' portfolio in receivership. Garner believed that the assignment required a firm of greater size and experience and appointed First Boston and Stephens, Inc. as portfolio managers. At some point, Governor Clinton called Garner to express his concern that, should the Lasater firm not be included as a manager, an Arkansas firm would be losing business. He asked her to consider appointing E.F. Hutton to select the portfolio manager. Garner told Governor Clinton that the assignment required an experienced national firm; she did not give E.F. Hutton or Collins, Locke & Lasater a role in managing the portfolio. Ms. Garner testified that Governor Clinton did not pressure her to hire the Lasater firm and she did not hear from his or his staff again regarding this matter. She did not consider it inappropriate for Governor Clinton to raise the matter with her.[46]

4. Neither Governor Clinton nor his staff pressured AHDA/ADFA to include Lasater's firm in bond underwritings

It has been alleged that Governor Clinton directed AHDA and ADFA to award bond underwriting business to Lasater & Company. The evidence, however, demonstrated that neither Governor Clinton nor his staff pressured anyone to include the Lasater firm in bond underwritings. Members of the Governor's staff have said it did not happen, members of the AHDA Board have said it did not happen, members of the AHDA staff have said it did not happen, and employees of both Lasater & Company and a competitor have said it did not happen. One witness recalled that a member of the staff of the Governor's Office suggested that the Lasater firm be included as an AHDA underwriter; no other witness could recall the incident.

Linda Chandler, who became AHDA Executive Director early in 1983, testified that Governor Clinton did not ask her to include or exclude any underwriting firms with respect to AHDA bond issues. Chandler testified that when she was seeking to become AHDA Executive Director, she initiated a meeting with Governor Clinton, whom she had not previously met. Chandler explained that she sought this meeting not to convince Governor Clinton to hire her, as that was a decision that would be made by the AHDA Board, but because she felt that under Governor Frank White the Executive Director had been a "political" position.[47]

Chandler told Governor Clinton that she was "not political"—she had served on the AHDA staff during both his first term and that of Governor White. She stressed her technical expertise and told Governor Clinton she would run the agency in a "business like fashion."[48] Governor Clinton made no mention of underwriting firms.[49] He neither favored nor disfavored particular firms.[50]

Chandler was selected as AHDA Executive Director. She was not aware of any influence exerted by the Governor's office to choose an underwriter.[51]

AHDA Board member Mort Hardwicke never discussed bond underwriting with Governor Clinton or Governor Clinton's staff. He has never heard that the Governor's office identified a specific firm that they wanted to receive underwriting business.[52] Hardwicke testified that he "never heard" of the Governor's office trying to influence AHDA's selection of underwriters.[53]

AHDA Board Member George Wright went even further. Wright testified that he never spoke with Governor Clinton about AHDA business.[54] Moreover, no one from the Governor's office called him regarding selection of underwriters.[55] Nor did anyone from the Governor's office ever contact AHDA staff members regarding underwriter selection.[56]

Wooten Epes succeeded Linda Chandler as Executive Director of AHDA in the fall of 1983. He testified that he did not recall ever being asked by the Governor's staff to include particular firms in bond offerings.[57] Epes did not recall the Governor's office being involved with choosing underwriters.[58]

Bob Snider and Paul Young, investment bankers at T.J. Raney & Sons, a competitor of Lasater & Company, do not recall AHDA bond contracts awarded on terms other than merit or complaints to that effect.[59]

Just one witness recalled discussing the inclusion of a specific underwriting firm with Governor Clinton's office. Charles Stout, an appointee of Republican Governor Frank White who was serving out his term as Chairman of the AHDA Board in 1983, recalled receiving a telephone call from Bob Nash, an assistant to Governor Clinton for economic development matters. According to Stout, Nash "called [him] and recommended that we [AHDA] start using the Lasater firm."[60] Stout testified that Nash "was suggesting a certain underwriter that we start using."[61] According to Stout, Nash indicated that the Lasater firm should be allocated 15 percent of the agency's bond underwritings.[62]

Stout recalled that, while he was on the telephone with Nash, he "asked one Board member, I think it was Hardwicke, to get on and listen to the conversation."[63] Stout recalled discussing the con-

versation with Hardwicke after Nash hung up; he recalled that he did not speak with the other Board members but that Hardwicke informed the other Board members of the conversation:

> I thought that Mort [Hardwicke] talked to the other Board members. I don't know. It's been a long time ago, and I've had a stroke and my memory's not good.[64]
>
> Senator SARBANES * * * Did you tell other members of the Board about it?
>
> Mr. STOUT. No, sir.
>
> Senator SARBANES. You didn't tell any of the other members?
>
> Mr. STOUT. Not to my memory, I didn't.
>
> Senator SARBANES. Is it your testimony that Mr. Hardwicke went around and told all the other members?
>
> Mr. STOUT. It's my recollection that he did.[65]

Hardwicke, however, would not confirm Stout's testimony. On the contrary, Hardwicke stated that he did not recall the incident described by Stout, despite Stout's testimony that Hardwicke joined him on the telephone with Nash.[66]

> I don't recall. I don't doubt Mr. Stout's word but I do not recall listening to Mr. Nash telling the Board that Lasater should get 15 percent.[67]

Hardwicke also did not recall telling the other Board members of this call.[68] Significantly, no other Board members recalled hearing about this alleged conversation. Wright, for example, did not recall learning of this telephone call from Hardwicke: "I don't recall hearing that Bob Nash called over here and said do this."[69] He added, "Specifically, no, sir. I don't recall him coming and talking to me about it."[70] Nor did any other witness recall this conversation.

Nash testified that while he may have spoken with Stout regarding bond underwriting contracts, he never instructed Stout to include Collins, Locke & Lasater in AHDA bond issues.[71] Nash did not recall ever discussing with Stout the specific percentages of bonds that different underwriting firms would receive.[72] Wright testified further that neither Nash nor anyone else in the Governor's office called him to ask that the Lasater firm be added.[73]

Even if this telephone conversation occurred—which is hardly clear—it is likely that other witnesses do not recall it because it was innocuous in nature. Stout himself characterized the conversation as a suggestion from Nash, rather than a directive.[74] He testified, "I took it as a suggestion."[75] Nash did not threaten Stout; nor did he mention Governor Clinton's name.[76] Asked what would have happened if the AHDA Board had not included the Lasater firm, Stout replied, "Who knows. I don't think anything would have happened."[77] The allegation that Governor Clinton influenced the selection of AHDA/ADFA bond underwriters based on political or personal considerations was further undermined by the Governor's treatment of his political opponents. Stephens Inc. continued to participate in AHDA bond underwritings after Bill Clinton defeated Frank White in 1982, despite the fact that the firm had supported Frank White, and that White went to work at Stephens Inc. after losing the 1982 election.[78] Hardwicke recalled that he spoke with

Governor Clinton shortly after he was reelected in 1982 and asked him how to deal with Stephens, Inc. According to Hardwicke, the Governor replied: "Give them a fair shake. That was the end of the conversation."[79]

Finally, Lasater himself testified that he did not believe the awarding of State bond business was related to political considerations:

> I believe that Lasater & Company would have received the same amount of bond business if they did or did not contribute to the Clinton campaign. And I base that on the fact that Stephens, Inc. who did the majority of the business when Frank White was Governor contributed heavily to Frank White, supported Frank White and fought the election of Bill Clinton and Bill Clinton still gave them a large share of the State business.[80]

5. Lasater had no influence over AHDA/ADFA appointments

The documents produced to the Special Committee include several letters to Governor Clinton from Lasater and his associates, recommending various individuals be appointed to the AHDA and ADFA boards. It has been alleged that these letters show that Lasater exerted undue influence over the agency. The evidence does not support this allegation. As an initial matter, there is nothing inherently improper about a citizen recommending possible appointees to State boards; the evidence developed by the Committee indicates it happened regularly.

Moreover, there was nothing unique about Lasater's recommendations; on the contrary many of the individuals recommended by Lasater were not appointed by Governor Clinton. For example, on January 4, 1985, Lasater wrote to Governor Clinton recommending Don Spears for the AHDA Board.[81] Spears, however, was not appointed.[82] Similarly, on April 3, 1985, Patsy Thomasson wrote to Governor Clinton recommending Don Spears, Ed Willis and Jim Tom Bell for ADFA Board.[83] Thomasson received a form letter back from Governor Clinton.[84] Neither Willis nor Bell was appointed to the ADFA Board.[85]

Nor can Lasater & Company's recommendations reasonably be characterized as attempts to influence the bond underwriter selection process. For example, on March 31, 1983, David Collins wrote to Governor Clinton recommending Linda Trent [Chandler] for AHDA Executive Director.[86] Chandler has never met David Collins and was not aware he had written a letter of recommendation on her behalf.[87] She has never met Dan Lasater either.[88]

Similarly, on May 1, 1985 Lasater wrote three identical letters to Governor Clinton, recommending that Bill Mathis be appointed to the ADFA Board and that Mort Hardwicke and George Wright be reappointed to the ADFA Board.[89] Lasater received three identical form letters back from Governor Clinton.[90] Mathis was not appointed to the ADFA Board while Hardwicke and Wright were reappointed.[91] Hardwicke testified that he has never met Lasater and was not aware of the letter.[92] Wright testified he also has never met Lasater and "was unaware that Lasater ever recommended me for anything."[93]

Finally, the evidence showed that Dan Lasater and his colleagues at Lasater & Company were hardly the only source of unsolicited recommendations to the Governor's office regarding appointments to the ADFA Board. Governor Clinton regularly received recommendations other private individuals, as well as public officials, such as members of the State legislature.[94] In this regard, Drake testified that when he worked at Stephens, Inc., that firm "routinely" made recommendations to the Governor's office regarding appointments to state boards.[95]

6. The Raney/Hutton/Lasater Team Was Awarded the State Police Commission Bond Underwriting Contract on the Merits

The Committee also examined a 1985 bond issue for the Arkansas State Police shared by T.J. Raney & Sons, E.F. Hutton and Lasater & Co. It has been alleged that Governor Clinton influenced the underwriter selection process to benefit Lasater. The record, however, is at odds with this allegation. It shows that Governor Clinton and his staff did not pressure the Arkansas State Police to include the Lasater firm in the bond underwriting or to award the contract to the group including the Lasater firm. To the contrary, the evidence demonstrated that Governor Clinton and his staff played no part in the underwriter selection process.

a. Background

The 1984 murder of an Arkansas State Trooper while outside the range of the Arkansas State Police radio system attracted widespread press attention in Arkansas.[96] The murder highlighted the inefficiency of the existing radio system and gave new urgency to the State Police's longstanding efforts to replace the system. Traveling together to that Trooper's funeral, the director of the Arkansas State Police, Col. Tommy Goodwin lobbied Governor Clinton for a new police radio system.[97] Governor Clinton agreed that a new radio system was necessary. As such, the State Police were evaluating financing alternatives for a new communications system by October 1, 1984.[98]

b. The Formation of the Raney, Hutton, Lasater Group

It was well-known to underwriting firms in Arkansas that a financing opportunity would exist with respect to a new police radio system. Bob Snider, head of the public finance department at T.J. Raney, testified that his firm learned of this opportunity in late 1984, before the State Police officially solicited proposals from financial firms.[99] Paul Young of T.J. Raney discussed the transaction with Bobby Roberts, Governor Clinton's liaison for criminal justice matters.[100] Young and Snider also met with Sam Bratton, Governor Clinton's Counsel.[101] Neither Roberts nor Bratton expressed a preference for any underwriting firm or indicated that Lasater & Company should receive this business.[102] No one in the Governor's office suggested any other financial firms with which T.J. Raney should work on this project.[103]

As part of its efforts to prepare for the underwriter selection, T.J. Raney contacted Stephens, Inc. about joining forces to pursue the financing. Snider testified:

> Our first call was to Stephens. They turned us down. They wanted to go by themselves on this [the police radio transaction]. Our next call was to E.F. Hutton.[104]

Snider recalled that E.F. Hutton suggested that Lasater & Company be included in the transaction: "when I talked to Hutton about us going joint account, Hutton mentioned to me that they felt like Lasater should be involved."[105]

The evidence indicates that the Raney firm approached the Lasater firm to work together on the police radio bonds. Drake testified that Young and Snider of T.J. Raney contacted him regarding joining forces to underwrite bonds for the State Police Commission:

> It's my recollection that in mid-1984—and it may have in the spring or in the summer—I was approached by two gentlemen from T.J. Raney and Sons, Bob Snider, who is managing director of the public finance department, and a colleague of his, Paul Young * * * seeking our assistance in pursuing the creation of legislation that would enable a state police radio system to be acquired by the Arkansas State Police, one to structuring a transaction that would enable us to underwrite the securities; and, [sic] three, to participate in a transaction that involved E.F. Hutton as the national distributor of securities.[106]

Young believed that Snider initiated contact with the Lasater firm.[107] Snider did not recall whether he, Young or someone from E.F. Hutton contacted the Lasater firm.[108]

The witnesses disagreed as to why the Raney firm approached the Lasater firm. Young testified that T.J. Raney contacted Lasater & Company because of Lasater & Company's experience underwriting AHDA bonds.[109] Drake, however, recalled that the Raney firm wanted to work with Lasater & Company because of Lasater's relationship with Governor Clinton, and that he told this to Lasater.[110] Neither Lasater, Young nor Snider recalled discussing with Drake that T.J. Raney approached Lasater & Company regarding the Police Commission bond underwriting because of Lasater's relationship with Governor Clinton.[111] Young, in fact, testified that he did not tell Drake that T.J. Raney approached Lasater & Company because of Lasater's relationship with Governor Clinton.[112] Snider also testified that was not the case:

> Q. Did anyone from T.J. Raney & Sons approach Mr. Drake, to your knowledge, and indicate that the reason they were approaching Lasater & Company was because of their relationship with the Governor?
>
> A. No. That's not why we did it.[113]

In any case, the fact that T.J. Raney first approached Stephens, Inc., and only approached Lasater & Company after Stephens, Inc. declined to enter into a partnership, undermines the allegation that T.J. Raney was seeking political connections to the Clinton Administration; as discussed earlier, the Stephens firm had been a political opponent of Governor Clinton.

c. The awarding of the underwriting contract

On April 4, 1985, Governor Clinton signed Act 817, "An Act Authorizing the Leasing of Communications Equipment for the Department of the Arkansas State Police; Providing for the Payment and Security of the Costs of the Equipment; and for Other Purposes."[114] The Act authorized the State Police Commission to acquire a new communications system, financed by bonds that in turn would be financed by revenues from drivers' license fees.

Much has been made of the fact that the Raney/Hutton/Lasater group hired the Mitchell, Williams law firm to help draft the legislation. The Majority alleges that the group benefitted improperly from the role their attorneys played in drafting the statute. In fact, the Raney/Hutton/Lasater group enjoyed no special advantages or information as a result of having retained the Mitchell, Williams firm.[115] The legislation did not specify what financial firms would underwrite bonds, did not establish criteria for such firms, and did not even specify by what procedures the State Police would select underwriters.[116] Young, Colonel Goodwin and Police Commissioner Johnny Mitchum testified that the legislation did not bias the selection process in favor of the Raney/Hutton/Lasater team.[117] The legislation of course had to be approved and passed by the Arkansas legislature to become a public law, after which it was available to all. The Lasater group made no secret of its relationship with the Mitchell, Williams firm. Sam Bratton, former Counsel to Governor Clinton, testified that it was common for law firms with expertise in bond work to draft bond-related legislation.[118]

On the same day Governor Clinton signed the legislation, the State Police Commission began a competitive process to select the bond underwriters. The State Police solicited proposals from all interested financial firms. In this regard, the minutes of an April 4, 1985 Meeting of the State Police Commission state:

> After a lengthy discussion between members of the Commission, Mr. Ed Erxleben and Mr. Dudley Meadows of State Purchasing, and representatives of several financial firms concerning procedures to follow relating to the acquisition and financing of the communication equipment, the Commission agreed to begin immediately the process of selecting a financial institution to handle the financing.
>
> The Commission agreed to solicit proposals from only those companies doing business in Arkansas.
>
> A letter will be mailed on Monday, April 8, 1985 to financial institutions in the state seeking proposals, with a cut-off date of two weeks from date of letter for proposals to be received.[119]

The State Police received eight proposals in response to its letter request. The eight proposals were then winnowed to four finalists by a Committee consisting entirely of career government officials: three State Police staff members (State Police Director Col. Tommy Goodwin, State Police Deputy Director Maj. Jim Tyler, and State Police Purchasing Officer David Mosely) and two staff from the State Purchasing Department (Ed Erxleben and Dudley Meadows).[120]

Police Commissioner Johnny Mitchum, an appointee of Governor Frank White, was a certified public accountant and the only member of the Police Commission with a background in finance.[121] Mitchum reviewed the underwriting proposals and concluded that the Raney/Hutton/Lasater proposal was the most attractive for the State.[122] In order to obtain some independent corroboration, Mitchum hired an actuary, John Myers, to evaluate the four proposals selected as finalists.[123] Mitchum did not know Myers, and had no reason to believe Myers would favor one firm over another.[124] While Myers recalled that Mitchum told him that he considered the Raney/Hutton/Lasater proposal to be the most favorable, Mitchum did not recall indicating that.[125] In any event, Myers and Mitchum agree that Mitchum did not direct Myers to reach any particular conclusion.[126]

The evaluation prepared by Myers assigned a net present value of $18,101,700 to the Raney/Hutton/Lasater proposal. In other words, Myers calculated that the Raney/Hutton/Lasater proposal would cost the State slightly more than $18 million (in 1985 dollars) over the life of the bonds. This was less than the net present value that Myers calculated for the Stephens, Inc. and Dabbs Sullivan proposals, but $28,000 more than the $18,073,030 assigned to the First Capital proposal.[127] Myers testified that, given the size of the transaction, the $28,000 difference was de minimus and the Raney/Hutton/Lasater and First Capital bids were statistically equivalent.[128] Myers concurred at the time that the Raney/Hutton/Lasater bid was the best for the State of Arkansas.[129]

There is no evidence that any of the losing bidders challenged Myers' analysis. However, the Raney/Hutton/Lasater group did raise some concern. In particular, Young testified that Myers did not adequately reflect the benefit to the State of the debt service reserve in the Raney/Hutton/Lasater proposal and therefore overstated the net present value of the proposal.[130]

> Actually, I did not feel like it gave us the advantage that I thought that we had. I had reviewed all the proposals myself and had looked at this particular proposal, and I don't think I really felt like it was as close as he presented. We had in our structure some funds that were invested that would generate a benefit that frankly I thought [was] not adequately weighed in his analysis.[131]

In essence, the larger debt service reserve contained in the Raney/Hutton/Lasater proposal allowed the State to lower its overall cost of borrowing through arbitrage.[132] Young testified that:

> the Stephens proposal had a reserve amount equal to one half-year's debt service as opposed to ours which had a full year's debt service, which actually was detrimental to their presentation because at the time * * * an issuer could keep the benefit of earnings that were generated over and above what the financing rate was. So the larger the reserve the greater the net benefit to an issuer. I don't recall how the other presentation structured their reserves. I think some had full year reserves. I think the one prepared by First Capital, I think, didn't have any reserve.[133]

On May 10, 1995, the Police Commission heard oral presentations from the four finalists.[134] After all the presentations, Commissioner Johnny Mitchum moved that the Raney/Hutton/Lasater team be awarded the contract. This motion carried by a vote of 4 to 2.[135]

d. Legislative review of the underwriting contract

Act 817, the enabling legislation for the police radio system, stated

> The [Police] Commission shall submit any contract, agreement, or proposal, as authorized by this Act, to the Arkansas Communications Study Committee and to the Arkansas Legislative Council prior to any obligation being incurred by the Commission for their advice and counsel.[136]

Both the Communications Study Committee and the Legislative Council ultimately gave favorable advice to the proposal. The Minutes of the July 10, 1985 Meeting of the Communications Study Committee, at which the contract was approved, state, "Mr. Erxleben said it was a well coordinated and reviewed contract."[137] Erxleben had been appointed State Purchasing Director by Governor Frank White and retained by Governor Clinton.[138]

e. The Clinton administration properly investigated rumors that Lasater was under investigation for drug use and was advised that no investigation was underway

The Majority argues that it was improper for the State Police Commission to award this contract to a group including Lasater & Company because of rumors at the time that Lasater used cocaine. In fact, it is clear that the Clinton Administration was concerned about awarding State bond business to anyone under investigation for drug offenses. The Governor and members of his staff raised the issue with law enforcement authorities, who reported that no investigations of Lasater were underway.

In early 1985, Hot Springs lawyer Sam Anderson, Jr. was tried on cocaine distribution and conspiracy charges. A witness at that trial testified that Lasater used cocaine.[139] Col. Tommy Goodwin, who had been appointed by Governor Frank White as Director of the Arkansas State Police, testified that before Lasater & Company was awarded the State Police bond underwriting, Governor Clinton told him that the firm should not get the contract if Lasater was under investigation for cocaine distribution.[140] Col. Goodwin asked subordinates in the State Police to make inquiries. They determined that no State or local criminal investigations of Lasater were underway at that time.[141] Although the Arkansas State Police began an investigation of Lasater the following year, the Police had no investigation underway in 1985.[142]

Betsey Wright, then Governor Clinton's Chief of Staff, also asked Colonel Goodwin to check if any investigations were underway. She, too, was advised that no investigations were underway.[143]

Lasater testified that he first became aware that he was the target of a cocaine investigation no more than sixty days before he was indicted on Federal charges in October 1986.[144]

7. Neither Governor Clinton nor his staff pressured the Arkansas State Police to award bond underwriting contracts to Lasater's firm

The Majority asserts that the Governor's Office closely monitored the bond underwriting process, and suggests that this tainted the process. However, even assuming that the Governor's office did keep track of the contracting process, there is no evidence that Governor Clinton or anyone acting on his behalf sought to influence the selection of an underwriter. On the contrary, the evidence demonstrated that the Police Commission selected the Raney/Hutton/Lasater group on its own, without any influence from the Governor's office.

As an initial matter, the Governor's staff testified that no influence was exerted. Betsey Wright, Governor Clinton's Chief of Staff, testified that the Governor's office did not express any preference to the State Police that Lasater & Company be awarded the underwriting contract and played no role in the selection process.[145] Sam Bratton, Governor Clinton's Counsel, testified that Lasater did not receive any kind of special treatment with respect to the police bond contract.[146] Michael Gaines, the Governor's liaison with the Police Commission, gave similar testimony.[147]

Second, Lasater and his employees testified that no influence was exerted on his behalf. Lasater testified he does not recall discussing the State Police Commission bond underwriting with Governor Clinton or his staff.[148] He is not aware of political pressure brought to bear on the award of this contract. Drake testified that he is not aware of anyone at Lasater & Company discussing the State Police underwriting contract with Governor Clinton, or of anyone from the Governor's office taking steps to award the contract to the Raney/Hutton/Lasater team.[149] Young testified that in his discussions with Governor Clinton's staff, he was never told that Lasater & Company would receive this award.[150] On the contrary, Young was concerned that the Raney/Hutton/Lasater group might not receive the contract despite submitting the best proposal.[151]

Finally, the State Police witnesses themselves testified that they acted unilaterally and without influence from the Governor's office. Commissioner Mitchum testified that: "I never recall anyone from the Governor's office taking an active role in that process."[152] Nor did Governor Clinton's office suggest that he undertake any kind of comparison that would favor the Raney/Hutton/Lasater proposal.[153] Colonel Goodwin, the director of the Arkansas State Police, testified that Governor Clinton never indicated to him that Dan Lasater was interested in securing this piece of bond underwriting business.[154]

The breakdown of the vote by the State Police Commission to award the contract to the Raney/Hutton/Lasater team demonstrates that it was not a politically motivated decision. The vote on the contract was 4–2. Commissioners Mitchum and Rockefeller two of the four commissioners who voted to award the contract to

Raney/Hutton/Lasater, were Republican appointees to the Police Commission. One Clinton appointee voted in favor of the Raney/Hutton/Lasater group, as did the sole appointee of Governor David Pryor. Notably, both members who voted against the Raney/Hutton/Lasater team, Commissioners Raff and Mashburn, were Clinton appointees.[155] The Director of the State Police at the time, Colonel Goodwin, also had been appointed by Republican Governor Frank White.[156]

The Raney/Hutton/Lasater team did not enjoy any special advantages in formulating a proposal. One losing bidder complained that the Raney/Hutton/Lasater proposal violated the enabling legislation, by providing for semiannual payments to bondholders rather than monthly payments. (This allowed the State to earn more in interest from holding the funds.) However, the legislation did not require that bondholders receive monthly payments; it required only that the radio equipment be paid for monthly: "Payments to cover the costs under the Lease Agreement shall be paid from the Lease Fund on a monthly basis."[157] As Young explained, this simply required the State to segregate the funds monthly, so they would be available for their designated purpose; it did not control the payments to bondholders.[158] Arkansas State bonds typically paid bondholders semiannually.[159] Young testified that all the other financial firms interpreted the statute in the same way as did the Raney/Hutton/Lasater team, namely providing for semiannual payments.[160] Only one losing bidder interpreted it differently.[161] Therefore, the Raney/Hutton/Lasater group gained little from the interpretation of the legislation by the Mitchell, Williams firm cited in the Majority Report: most bidders had already interpreted the legislation to pay for semiannual payments.

It has been alleged that a May 1, 1985 memorandum that Michael Gaines, Governor Clinton's liaison to the Arkansas State Police, sent to the Governor and Betsey Wright reflected an improper attempt by the Clinton Administration to monitor the underwriter selection process.[162] The memorandum indicates "Tommy Goodwin's observations" of which firms the Commissioners favored for the underwriting contract. Gaines does not recall preparing the memorandum; he does not believe he asked Colonel Goodwin for this information but rather that Colonel Goodwin provided him this information to him.[163] No one in the Governor's office told Gaines to monitor the votes on the award of the bond underwriting contract.[164] Betsey Wright testified that she was not monitoring the votes.[165]

Betsey Wright wrote a note on the memorandum that "street talk" suggested that Lasater had submitted "an unreasonably low bid knowing he can raise it once he gets it." In response to Wright's note, Governor Clinton wrote, "Lasater should be told bid must be price." The majority has alleged that this colloquy showed the Clinton Administration's favoritism to Lasater. This allegation lacks merit. Far from demonstrating favoritism to Lasater, Governor Clinton's comment demonstrated his insistence that contracts be awarded on the merits, and the State's fiscal interest be protected.

In any event, Wright's concerns were unfounded. This underwriting contract did not entail "bid" to provide goods or services for the

State at a price that could be altered later, but rather a "proposal" to sell securities to investors. Drake explained:

> * * * in all deference to Betsey, whom I admire as a wonderful public servant, she doesn't know beans about investment banking. She may have heard that we had "low balled." But, there was no bid. There was no bid to low ball. It was a proposal * * * her concern, in my mind, was a concern of perception rather than reality. We submitted a proposal. We were not asked to submit a bid nor were our competitors asked to submit a bid. Our proposal contained a provision for interest rates if the securities were sold at the moment of our submission. And, if you will look at my memo of April 30th to Dan [Lasater], George [Locke] and Dan Moudy, which appears to be in reaction to an assertion that we had low balled our proposal, I make it real clear that the proposals * * * were submitted well in advance of the financing date.[166]

Drake added that while the Raney/Hutton/Lasater team may have priced the securities aggressively, "aggressive pricing only occurs by definition when securities are offered, not when a proposal is made."[167] Thus, the aggressive pricing did not involve the State on the State's money.

8. Dan Lasater's relationship with Bill Clinton and Roger Clinton

Dan Lasater first met Virginia Kelley, the mother of Bill and Roger Clinton, at the Oaklawn Park racetrack in Hot Springs in the late 1970's.[168] He met Roger Clinton shortly thereafter, while Roger was singing at a nightclub in Hot Springs.[169] At some later point, Mrs. Kelley introduced Lasater to her other son, Governor Clinton, at Oaklawn.[170]

While Roger Clinton was not one of his closest friends, Lasater did socialize with him during 1982–86.[171] Lasater recalled that either Governor Clinton or Virginia Kelley asked Lasater if he could find a job for Roger Clinton.[172] Lasater hired Roger Clinton to work as a stablehand at his Florida horse farm; he worked there for four to six months during 1983.[173] Roger Clinton received the same compensation as other stablehands.[174] Lasater testified that hiring Roger Clinton was not intended to help his firm get State business:

> Senator FAIRCLOTH. No connection? You didn't think that hiring the Governor's brother and having him would help you to curry favor and friendship with the governor and get bond business?
>
> Mr. LASATER. I don't think hiring the Governor's brother for $3 an hour to muck stalls at a farm in Florida would get me any business, no.[175]

Around 1984, Roger Clinton told Lasater than he owed a drug dealer $8,000 and that the drug dealer had threatened to harm him, Governor Clinton and Virginia Kelley if the debt were not paid.[176] Lasater testified that he does not know if Governor Clinton and Mrs. Kelley were aware of this threat.[177] Lasater loaned the money to Roger Clinton.[178] Lasater never discussed the loan with

Governor Clinton and doesn't know when Governor Clinton became aware of it.[179]

Lasater became a political supporter of Governor Clinton in the 1980's. George Locke recalled that he was contacted by Governor Clinton or his staff within days of Governor Clinton's loss to Frank White in 1980, and introduced Lasater to the Governor at a meeting shortly thereafter.[180] Lasater testified that Locke has told him that sometime during 1980–1982, while Bill Clinton was seeking to regain the office he had lost to Frank White in 1980, Clinton asked to meet with Messrs. Locke, Collins and Lasater to seek their support and that such a meeting took place.[181] Lasater has no independent recollection of the meeting.[182] Lasater contributed to Governor Clinton's campaigns in 1982, 1984 and 1986. Lasater organized a fundraiser* for Governor Clinton in 1984, which raised approximately $50,000.[183]

Lasater described himself as "a friend and supporter [of Governor Clinton], like many people in Arkansas. Not a close friend."[184] While the Majority cited a letter Lasater sent to Governor Clinton asking for access to the Governor's office, the Majority omitted the testimony of Lasater and Betsey Wright that no such access was given.[185] Lasater recalled being at the Governor's Mansion on no more than two occasions.[186]

> * * * I can recall being at the Governor's Mansion possibly twice, and those were social events. I think one time was when Bob Hope was in town and they had some kind of a party over there for him, and some other social function. I have never been to the mansion on a personal basis.[187]

Lasater specifically denied the tales of Barry Spivey cited by the Majority;[188] Spivey was never questioned by the Committee and his account was obtained by the Majority outside the Committee's regular procedures for production of documents and is consequently unauthenticated. Lasater was not a close friend of Governor Clinton and received no special treatment as a result of his relationship with Governor Clinton or Roger Clinton.

In October 1986, Lasater was indicted on a single Federal count of conspiracy to distribute cocaine and to possess with intent to distribute. He pleaded guilty the next week and served six months in prison and a further six months in a halfway house.[189] Lasater never discussed the cocaine investigation with Governor Clinton and doesn't know when Governor Clinton learned of it.[190] Following his guilty plea, Arkansas Securities Commissioner Beverly Bassett Schaffer revoked his securities license.[191]

H. The Rose Law Firm's Representation of Madison Guaranty

From 1977 until 1992, Mrs. Clinton practiced law at the Rose Law Firm, one of the most prominent law firms in Arkansas. Starting as an associate, within two years Mrs. Clinton became a partner in the firm.

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*Patsy Thomasson, who was working for Mr. Lasater at that time as an employee of his holding company, helped organize the fundraiser. (Thomasson, 2/23/96 Dep. pp. 55–56.) Ms. Thomasson did not work for Lasater & Co. after 1983, did not work on attempting to secure underwriting business for the firm, and did not discuss the firm with Governor Clinton's office. (Thomasson, 2/23/96 Dep. p. 22; Drake, 1/24/96 Dep. pp. 242–243.)

In April 1985 Madison Guaranty retained the Rose Law Firm to provide legal advice on a securities law matter, a proposed sale of preferred stock. The following year, on July 14, 1986, the firm ceased its representation of Madison Guaranty so the firm could qualify to represent federal regulatory agencies in litigation involving failed savings and loan associations. The Rose Law Firm was paid approximately $21,000 for its work in 1985 and 1986 on behalf of Madison Guaranty.

The Committee devoted considerable attention to the circumstances of the Rose Law Firm's retention by Madison Guaranty. In particular, the Committee examined allegations that James McDougal directed a portion of Madison Guaranty's legal business to Mrs. Clinton for improper reasons. The evidence, however, demonstrated that nothing improper occurred in connection with Madison Guaranty's retention of the Rose Law Firm.

The Committee also examined the substance of the work the Rose Law Firm and Mrs. Clinton performed for Madison Guaranty. The evidence demonstrated that the Rose Law Firm's work for Madison Guaranty was legitimate, well-documented, and appropriately billed. There is no credible evidence that any of the legal services provided by Mrs. Clinton and the Rose Law Firm were improper or contributed to the failure of the institution.

Finally, the Committee reviewed Mrs. Clinton's prior statements concerning the Rose Law Firm's retention by and work for Madison Guaranty. In this regard, the Committee carefully examined the documentary evidence, including the Rose Law Firm's billing records for the Madison Guaranty engagement, and took testimony from Rose Law Firm lawyers who participated in the representation. The Committee also examined the documents prepared by the Rose Law Firm for Madison Guaranty. This evidence demonstrated that Mrs. Clinton has accurately characterized her representation of Madison Guaranty as limited and insubstantial.

1. Retention of the Rose Law Firm by Madison Guaranty Savings & Loan

On February 25, 1996, Pillsbury, Madison & Sutro, the law firm retained by the Resolution Trust Corporation to investigate possible civil claims relating to Madison Guaranty, concluded that a "finder of fact is highly unlikely to find that there was anything untoward, let alone fraudulent or intentionally wrongful, in the circumstances of the Rose Law Firm's retention by Madison Guaranty."[192] The Special Committee's investigation has confirmed that conclusion.

a. Madison Guaranty's proposal to issue preferred stock

The Rose Law Firm was initially retained by Madison Guaranty in April 1985 to provide legal advice on securities law matters, including a proposed offering of preferred stock. James McDougal apparently had already developed a plan to sell preferred stock and had even lined up some potential buyers for the stock. On April 3, 1985, Madison Guaranty personnel met with officials of the Federal Home Loan Bank Board (the "FHLBB") in Dallas. A contemporaneous memorandum[193] of that meeting prepared by an FHLBB official states, "The Association plans to issue $600,000 of preferred

stock for which a buyer is awaiting issuance, and a second issue of unknown amount will follow shortly thereafter."* An April 18, 1985 memorandum from McDougal to Madison Guaranty president John Latham states, "I want this preferred stock matter cleared up immediately as I need to go to Washington to sell stock."[194]

In early April Madison Guaranty employees had taken some preliminary steps to prepare to sell the preferred stock,[195] but legal issues had arisen when they contacted the Arkansas Securities Department (the "ASD") to obtain forms for the stock offering.[196] On April 3, 1985, ASD Chief Examiner Charles Handley advised Madison Guaranty vice president Davis Fitzhugh (a lawyer with an MBA degree who was working with Latham on the preferred stock matter)[197] that he questioned whether Madison Guaranty could issue non-voting preferred stock, but he would "be glad to review his or the association's attorney[s'] reasons and opinions as to their ability to issue preferred stock."[198] McDougal's April 18 memorandum to Latham directing that the preferred stock matter be "cleared up immediately," coupled with Handley's suggestion that an opinion from Madison Guaranty's counsel might resolve the legal issue, may have precipitated the engagement of the Rose Law Firm—the first time entries by Rose Law Firm attorneys on the preferred stock matter are dated April 23, 1985, five days after McDougal's memorandum to Latham, and include conferences with Latham and McDougal about the proposed preferred stock offering.

There are good reasons for Latham and McDougal to have retained the Rose Law Firm to assist Madison Guaranty with the preferred stock matter. At the time that Madison Guaranty encountered questions from the ASD on the preferred stock proposal, some of the institution's employees had been consulting with a Rose Law Firm attorney on securities law issues, although the firm had not been retained and Madison Guaranty was not being billed for those informal consultations.[199] Rick Massey, then a first-year associate at the Rose Law Firm, had met John Latham when Massey lectured on securities law at the University of Arkansas at Little Rock School of Law.[200] Latham was one of the students in a securities law class Massey taught, and after class Latham sometimes would ask Massey questions about securities law issues.[201] After a few of these discussions Latham referred another Madison employee to Massey for advice on securities law matters.[202]

Massey recalls that eventually he had lunch with Latham and "actually pitched the business to him [saying] * * * Why don't you hire us and put us to work on some of these things."[203] Rose Law Firm partner David Knight accompanied Massey to the lunch with Latham.[204] Latham recalls "that Rick pitched the business in the sense that he wanted us to hire them to do legal work for us."[205] Latham's response was that he did not have the authority to do so.[206] Massey testified that he may have then had a conversation

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*It is worth noting, in light of the questions that have been raised about the oversight of Madison Guaranty by Arkansas regulatory officials, that in April 1985 the federal regulators were not overly concerned about Madison Guaranty's financial condition. According to the April 3 memorandum, "The SA [Supervisory Agent] indicated general satisfaction with Madison's business plan as well as corrections and improvements following the last examination report except that the rapid growth has not been accompanied by proportionate increases in Net Worth." (Doc. No. 032901, John Mitchell memorandum to File.) The memorandum also reports that: "A discussion was had regarding Madison's service corporation development projects, with which we have a reasonable comfort level."

with Mrs. Clinton about Madison Guaranty, because he was aware that she was acquainted with James McDougal.[207] Latham also has a "vague recollection" of a discussion with McDougal in which they either discussed or Latham inferred that McDougal "had friends at the Rose Law Firm" and "was wanting to spread his business with more of his friends."[208]

b. Mrs. Clinton's role in the retention of the Rose Law Firm by Madison Guaranty

Mrs. Clinton recalls that Massey or Vincent Foster asked her if she would talk to McDougal about the firm doing legal work for Madison Guaranty.[209] Mrs. Clinton also recalls that some of the Rose Law Firm's partners were hesitant to accept McDougal as a client because several years earlier, when McDougal was operating another small Arkansas financial institution—Madison Bank & Trust Company of Kingston, Arkansas[*]—he had retained the firm and then failed to pay in full for the services they provided.[210] The Special Committee's investigation has confirmed Mrs. Clinton's recollection of a problem obtaining payment from Madison Bank for prior legal work by the Rose Law Firm. Documentation obtained by the Special Committee shows that the Rose Law Firm was not paid by Madison Bank for legal work in late 1981 and early 1982 until October 1984—almost three years after the work was done.[211] Moreover, when the Rose Law Firm finally was paid in October 1984, Madison Bank paid only $5,000 of the total $5,893.63 that was owed to the firm.[212]

In addition, Rose Law Firm partner David Knight confirmed that at the time of the lunch with Latham, Rose Law Firm partners were concerned about the problem the firm had encountered collecting for the earlier Madison Bank work. Knight testified that immediately before the lunch with Latham he mentioned the possible Madison Guaranty engagement to C.J. Giroir, a senior partner at the firm, who raised the problem the firm had encountered in collecting for the Madison Bank legal work.[213] Knight recalls that Giroir said, "He thought it was fine to go ahead and have the lunch. But if anything came out of it, and we decided we wanted to undertake a representation on something, that we needed to—I needed to look into that and make sure there wasn't a problem there."[214] As noted above, Mrs. Clinton recalls that Vincent Foster may have asked her to approach McDougal about the firm's retention by Madison Guaranty and the prior payment problems with McDougal at Madison Bank, and that she may have spoken with other Rose Law Firm partners about the matter.[215] (Her recollection that she may have spoken with other partners is consistent with Knight's recollection that Giroir raised the matter with him—

[*] Madison Bank & Trust Company should not be confused with Madison Guaranty Savings & Loan Association. They were two different financial institutions that James McDougal controlled and operated at different times. The potential for confusion stems from the fact that in each instance McDougal changed the name of the institution to "Madison" after he acquired control. While the "Madison" in Madison Bank & Trust may have been selected because the bank was located in Madison County, Arkansas, Madison Guaranty Savings & Loan (formerly Woodruff County Savings and Loan Association) was not in Madison County—it was in a different part of the state altogether. The use of a profile of President James Madison on Madison Guaranty's stationary suggests that McDougal may have selected the name of the bank because he admired President Madison. Madison Bank employee Gary Bunch confirmed that point when he testified before the Special Committee. (Bunch, 5/16/96 Hrg. p.42.)

clearly the partners were concerned about McDougal's prior failure to pay his bills in a timely fashion.)

Although it is impossible now, over eleven years later, to reconstruct exactly how the billing issue was resolved and the Rose Law Firm was retained, it appears that Massey* or Foster may have spoken with Mrs. Clinton about the billing problem and she then spoke with McDougal.[216] Mrs. Clinton recalls that she told McDougal the Rose Law Firm would do the work if Madison Guaranty would enter into a retainer agreement which would ensure that the Rose Law Firm was paid for its work.[217] Mrs. Clinton remembers that McDougal agreed to a $2,000 a month retainer and indicated that Massey could do the securities work for Madison, if "Latham wants him to do the work."[218]

Mrs. Clinton was the "billing partner" on the Madison Guaranty engagement, and Massey was the junior associate responsible for the "hands-on" legal work. This arrangement was dictated both by the kind of legal work that was involved and by the Rose Law Firm's internal management policies. The work to be done for Madison Guaranty involved advice on corporate securities law, a very technical and specialized area. Mrs. Clinton was a commercial litigator and did not have any special expertise in corporate securities law.[219] Massey, who did practice in that area, was a junior associate. Rose Law Firm policies did not permit a junior associate to be solely responsible for a client account.[220] Accordingly, Mrs. Clinton served as the billing partner while Massey did most of the work on the securities law matters.*

The evidence collected by the Special Committee confirms that Massey performed most of the substantive legal work and billed considerably more time than Mrs. Clinton on the securities law matters.[221] This finding is consistent with Mrs. Clinton's public statements regarding the matter, including her statements before additional billing records were discovered in the White House on January 4, 1996.[222] The Rose Law Firm billing records that were discovered in January 1996 contain detailed time entries for the Rose Law Firm's work for Madison Guaranty. Those records show that Mrs. Clinton's billings on the securities law matters totalled approximately 19.4 hours over 9 months, while Massey billed 75.4 hours over the same time period.

During the Special Committee's hearings an issue arose concerning Mrs. Clinton's description of her work for Madison Guaranty as a "minimal amount."[223] Comparing Mrs. Clinton's Madison Guaranty billings with the billings by Jay Stephens of Pillsbury Madi-

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*Whatever the exact sequence of events, it is clear that Massey was seeking to recruit Madison Guaranty as a client. Knight recalls that Massey "came up with the idea of having John Latham to lunch" (Knight, 4/26/96 Dep. p.13) and it was Massey who "pitched the business" to Latham. Knight, 4/26/96 Hrg. pp.34–35. Latham recalls Massey asking for work, but does not even recall Knight being present at the lunch. (Latham, 5/16/96 Hrg. p.29.)

*At the May 16, 1996 hearing at which Latham and Knight testified, Majority Counsel questioned why Mrs. Clinton, rather than Knight, served as the billing partner on the engagement. (Knight, 5/16/96 Hrg. pp.48-51.) In fact, it makes perfect sense for Mrs. Clinton to have served as the billing partner—it was she who had arranged the retainer agreement with McDougal that addressed the payment concerns arising out of the prior Madison Bank work. Having met with McDougal and negotiated the retainer agreement, it is to be expected that Mrs. Clinton would serve as the billing partner and ensure that the billing procedure she had agreed upon with McDougal was followed. Knight testified that it was not unusual at the Rose Law Firm for a partner to handle billing on a matter that was outside that partner's area of expertise. (Knight, 4/24/96 Dep. p.27, as corrected by a May 16, 1996 errata submission.)

son & Sutro on the investigation of Madison Guaranty conducted by that firm for the Resolution Trust Corporation sheds some light on this issue. As discussed elsewhere in this report, Stephens testified that he did "minimal" work on the PM&S investigation of Madison Guaranty, but his billing records[224] show that he billed 339.75 hours over 12 months, or an average of 28.3 hours per month. Mrs. Clinton in contrast, billed 63.5 hours over 15 months, or an average of 4.23 hours per month. The fact that Mr. Stephens testified under oath that his work was "minimal" in amount,[225] when the records of the time he billed to the government show he did far more work in 1994 and 1995 than Mrs. Clinton did in 1985 and 1986, demonstrates that Mrs. Clinton's description of her work for Madison Guaranty as "minimal" is fair and accurate. (The comparison also suggests that Mrs. Clinton's critics may be applying a double-standard in an effort to score political points.)

Other contemporaneous documentation that the Special Committee has collected confirms the limited nature of Mrs. Clinton's work on the preferred stock and securities brokerage matters. Massey corresponded and consulted extensively with the ASD on a number of issues relating to the preferred stock proposal and Madison Guaranty's efforts to license a securities brokerage affiliate. The documentation indicates that the correspondence and other communications on these matters were between Handley, representing the ASD, and Massey, representing Madison Guaranty.[226] Handley testified that he had numerous communications with Massey about the preferred stock and broker-dealer matters.[227] He did not have any contact with Mrs. Clinton. Mrs. Clinton's time records show that she reviewed only a few of the letters that Massey wrote to the ASD, had no discussions with Handley, and played little or no role in the drafting and the underlying research and legal analysis.[228] Mrs. Clinton had only one brief telephone discussion with the ASD, which is discussed below.

There is no significant discrepancy between the recollections of Massey and Mrs. Clinton regarding the circumstances surrounding the retention of the Rose Law Firm by Madison Guaranty. Latham and Knight confirm the key events—the effort by Massey to obtain business from Madison Guaranty[229] and the prior billing problem for Madison Bank work.[230] Massey has consistently stated that he made an effort to recruit Madison Guaranty as a client and had made a proposal to Latham, "As I testified earlier, I actually pitched the business to him. I think the pitch was basically, gee, I'm—you're asking me all these questions. Why don't you hire us and put us to work on these some of these things."[231] Latham confirmed that Massey "pitched the business" at the lunch and tried to persuade Latham that Madison Guaranty should retain the Rose Law Firm.[232] Massey was unable to "close the deal," however, because Latham did not have the authority to retain the Rose Law Firm. (Latham does recall that he suggested to McDougal that Madison Guaranty should retain the Rose Law Firm, and McDougal came back to Latham and instructed him to put the Rose Law Firm on retainer.[233]) Mrs. Clinton eventually played a role in resolving the matter because of her prior relationship with James McDougal.[234]

Different versions of how Madison Guaranty retained the Rose Law Firm have been recounted by James McDougal * and over time have been discredited. McDougal at one point told a reporter that Governor Clinton visited McDougal at Madison Guaranty and expressed a concern about his family's financial situation, then asked if McDougal could send Mrs. Clinton some of Madison Guaranty's legal work.[235] The Special Committee's investigation supports the prior conclusion of Pillsbury, Madison & Sutro that McDougal's story is contrary to the evidence and simply makes no sense.**

A brief analysis of the economics of the Rose Law Firm engagement reveals the flaws in this version of the retention. McDougal agreed to put the Rose Law Firm on a $2,000 a month retainer. As a partner in the Rose Law Firm, Mrs. Clinton earned a percentage of the firm's profits. "[I]f all the [$2,000 a month] retainer had been earned in fees, Mrs. Clinton's share would have been less that $20 a month."[236] This nominal sum of money does not support the theory that McDougal was using Madison Guaranty to bestow a financial benefit on the Clintons. Moreover, Mrs. Clinton's share of the profits was calculated based on a "five year rolling average" of her billings for her own time.[237] Unlike some law firms, the Rose Law Firm generally did not compensate partners for legal work they brought into the firm that was done by others.[238] Thus, if the purpose of the Madison Guaranty engagement was to enrich the Clintons, Mrs. Clinton would have tried to bill as much time to the matter personally as possible. As discussed above, she did not do that.

There is another significant flaw in this version of events. McDougal claims that Governor Clinton visited him at Madison Guaranty in the summer or perhaps early fall of 1984 (according to McDougal, it was a hot day and Clinton, sweating from his jog, supposedly sat in and stained McDougal's new leather chair).[239] Yet the retainer agreement and the Rose Law Firm's work for Madison Guaranty did not commence until April 1985. It seems unlikely that if Governor Clinton had asked McDougal to retain Mrs. Clinton, and if McDougal was willing to do so, that the retainer

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* The Special Committee did not subpoena James McDougal pursuant to an agreement with the Office of the Independent Office (the "OIC"). On September 21, 1995, Special Committee staff provided the OIC with a list of potential witnesses to be interviewed, deposed or examined at public hearings. On September 27, 1995, the OIC responded to the Special Committee letter of September 21, stating, "We are particularly concerned that investigations and hearings on subject matters relating to Madison Guaranty, Whitewater and CMS would hinder or impede our investigations and prosecutions and might jeopardize the proper administration of justice in light of the pending indictment in *United States* v. *James B. McDougal*." On October 2, 1995, Chairman Alfonse D'Amato and Ranking Member Paul Sarbanes wrote to the OIC and stated, "The Special Committee does not intend to seek the testimony of any defendant in a pending action brought by your office, nor will it seek to expand upon any of the grants of immunity provided to persons by your office or its predecessors." James McDougal, of course, was a defendant in a pending criminal action brought by the OIC.

** Pillsbury Madison & Sutro reached the following conclusion:

"First, McDougal may not be a reliable witness. In January 1996, McDougal's psychiatrist testified that McDougal's recollections are not trustworthy, although this one might be.

"Second, the statement that McDougal had no specific legal work in mind when he retained the Rose Law Firm obviously is wrong. The preferred stock issue had arisen at least a week before Mrs. Clinton met with McDougal on April 23, 1985, and work on this project began the same day as that meeting.

"Third, and perhaps most significantly, the alleged economic motivation makes no sense. McDougal suggests that the Clintons needed $2,000 a month and the implication is that this accounts for the monthly retainer in that amount, but there is no evidence that the Clintons ever received anything like $2,000 a month from the engagement, and every reason to believe that they never received more than a trivial sum of money." (PM&S Supplemental Rose Report, 2/25/96, p.24 (footnotes omitted).)

would not have been put into place and the Rose Law Firm would not have been given any legal work until some nine months later. David Knight recalls that his lunch with Latham and Massey was in the spring of 1985,[240] perhaps in February or March.[241] Massey testified that it was a matter of weeks between the "pitch" to Latham and the retention of the Rose Law Firm.[242] The Rose Law Firm billing records establish that the firm began working for Madison Guaranty on April 23, 1985.[243] The first $2,000 monthly "retainer" payment was in April or May 1985.* Knight recalls that it was Massey who told him that the firm had been retained by Madison Guaranty.[244] All of these events are consistent with Mrs. Clinton's recollection of the circumstances of the retention and are inconsistent with McDougal's story.**

c. Conclusion

Taken as a whole, it is clear that there was nothing improper or inappropriate about the retention of the Rose Law Firm by Madison Guaranty. Madison Guaranty needed legal counsel after legal issues arose out of McDougal's plan to sell preferred stock. The Rose Law Firm, because of Massey's relationship with Latham and the firm's expertise in securities law, was a logical choice to provide that counsel. The Special Committee has not found any evidence that Madison Guaranty's retention of the Rose Law Firm was a scheme for McDougal to confer a financial benefit on the Clintons. This conclusion is consistent with the findings of Pillsbury Madison & Sutro after a two-year investigation of Madison Guaranty.[245]

2. The Arkansas Securities Department's regulation of Madison Guaranty Savings and Loan

As discussed above, the Special Committee's investigation has confirmed that Mrs. Clinton's role in the representation of Madison Guaranty before the ASD was very limited. A related issue is whether, notwithstanding the limited nature of her work on the securities matters, Mrs. Clinton sought to use her position as the Governor's wife to seek to influence the ASD. The Special Committee has reviewed both matters—the preferred stock proposal and the broker-deal proposal—in which the Rose Law Firm represented Madison Guaranty before the ASD. In each case the evidence demonstrates that there was no effort to obtain preferential treatment, and that, in fact, no preferential treatment was given. To the contrary, the ASD under the direction of Beverly Bassett Schaffer performed its duties in an entirely appropriate manner and took no action that either improperly benefitted Madison Guaranty or that was in any way inconsistent with the public interest.

a. The proposal to issue preferred stock

As noted above, on April 3, 1995, Madison Guaranty vice-president Davis Fitzhugh contacted the ASD to obtain the necessary

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*A May 2, 1985 Madison Guaranty check for $2,000 (Doc. No. S-KCR02954) to the Rose Law Firm may be the first monthly payment under the retainer agreement. No Madison Guaranty checks to the Rose Law Firm prior to May 2, 1985 check have been located.

**It is worth noting that on at least one occasion McDougal has recanted his earlier statements about the retention of the Rose Law Firm and characterized them as a "total fabrication." ("First Lady's Former Law Aide Supports and Contradicts Her", Star Tribune, Jan. 12, 1996.)

forms for a preferred stock offering.[246] ASD Chief Examiner Handley testified that Fitzhugh said he had been told other savings and loan institutions had issued preferred stock and there was a "standard form" for such stock offerings.[247] Later that day, Handley sent a memorandum to Schaffer regarding his conversation with Fitzhugh on the preferred stock matter.[248] In that memorandum Handley, who was not an attorney, advised Schaffer that he did not believe the Arkansas savings and loan statutes provided for the issuance of non-voting preferred stock by a state-chartered savings and loan association.[249] Handley also provided Fitzhugh a copy of his April 3 memorandum, which attached copies of the Arkansas savings and loan statutes. It appears that Fitzhugh reviewed the memorandum and the statutes Handley sent him. An April 16 memorandum from Fitzhugh to John Latham summarizes the statutes and argues that under the statutes Madison Guaranty should be permitted to issue preferred stock.[250] Since the Special Committee was not able to obtain testimony from McDougal, it was not possible to determine whether Fitzhugh's April 16 memorandum caused McDougal to write his April 18 memorandum to Latham stating he wanted the preferred stock "cleared up immediately" and to decide to retain the Rose Law Firm.

(1) Mrs. Clinton's one telephone conversation with Beverly Bassett Schaffer

Mrs. Clinton had one preliminary telephone conversation with Beverly Bassett Schaffer about the preferred stock matter.[251] On April 29, 1985, Mrs. Clinton called Schaffer and told her that the Rose Law Firm was preparing to submit a proposal for Madison Guaranty to issue preferred stock.[252] Schaffer testified that she told Mrs. Clinton she was already "familiar with that issue."[253] Schaffer told Mrs. Clinton that the letter should be directed to Charles Handley, who was handling the Madison Guaranty matter.[254] Mrs. Clinton does not recall anything specific about her conversation with Schaffer except that she asked to whom in the office requests concerning savings and loan associations should be directed.[255] Her recollection is consistent with Schaffer's testimony and with the documentary evidence, and the Special Committee has no evidence that anything further was discussed in that telephone conversation. That telephone call was Mrs. Clinton's only personal contact with the ASD.

(2) Richard Massey's work with Charles Handley

On April 30, 1985, the Rose Law Firm sent a letter to Handley seeking to confirm the Rose Law Firm's legal opinion that under the Arkansas Business Corporations Act a state-chartered savings and loan association could issue a class of non-voting preferred stock.[256] Schaffer was copied on the letter. On May 6, 1985, Handley forwarded the letter to Schaffer and Assistant Securities Commissioner Nancy Jones with a handwritten note indicating that he did not agree with all aspects of the Rose Law Firm's legal analysis.[257] Although Handley agreed that a state-chartered savings and loan could issue preferred stock, he believed that a different provision of Arkansas law provided the authority for the

stock issuance. The distinction here is important—Handley did not question Madison Guaranty's ability under Arkansas law to issue preferred stock. His concern was a narrow, technical question of what provision of Arkansas law authorized the issuance of preferred stock. It was left to Schaffer, a lawyer with experience in securities law, to resolve that issue.

On May 14, 1985, Schaffer concluded that the Rose Law Firm's analysis was correct and that under the Arkansas Business Corporations Act a state-chartered savings and loan institution could issue non-voting preferred stock.[258] Schaffer's decision has been widely misunderstood and misreported. Contrary to the assertions in many news media reports on this matter, Schaffer's decision did not permit Madison Guaranty to sell preferred stock. Instead, it simply cleared the way for Madison Guaranty to file an application with the ASD requesting permission to sell the stock. In other words, even after Schaffer's May 14 letter, issuance of the stock remained subject to the approval of the ASD. As discussed below, that approval was never granted.

b. The Proposal to Operate a Broker-Dealer Subsidiary

The preferred stock proposal was not the only matter in which the Rose Law Firm represented Madison Guaranty before the ASD. It appears that as early as March 1985, McDougal was planning to establish a securities brokerage operation at Madison Guaranty. Davis Fitzhugh, a former vice president of Madison Guaranty, testified that he "was hired primarily because [Madison Guaranty was] interested in having a broker/dealer network, securities sales. I told them I was willing to take all the series licenses involved. I didn't know anything about it, but I was willing to try to learn. So, that's really—that's one of the main things they hired me for, that plus general real estate development."[259] On May 14, 1985, Richard Massey submitted to the ASD on behalf of Madison Guaranty an application to engage in securities brokerage activities through a second-tier service corporation.[260] A thorough review of the correspondence between Massey and Handley on this proposal demonstrates that Handley and the ASD clearly were not giving Madison Guaranty or the Rose Law Firm any special treatment. That correspondence is described below.

On May 22, 1985, a week after Massey submitted the securities brokerage application, Handley forwarded a memorandum to Schaffer and Jones listing eleven issues that he had identified in his review of the application.[261] Handley also sent Massey a copy of his memorandum. In addition to issues relating to filing procedures and information about the proposed broker-dealer subsidiary, Handley identified two significant issues relating to the ASD's regulation of the parent company. First, Handley noted that the ASD would need to review current financial statements for Madison Guaranty to determine whether "the total aggregate outstanding investment in capital stock, obligations or other securities of service corporations and subsidiaries and joint ventures" exceeded 6% of Madison Guaranty's assets, a limitation imposed by ASD Rule V(C) (the "six percent rule").[262] Second, Handley noted that Madison Guaranty's most recent financial statements, for year-end 1984, indicated that the institution did not meet the FHLBB mini-

mum net worth requirements.[263] Handley recommended to Schaffer and Jones that Madison Guaranty be required to submit their current net worth calculation and a plan to cure any deficiency before the ASD would approve the securities brokerage proposal.

On June 17, 1985, Massey replied to Handley's letter of May 22, indicating that his letter was an amended application on behalf of Madison Guaranty.[264] Massey's June 17 letter outlined steps that Madison Guaranty would take to correct the institution's net worth deficiency, including issuance of "a new class of preferred stock."[265] Despite the proposal outlined in Massey's June 17 letter, Handley took the position that Madison Guaranty would have to comply with federal net worth requirements before the ASD would approve the brokerage subsidiary proposal. On June 18, 1985, after reviewing the amended application submitted by Massey, Handley sent a memorandum to Jones and Schaffer stating that the application should not be approved "until the Association has filed proof it has met the [FHLBB] minimum net worth requirement and even then our approval would need to be conditioned on receiving the FHLBB's principal supervisory agent's approval" (under the so-called "direct investment rule").[266] Handley also continued to insist that Madison Guaranty provide additional financial information so the ASD could confirm that the institution's proposed investment in the broker-dealer would not exceed the six percent rule limitation on investments in service corporations.[267]

The significance of Handley's position on these two regulatory requirements, as documented in his June 18 memorandum, is that it dispels any suggestion that the ASD was "going easy" on Madison Guaranty. Handley, supported by Schaffer, was requiring Madison Guaranty to meet all applicable regulatory requirements before the ASD would permit the institution to operate a broker-dealer subsidiary.*

On July 10, 1995, Massey sent a letter to Handley in response to Handley's June 18 memorandum, arguing that the direct investment rule was inapplicable because the "investment in question was one of the service corporation and not of Madison."[268] Massey argued that the rule prohibited only direct investments by savings and loans in a service corporation, so in the Madison Guaranty situation, where the brokerage firm would be a second-tier investment by an existing service corporation, prior approval by the FHLBB was not required.[269] On July, 17, 1985, Handley forwarded Massey's letter of July 10th to Schaffer and Jones, stating that he disagreed with Massey's position and also had concerns about the effect on net worth of certain adjustments to Madison Guaranty's

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*In a February 25, 1992 memorandum from Schaffer to Jeff Gerth, a reporter for The New York Times, Schaffer recalled that Assistant Securities Commissioner Nancy Jones believed that Madison Guaranty did not need to obtain approval of the ASD before operating a second-tier securities subsidiary: "In the mid-1980's, federal savings and loans were allowed to engage in securities brokerage activities. Assistant Commissioner Nancy Jones believed that the savings and loan could engage in this activity without our prior approval. Charles Handley and I took the position, however, that it was not a pre-approved activity and that the savings and loan could not do it without our prior approval. Thus, we gained the necessary leverage to insist on an immediate infusion of additional capital." (Doc. Nos. 0000149, 0000155.) Obviously, if Schaffer was seeking to give Madison Guaranty special or lenient treatment, she could simply have adopted Jones's position and permitted Madison Guaranty to go forward with the brokerage operation. As the correspondence summarized here demonstrates, however, she did the opposite. Schaffer and Handley required Madison Guaranty to comply with every applicable regulatory requirement.

December 31, 1984 audited financial statements.[270] Handley told Schaffer and Jones that he "would recommend that the approval of this application be conditioned on the Association meeting the net worth requirements of the FHLBB or at a minimum the Association filing a detailed and reasonable plan which reflects that these net worth requirements will be met within a very short time."[271] Again, Massey was copied on the memorandum.

On July 25, 1985, Massey wrote another letter to Schaffer indicating that the adjustments to Madison Guaranty's year-end 1984 financial statements were a result of the differences in calculating "net worth" under generally accepted accounting principles (GAAP) and regulatory accounting principles (RAP).[272] Massey also proposed that Madison Guaranty be permitted to operate the brokerage subsidiary and use profits from that and other new business ventures, as well as savings from plans to reduce operating expenses, to cure the net worth deficiency. On July 27, 1985, Handley sent a memorandum to Schaffer and Jones stating that he had reviewed Massey's letter of July 25 and concluded that the year-end 1984 adjustments would not decrease Madison Guaranty's net worth.[273] Handley continued to recommend, however, that Madison Guaranty's application to operate a securities brokerage be conditioned on Madison Guaranty's submission of either proof that it was in compliance with FHLBB net worth requirements or a detailed plan outlining steps to come into compliance. He rejected the proposal Massey had submitted, on behalf of Madison Guaranty, that the net worth deficiency be cured with net profits generated from proposed new business ventures (including the proposed brokerage subsidiary) and the future reduction of operating expenses.[274]

Efforts by Madison Guaranty and Massey to satisfy the requirements imposed by the ASD continued through 1985. On September 9, 1985, Massey forwarded to Schaffer a letter outlining two proposed actions Madison Guaranty would take to come into compliance with the FHLBB net worth requirements by December 31, 1985.[275] Massey's letter acknowledged that as of June 30, 1985, Madison Guaranty was not in compliance with the applicable FHLBB minimum net worth requirement.[276] Massey proposed that Madison Guaranty would cure the net worth deficiency before year-end with a $3 million offering of preferred stock and an offering of limited partnership units of Madison Guaranty, with Madison Financial Corporation as the general partner.[277]

On September 12, 1985, after reviewing the proposal set forth in Massey's letter of September 9, Handley prepared a handwritten memorandum to Schaffer advising her that Madison Guaranty's net worth deficiency had "increased greatly since March 31, 1985."[278] Handley recommended that, at a minimum, the ASD should condition the approval of the securities brokerage application on three factors: 1) Madison Guaranty filing documents which reflected the "exact terms and conditions" of the preferred stock offering; 2) an opinion by counsel that the preferred stock would meet all the conditions necessary under FHLBB rules to be included in regulatory net worth; and, 3) that Madison Guaranty would file a statement reflecting that the institution could successfully complete its stock offering in the stated time period.[279]

Schaffer accepted Handley's recommendation, and on October 17, 1985, she sent a letter to Massey indicating that Madison Guaranty's request to engage in brokerage activities had been approved on September 20, 1985, "conditioned upon Madison's [compliance with] the Federal Home Loan Bank Board's minimum net worth requirements by December 31, 1985."[280] Schaffer also asked Madison Guaranty to keep the ASD informed on the status of "Madison's efforts to achieve compliance."[281] On December 9, 1985, Handley wrote to Massey that the ASD was "concerned about the ability of Madison to complete the sale of such stock and meet the minimum net worth requirements of the Bank Board by December 31, 1985, as earlier agreed."[282] On December 18, 1985, Madison Guaranty acknowledged that it could not meet the conditions for engaging in securities brokerage activities that had been imposed by the ASD: "Madison acknowledges that it has not met the FHL[B]B's minimum net worth requirements, and that the successful implementation of steps which would satisfy such requirements was a condition to your approval of the Application. Thus, Madison undertakes that it will not engage in brokerage activities until it has received approval from [the ASD] with respect to such activity."[283] The requirements imposed by the ASD were never met.

Despite the months of work by Massey and the Rose Law Firm,* Madison Guaranty never issued any preferred stock and never operated a broker-dealer subsidiary. It is abundantly clear that the institution received no preferential treatment from Schaffer or the ASD in connection with its application to issue preferred stock and operate a brokerage subsidiary.

c. Beverly Bassett Schaffer's efforts to close Madison Guaranty

Madison Guaranty's financial condition continued to worsen in the first half of 1986. On July 11, 1986, Schaffer attended a meeting in Dallas between the FHLBB regulators and the Madison Guaranty board of directors. In attendance were Schaffer and Handley from the ASD; Rolf Coburn, Bob Young, Dawn Pulcer, James Clark, Chip Kieswieter, Larry Stacy, and Walter Faulk from the FHLBB; Karen Bruton from the Enforcement Division of the Federal Savings and Loan Insurance Corporation (the "FSLIC"), the predecessor to the Resolution Trust Corporation; Steve Cuffman, Dennis Edwards, John Latham, Jack Owen, Sarah Hawkins, and Charles Peacock from Madison Guaranty board of directors; and John Selig and Breck Speed of the Mitchell, Williams & Selig law firm, outside counsel to Madison Guaranty.[284] McDougal was not present, and no one from the Rose Law Firm attended the meeting.

At the meeting, the regulators confronted the board of directors with findings of regulatory violations at Madison Guaranty and advised the board of directors that the McDougals would have to be removed from any role at the institution.[285] Faulk identified a number of serious problems at Madison Guaranty, including: 1) net worth $1.6 million short of FHLBB regulations; 2) uncontrolled

*As noted above, the great majority of this work was done by Massey. Mrs. Clinton did not play a significant role and had no personal contacts with the ASD after the initial telephone conversation with Schaffer.

growth of deposits; 3) accounting mismanagement; 4) excessive compensation for McDougal and Latham; 5) "misuse of position and usurpation of corporate opportunities"; and 6) inaccurate and unsupported appraisals and projections.[286] Handley testified that the ASD was in complete agreement with the federal officials and concurred with the action against McDougal.[287] FHLBB officials have stated that Schaffer and the ASD were fully supportive of the FHLBB's position and took no action to interfere with or impede the actions of the federal regulators.[288]

At the meeting, Selig proposed a consulting agreement or a voting trust for the McDougals, but the federal regulators insisted that the McDougals had to be removed from any association with Madison Guaranty and its affiliates.[289] The McDougals resigned from their positions at Madison Financial later that month.[290] Latham also was removed.[291] Board member Steve Cuffman assumed the title of Madison Guaranty chief executive officer and oversaw Madison Guaranty's operation until a new chief executive was put in place by the federal regulators.

After the July 11 meeting, Schaffer provided a copy of a June 19, 1986 FHLBB letter on Madison Guaranty to Sam Bratton, an aide in Governor Clinton's office who was responsible for state savings and loan matters.[292] Schaffer testified that she sent the FHLBB letter and a July 2 cover note to Bratton because she was concerned that McDougal might seek to have the governor's office intercede on his behalf because of his longstanding relationship with Governor Clinton.[293] At the time Schaffer knew that McDougal had been an aide during Clinton's first term as governor and was a political supporter, but she did not know that Clinton had any business ties to McDougal.[294] Schaffer also feared that depositors would be concerned about their accounts at Madison Guaranty and might contact the governor's office, and she wanted Bratton to be prepared for any such calls.[295] With respect to the latter concern, Schaffer testified that it was her regular practice* to inform the governor's office before a savings and loan association was closed.[296]

The June 19 FHLBB letter that Schaffer attached to her note to Bratton had already been sent to Madison Guaranty, so Schaffer was not releasing any non-public information to the governor's office. In addition, FHLBB regulators had contacted McDougal directly and advised him that the FHLBB would be taking over management of the institution and that he would be removed.[297] Schaffer testified that she does not believe that anything untoward, irregular, or improper resulted from her communication with Bratton.[298] Bratton[299] and Betsey Wright,[300] the former chief of

*Documents obtained by the Special Committee confirm that state regulators kept the governor's office apprised of potential regulatory problems affecting financial institutions. A February 19, 1986 letter to Governor Clinton from Bank Commissioner Marlin D. Jackson (Doc. No. DKSN 018001) reports on the lack of funds in the Federal Savings and Loan Insurance Corporation (FSLIC) fund. The letter states that Jackson "shared this information only with members of the Governor's staff. I think it is important to recognize the seriousness of the dilemma facing the Congress and the State in regard to the adequacy of the FSLIC fund." It was only some five months later that Schaffer informed the governor's office of the problems at Madison Guaranty. Her action in doing so appears both timely and entirely appropriate in view of the problems recognized in the Jackson letter. (Jackson's letter proved to be prescient. As discussed below, in 1987 when Schaffer recommended to federal authorities that Madison Guaranty be closed, the FSLIC insurance fund was inadequate, and as a result the closure of the institution was delayed for almost two years.)

staff to Governor Clinton, confirmed that Schaffer's action was appropriate and consistent with past practice in matters involving troubled financial institutions. Clearly, nothing was done by ASD officials to thwart the decision to remove the McDougals.[301]

Ultimately, it was Schaffer who insisted that Madison Guaranty be closed by the federal regulators.[302] Although a cease and desist order was entered against Madison Guaranty shortly after the July meeting in Dallas,[303] the ASD did not have proof that Madison Guaranty was insolvent until late 1987, when the institution's independent auditors completed an annual audit of the thrift. On December 10, 1987, after reviewing the independent auditors' report on Madison Guaranty's financial condition at year-end 1986, Schaffer recommended to the FHLBB that the institution be closed, "since it is apparent now that [Madison Guaranty] cannot be restored to solvency without assistance of the FSLIC and since it appears unlikely that the FHLBB will succeed in finding a purchaser or merger partner, [the ASD] must request that [Madison Guaranty] be transferred immediately to the FSLIC."[304] The FHLBB refused to take action to close the institution, however, and as a practical matter there was nothing further Schaffer and the ASD could do without the support of the federal officials.

The Committee found no evidence that Schaffer and the ASD failed to take timely and appropriate action to close Madison Guaranty. While the ASD theoretically could have brought a lawsuit in state court to have Madison Guaranty closed and placed in a receivership, the ASD would have had the burden of proving that Madison Guaranty was insolvent. Prior to receiving the December 1987 audit report, the ASD had no such proof. More important, even after receiving the December 1987 audit report, the ASD did not have funds to pay off depositors if Madison Guaranty had been closed by the state.[305] Schaffer testified that if the institution had been closed without paying off depositors, it might have precipitated "panic" and led to a statewide banking crisis.[306] Former FHLBB supervisory agent Walter Faulk agreed that this would have been "a rather foolish move on [ASD's] part because you would raise concerns within the community."[307] Handley testified that if the ASD had moved forward and filed for receivership, it would have been "disastrous to the insurance system in the State of Arkansas."[308] Under these circumstances it is not surprising that the ASD deferred to the federal regulators and did not act unilaterally to close the institution. The federal regulators did not close Madison Guaranty until February 28, 1989.[309] This delay was the result of the failure of the federal authorities to act on Schaffer's December 1987 recommendation and was in no way caused by Schaffer or other Arkansas officials. Although the Special Committee did not investigate the effect this delay had on the losses associated with Madison Guaranty, it is likely that those losses would have been reduced if the federal authorities had heeded Schaffer's recommendation and closed the institution in 1987.

d. Conclusions

(1) The securities law matters on which the Rose Law Firm advised Madison Guaranty were not unusual or inappropriate

The documents and testimony that the Special Committee has obtained provide a number of insights into the work the Rose Law Firm did for Madison Guaranty on the preferred stock and brokerage subsidiary proposals. The evidence establishes that the Rose Law Firm confronted regulatory obstacles at the ASD and performed significant legal services over the course of several months seeking to satisfy those regulatory impediments. This is the kind of legal work that large law firms routinely do for to their clients, and there was nothing unusual or inappropriate about the securities law work the Rose Law Firm did for Madison Guaranty.

Furthermore, the activities that Madison Guaranty was seeking to have approved by the ASD were lawful so long as the applicable regulatory requirements were satisfied. The preferred stock offering in particular, if successful, would have benefitted both depositors and regulators because it would have increased the institution's net worth and improved its financial condition. In the mid-1980s it was a common industry practice for savings and loan associations to issue preferred stock, and financially troubled institutions even were encouraged to do so by federal regulators.[310] Schaffer testified that federal regulators were recommending that troubled thrifts raise additional capital by issuing preferred stock, "particularly for small savings and loans, [or] closely held entities without a market."[311] This policy was reflected in FHLBB regulations in effect at the time. On July 12, 1984, the FHLBB had issued regulations authorizing a federally chartered savings and loan association to establish a subsidiary "whose sole purpose is to issue debt or equity securities that the association is authorized to issue directly * * * and to remit the net proceeds of such issuance to the association. * * *"[312] In May 1985, the FHLBB reported it was "aware that during the past year many institutions [had issued] subordinated debt to "limited purpose" finance subsidiaries which obtained the funds to purchase the subordinated debt by issuing preferred stock to independent third parties."[313] Thus, the preferred stock proposal that Madison Guaranty and the Rose Law Firm presented to the ASD was consistent with both federal regulatory policy and the actions of similarly situated financial institutions.

Finally, the correspondence between Massey and Handley, coupled with the Rose Law Firm billing records, establishes conclusively that Massey without question did most of the Rose Law Firm legal work on the securities matters involving the ASD. Mrs. Clinton's role was relatively minor, and Massey was the point of contact for both the regulators and the client. Mrs. Clinton had only one contact with the ASD, and nothing improper resulted from that contact. This finding is consistent with the position Mrs. Clinton has taken since questions first arose about the work the Rose Law Firm did for Madison Guaranty. Nothing the Special Committee has found calls into question the accuracy of Mrs. Clinton's prior statements regarding the nature and amount her work for Madison Guaranty on the securities law matters.

(2) Madison Guaranty received no preferential treatment

The correspondence between the ASD and the Rose Law Firm also shows that Beverly Bassett Schaffer delegated both Madison Guaranty securities matters to Charles Handley, a career official of the ASD, for review and analysis. Handley was a 16-year veteran of the Department and a career regulator, not a political appointee.[314] He conducted a thorough, rigorous and fair review of Madison Guaranty's proposals and did not hesitate to point out deficiencies and withhold regulatory approval where appropriate. The positions taken by the ASD were based on Handley's interpretation of the applicable laws and regulations, and Handley testified that no one ever pressured him to relax these requirements on behalf of Madison Guaranty.[315] When the Rose Law Firm took issue with Handley's interpretations of the legal requirements, he did not simply acquiesce to the law firm's arguments. Instead, he held firm to his position and demanded compliance with regulatory requirements.

Perhaps most important, Beverly Bassett Schaffer supported Handley's recommendations and never took any action to relax the applicable regulatory requirements or to give Madison Guaranty and the Rose Law Firm special treatment. Schaffer, Handley and ASD staff attorney William Brady all testified that at no point did either Governor Clinton or Mrs. Clinton ask Schaffer to do anything illegal or improper.[316] In particular, Schaffer testified that she did not attach any particular significance to her one telephone conversation with Mrs. Clinton.[317] Nor did anyone in the Governor's office put any political pressure on Schaffer or any other ASD staff to give Madison Guaranty special treatment.[318] In short, Schaffer behaved exactly as an appointed regulatory official should in relying upon the expertise of her professional staff to identify applicable regulatory requirements and then insisting that all such requirements be met before her department approved Madison Guaranty's proposals. Because those requirements were never satisfied, the proposals were never approved by the ASD.

The propriety of the actions taken by the ASD is evidenced by the fact that the federal regulators have since praised Schaffer's actions. Walter Faulk, the former FHLBB supervisory agent for Arkansas savings and loan institutions, has stated that Schaffer "acted responsibly at all times and I don't see how anyone that knew the history of this case,. . . could say that she acted irresponsibly or delayed or drug her feet in any manner whatsoever."[319] The Special Committee has found no contrary evidence. Schaffer at all times acted responsibly and ethically in her dealings with the Rose Law Firm on the Madison Guaranty matter.

3. The IDC Real Estate Transactions

In the late summer and fall of 1985, the Rose Law Firm provided some legal services to Madison Guaranty in connection with the purchase of a large tract of land south of Little Rock from the Industrial Development Corporation ("IDC"). The work done by the Rose Law Firm, and especially Hillary Rodham Clinton, on IDC matters has been the subject of considerable attention. The focus of that attention has been on whether Mrs. Clinton or other Rose

Law Firm lawyers had any involvement in aspects of the IDC transaction that may have been unlawful. The Special Committee investigation found no credible evidence that the Rose Law Firm and Mrs. Clinton were involved in or aware of any unlawful activity involving the IDC property. The evidence the Special Committee has collected that is relevant to this issue is discussed below.

a. The Rose Law Firm and Mrs. Clinton played no role in the alleged "Straw Buyer" arrangement between Seth Ward and James McDougal

On or about August 2, 1985, the Rose Law Firm opened a client billing number (used to record lawyer time and expenses in the firm's internal accounting system for billing purposes) entitled "Madison Guaranty—IDC."[320] Mrs. Clinton, who was the "billing partner" on other work the Rose Law Firm already was doing for Madison Guaranty (discussed above), has no recollection of how the IDC work came into the Rose Law Firm.[321] Webster Hubbell, however, reportedly has said that his father-in-law Seth Ward, who was working for Madison Guaranty at the time, referred the matter to the Rose Law Firm at the direction of James McDougal.[322]

Rose Law Firm billing records indicate that real estate partner Thomas Thrash began working on the IDC transaction on August 6, when he reviewed a draft contract for the sale of the property to Madison Financial Corporation, a subsidiary of Madison Guaranty.[323] Thrash exchanged drafts of the sales contract with IDC's attorney, Darrell Dover, throughout August.[324] The Rose Law Firm billed Madison Guaranty $654.30 for services provided by Thrash in August 1985 on the acquisition of the IDC property.[325] Rose Law Firm associate Davis Thomas, Jr. also worked on the acquisition of the IDC property in August 1985, and the Rose Law Firm billed Madison Guaranty $90.00 for his work.[326] Mrs. Clinton did not do any work on the IDC matter in August 1985.[327]

The principal issue relating to the Rose Law Firm's work in connection with the acquisition of the IDC property is whether Rose Law Firm attorneys knew or should have known that Seth Ward, who purchased some 650 acres of the IDC property for $1.15 million, may have been a nominee or "straw buyer" for Madison Guaranty.[328] (Madison Financial Corporation purchased the remaining 400 acres of the IDC property.)[329] The straw buyer issue is pertinent because if Ward was acting as a straw buyer for Madison Guaranty, the transaction may have been a violation of an Arkansas law limiting the size of investments by state-regulated savings and loan associations.[330] John Latham[331] and Davis Fitzhugh[332] also have testified that they understood that Ward purchased a portion of the IDC property because of limits on the amount Madison Guaranty could invest in a service corporation (Madison Financial). Former Madison Guaranty loan officer Don Denton reportedly has stated that the purpose of the transaction was to avoid the investment limitation.[333]

(1) The purchase of the IDC property by Madison Financial and Seth Ward

In 1985 Ward was employed by Madison Guaranty on a part-time basis to look for real estate investment opportunities in the Little Rock area. Ward testified[334] that James McDougal wanted to acquire an easement through the IDC property to gain access to a "landlocked" piece of property that McDougal intended to buy from International Paper Corporation.* When Ward contacted IDC, they were unwilling to sell an easement, but offered to sell the entire property.[335] Ward recalls that he reported back to McDougal, and McDougal said Madison Guaranty was not interested in purchasing such a large piece of property.[336] John Latham confirms that McDougal was interested in acquiring only a portion of the IDC property—"just one area on 145th Street that he wanted to develop as a residential area."[337] Ward went back to IDC and negotiated a lower price, and then told McDougal he intended to purchase the entire property himself. Ward recalls that McDougal responded, "Well, at that price, we'd like to share it with you."[338] Again, Latham's recollection is consistent. Latham testified: "It was a very good purchase, and I think that both Seth wanted to make as much money on it as possible and Jim McDougal wanted to make as much money as possible. And so they split it up."**

Despite the testimony of Ward and Latham, it is not clear when the decision was made that Ward would purchase a portion of the IDC property and Madison Financial would purchase the remainder of the property. The initial drafts of the contract for the sale of the IDC property indicated that the entire property would be purchased by Madison Financial or its "affiliate."[339] Subsequent drafts changed the wording of the contract from "affiliate" to "any individual or entity" designated by Madison Financial, language that would more clearly include Ward.[340] Ward ultimately purchased approximately 650 acres of the IDC property, the portion of the property north of 145th Street, for $1.15 million.[341] Madison Guaranty loaned Ward the entire purchase price of the property on a "non-recourse" basis—Ward was not personally liable, and the loan was secured only by the property:

> Notwithstanding anything herein to the contrary, makers and payee covenant and agree that makers, their heirs and assigns shall not be personally liable to the holders of this note for any default which may occur in the performance of any of the terms hereof * * *. The sole remedy of

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*This is the property that James and Susan McDougal purchased from International Paper Co. in October 1986 in the name of Whitewater Development Corporation without the knowledge of the Clintons. When they purchased the property the McDougals represented to International Paper that they were the sole owners of Whitewater Development Corporation. (PM&S Preliminary Report on Whitewater Development, 4/24/95, pp.116–122; PM&S Report on Whitewater Development, 12/13/95, pp.62–64.) The Clintons have stated that they were unaware of the International Paper transaction. (Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 24(c), at 59–60; Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 24, at 46–47.) James McDougal did not inform the Clintons of the purchase of the International Paper property in November 1986 when he suggested that they transfer their stock in the corporation to him. (Doc. No. DKSN 010462, November 14, 1986 letter from James McDougal to Governor and Mrs. Clinton regarding status report on Whitewater Development Corporation.)

**As noted above, Latham also acknowledged that Arkansas savings and loan regulations would not have permitted Madison Guaranty to purchase the entire property. (Latham, 5/15/96 Dep. pp.35–36.)

> the maker(s) in the event of any such default shall be to proceed against the collateral encumbered mortgage securing [the property.] [342]

Madison Financial purchased the remaining 400 acres of the property, the property south of 145th Street, for $600,000.[343] Madison Financial also paid Ward $35,000 for a 270-day option to purchase the property from Ward, one version of which excludes 22.5 acres of the property (the Holman Acres parcel).* In addition, Madison Financial agreed to pay Ward a ten percent commission * on all sales of IDC commercial property.[344]

Don Denton recently told the Federal Deposit Insurance Corporation (FDIC) that it is "his opinion" that the non-recourse wording of the note agreement, quoted above, was supplied by Webster Hubbell.[345] He previously has made contradictory statements, however, and he reportedly refused to be sworn at his FDIC interview. Denton was interviewed by Pillsbury Madison & Sutro on April 28, 1994, and questioned about the IDC transaction. The memorandum of that interview indicates that on two occasions Denton stated that he was not aware that anyone from the Rose Law Firm provided advice or counsel to Ward on the transaction.[346] In light of these prior statements, it is not clear why Denton now, two years later, has an "opinion" that Hubbell supplied the non-recourse language.**

The terms of Ward's purchase, particularly the non-recourse financing, the option, and the commission agreement, have been viewed as indicating that Ward may have been a "straw buyer" for

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*The terms of the option agreement are a matter of dispute. There are three versions of the agreement: (1) an unsigned draft dated September 23, 1985 that Ward provided to Special Committee staff during his deposition on Feb. 12, 1996; (2) a signed version (marked "void") dated September 24, 1985, that gives Madison Financial an option on all the property Ward purchased; and (3) another signed version dated September 24, 1995, that excludes the 22.5 acres Holman Acres parcel from the option. Ward testified that the voided version, which did not provide for the $35,000 payment and did not exclude the Holman Acres parcel from the option, did not accurately state the terms of his agreement with McDougal. (Ward, 2/12/96 Dep. pp.21–23.) Denton recently told FDIC investigators that he was provided a copy of the amended version, that excludes the Holman Acres property from the option, by Seth Ward on July 14, 1986. (FDIC Office of Inspector General, Interviews of Don Denton, June 3, 1996, pp.8–9 and June 11, 1996, p.6.) An unsigned copy of the amended version with a handwritten notation by Denton in the upper left corner, "Received 7–14–86 Seth," was provided to the FDIC by Denton [Document Not Numbered]. In a March 7, 1996 interview, Timothy Daters, the engineer who surveyed the IDC property, stated that the legal description of the Holman Acres property that is attached to the amended version of the September 24, 1985 letter was prepared by his firm on March 31, 1986, suggesting that the amended version was prepared some time after that date. (FDIC Interview of Timothy Daters, 3/7/96, p.1.)

*Ward later sued Madison Guaranty for commissions he claimed he was owed on sales of IDC property. Ward v. Madison Guaranty Savings and Loan, No. 87–7580 (Pulaski Cty. Cir. Ct.). Relevant aspects of that litigation are discussed below.

**Denton has been granted immunity from prosecution by the Office of the Independent Counsel and is a cooperating witness in that investigation. (Denton, 5/8/96 Hrg. p.48.) There are significant differences between Denton's statements to Pillsbury Madison & Sutro in April 1994 and his statements to the FDIC in June 1996. There are also significant differences between Denton's statements to the FDIC investigators in the June 3, 1996 and June 11, 1996 interviews. Finally, Denton's recollection, as reported in the FDIC interview memoranda, is faulty on a number of points. For example, in his June 3, 1996 interview, Denton said that "while at Union [National Bank] he also was the loan officer on a 1978 $20,000 equity loan to [James] McDougal and Susan McDougal and William and Hillary Rodham Clinton for the purchase of the property that has come to be referred to as the Whitewater property." (FDIC–IG Interview of Don Denton, 6/3/96, p.1.) In fact, the Union Bank loan was an unsecured personal loan to Mr. McDougal and Mr. Clinton, and neither Mrs. McDougal or Mrs. Clinton were borrowers. The differences and errors in these recent interview statements call into question Denton's credibility and reliability as a witness. Some of Denton's statements, such as the statement above regarding the Whitewater loan, suggest that his present recollection may have been affected by newspaper stories or other information he has obtained since he received immunity and became a cooperating witness in the Independent Counsel's investigation.

Madison Guaranty.[347] Both Ward[348] and Latham[349] dispute the allegation that Ward was a "straw buyer" who "warehoused" the IDC commercial property for Madison Guaranty. James Clark, the bank examiner who was in charge of the examination of Madison Guaranty in 1986, recently told the FDIC that in his view Ward was acting as a "straw buyer" in the transaction, however.[350]

For purposes of the Special Committee's investigation, the important issue is not whether Ward was in fact a "straw buyer," but whether Rose Law Firm attorneys were aware of the questionable aspects of Ward's arrangement with McDougal. As discussed below, while the evidence is mixed on the question of whether Ward was in fact a straw buyer, there is no credible evidence that anyone at the Rose Law Firm (except perhaps Hubbell)* knew that Ward might have been acting as a straw buyer for Madison Guaranty.

Rose Law Firm attorneys did not work on the IDC acquisition after August 1985, when drafts of the transaction documents were being prepared indicating that Madison Financial or an "individual or entity" designated by Madison Financial** would purchase the entire IDC parcel, until October 1985, when Thrash attended the closing.[351] It was during this interim period that Ward and McDougal reached some agreement, set out in the differing versions of the September 24 letter agreements, that Ward would purchase a portion of the IDC property, would give Madison Financial an option on some or all of the property he purchased, and would be paid a ten percent commission on all sales of IDC commercial property.[352] No time records, billing statements, documents, or testimony has been obtained by the Special Committee which would suggest that Rose Law Firm attorneys (except perhaps Hubbell, as discussed below) were involved in the agreement between Ward and McDougal.

Ward testified that in September 1985 he asked Hubbell to assist him with documenting his arrangement with McDougal, but Hubbell declined to do so because the Rose Law Firm already represented Madison Guaranty.[353] Rose Law Firm billing records do not contain any time entries for work relating to the September 24 letter agreement. Hubbell testified that Ward had "multiple conversations" with him regarding the IDC transaction.[354] Hubbell also testified that it was his "understanding, and that's again based on conversations [with Ward], was that when it came close to closing that there was some concern about Madison taking all of the property in its name and that Mr. Ward offered to take a portion in his name until it was sold, if Madison would lend him the money to do so."[355] Hubbell said he believes he obtained this information at some time after the closing, however.[356] There is no evidence that Hubbell shared this information with other Rose Law Firm

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*There is some evidence, discussed below, that Webster Hubbell may have been aware of the agreement between Ward and McDougal. Also, as discussed above, Don Denton recently told FDIC investigators that it is his "opinion" that Hubbell provided the non-recourse language for Ward's IDC note. (FDIC Office of Inspector General Interview of Den Denton, June 3, 1996.) It is not clear, however, what, if anything, Hubbell told others at the Rose Law Firm about the arrangement between Ward and Madison Guaranty.

**Pillsbury Madison & Sutro stated that "[e]ven the change in the language from 'affiliate' to 'entity or individual' is not the sort of thing that would have suggested incipient wrongdoing [to the Rose Law Firm attorneys involved in the transactions]." (PM&S Supplemental Rose Report 2/25/96, p.62.)

lawyers.* Mrs. Clinton has stated that she knows nothing about an agreement between Ward and McDougal,[357] and that she had nothing to do with the preparation of the September 24 letter agreement.[358]

Although Thomas Thrash attended the IDC closing on October 4, 1985,[359] and thus would have known that Ward was buying a portion of the property with financing provided by Madison Guaranty, he would not have known from the closing documents that the financing was non-recourse. The promissory note with the non-recourse terms was not executed until October 15, almost two weeks after the closing.[360] Moreover, there is no reason that Thrash or any other Rose Law Firm attorney (including Mrs. Clinton) would have questioned Ward's involvement in the transaction or doubted that Ward was a bona fide purchaser. Ward was an established, successful business leader in Little Rock, and Thrash and other Rose Law Firm lawyers would have known that Ward had the financial wherewithal to purchase a portion of the IDC property if he wished to do so.[361] Thus Ward's involvement in the transaction made economic sense and in itself would not have suggested any scheme to evade a regulatory requirement.[362] In short, there was nothing about the transaction that would have put the Rose Law Firm on notice that Ward was anything other than a bona fide purchaser of a portion of the IDC property.

(2) Other Ward/Madison guaranty loans

On March 31, 1986, Ward borrowed $400,000 from Madison Guaranty.[363] A signed copy of the March 31, 1986 note from Don Denton's files states that the loan is secured by a "mortgage covering real estate," and that "[t]he purpose of this loan is business investment."[364] The loan committee minutes approving the loan states that the purposes of the loan were to "pay a personal debt; pay income taxes; purchase airplanes."[365] The loan was secured with a mortgage on the Holman Acres property, and a March 31, 1986 mortgage to Madison Guaranty in the amount of $400,000 attaches a legal description* of the Holman Acres property.[366]

As noted above, in 1987 Ward sued Madison Guaranty for his commissions on the IDC transaction, and at that trial he testified that the purpose of the two loans was in order to meet his cash needs because "they [Madison Financial] didn't have any cash to pay me the commission with, so they offered to loan me money from Madison [Guaranty] Savings & Loan."[367] In his second FDIC interview, on June 11, 1996, Denton stated that he understood that the $400,000 loan to Ward was made because Madison Guaranty did not have the money to pay Ward the commissions he was due on the sales of IDC property, so either Latham or McDougal suggested that Ward be loaned $400,000.[368] Denton also said that he understood that the $400,000 loan represented $300,000 in com-

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*As PM&S observed "It is much harder to prove what other Rose Law Firm lawyers knew (if anything) about these matters. Other than Hubbell, all of them have denied knowing the salient terms that arguably make Ward a straw." (PM&S Supplemental Rose Report, 2/25/96, p.155.) "No substantial evidence to the contrary has been found except possibly as to Hubbell." (*Id.,* p.156.)

*This is the legal description on the Holman Acres property that Timothy Daters told the FDIC his firm prepared on March 31, 1986, and that is attached to the amended version of the September 24, 1985 letter agreement. (FDIC interview of Timothy Daters, 3/7/96, p.1.)

missions, $70,000 to repay the outstanding balance Ward owed on a February 25, 1986 loan which had been used to pay off his remaining debt on the IDC purchase, and $30,000 for interest.[369]

Documents also indicate that Madison Financial borrowed $300,000 from (or at least acknowledged a debt of $300,000 to) Ward on or about April 7, 1986. An April 4, 1986 Madison Guaranty board resolution, notarized on April 7, states: "*Be it resolved* that Madison Financial Corporation is authorized to borrow $300,000 from Seth Ward."[370] Denton told the FDIC that the purpose of the Ward "loan" to Madison Financial was to give Ward "greater protection in the form of notes to set off his loans" in connection with the commissions he was owed on the IDC sales.[371] Ward testified in 1987, in his lawsuit against Madison Guaranty, that the purpose of the $300,000 loan to Madison Financial was that if Madison Financial was unable to pay him his commissions he "wanted a note from them indicating that they owed me at least that much money so I could start drawing interest on it as long as I was going to have to pay interest on the money I had to borrow from the S&L."[372]

At his first FDIC interview,[373] on June 3, 1996, Denton was shown an April 7, 1986 entry from the Rose Law Firm billing records by Mrs. Clinton recording a "telephone conference with Don Denton."[374] At that time he told the FDIC investigator that he "had no recollection of the call, and believed that the entry may have been in error.[375] At his second interview, on June 11, Denton changed his story. On June 11, he told the FDIC investigators that he believes he discussed the Ward loans with Mrs. Clinton on April 7, 1986.[376] Denton apparently bases this new recollection at least in part on an April 7 [1986] telephone message[377] to him from "Sandra of Hillary Clinton's Office" that is attached to a page of Denton's handwritten notes relating to the "Babcock"* matter.[378] Denton said he recalls that he returned Mrs. Clinton's telephone call and spoke with her about "the $400,000 loan to Ward, #4027, and the $400,000 loan from Ward to [Madison Financial]."[379] Denton said he vaguely recalls that Mrs. Clinton may have been preparing the loan documents, and that when he told her he had already prepared the documents, she asked him to send her copies.[380] (The fact that Denton believes he spoke with Mrs. Clinton about the $400,000 Madison Guaranty loan to Ward and provided her with a copy of the loan documents may be particularly significant, for reasons that are discussed below.)

Denton also now claims that during his telephone conversation with Mrs. Clinton he told her that "there could be a problem with the notes as they constituted in effect a parent entity fulfilling the obligation of a subsidiary."[381] Denton told the FDIC that Mrs. Clinton "summarily dismissed" his concern "in a manner which he took to mean that he was to take care of savings and loan matters, and that she would take care of legal matters."[382] Denton told the FDIC that he expressed the same concern about the notes to Ward "shortly after" the telephone conversation with Mrs. Clinton.[383] When asked if he knew why Mrs. Clinton had called him on the

*The Babcock matter involved a workout on a defaulted commercial loan in which Madison Guaranty had obtained a participation from Savers Savings. (See PM&S Rose Report, 12/28/95, p.39.)

matter, Denton said he was "reasonably confident" that she was acting on Webster Hubbell's behalf.[384] Denton did not give a reason why he believed Mrs. Clinton was acting on Hubbell's behalf, and he said his only contact with Mrs. Clinton relating to Madison Guaranty was on the Babcock matter.[385]

Putting aside for the moment the possible significance of Denton's telephone conversation with Mrs. Clinton, if it occurred, the manner and timing of Denton's new "refreshed" recollection raises questions. In addition to the obvious improbability of forgetting a conversation with the First Lady of Arkansas for ten years (during which time the matters at issue were the subject of first litigation, then extensive national press attention), Denton's new story suffers from some significant flaws and internal inconsistencies. First, he had a copy of the April 7 telephone message and a copy of the Rose Law Firm billing records[386] when he first was interviewed by the FDIC, so there was no information provided to him at his first FDIC interview that he did not already have. (It also is reasonable to assume that between January 1996, when the Rose Law Firm billing records were discovered, and his June 3, 1996 FDIC interview, Denton was questioned in detail by the staff of the Independent Counsel about the entries in the billing records that refer to him.) These circumstances hardly provide a satisfactory explanation for how Denton came to suddenly recall a ten-year old telephone discussion with Mrs. Clinton.

Other flaws in Denton's new story are also troubling. The April 7 telephone message slip does not indicate the subject of the call, but it appears to have been attached to a page of Denton's handwritten notes[387] that seem to relate only to the Babcock matter. Mrs. Clinton has five time entries in the Rose Law Firm billing records, starting on April 9, 1986, and ending on May 6, 1986, that all were billed to the Babcock matter.[388] Her April 9, May 1, and May 6 time entries all reflect telephone conversations with Denton relating to the Babcock matter.[389] Moreover, all of Mrs. Clinton's time for discussions with Denton except the April 7 entry were billed to the Babcock matter. This suggests that the April 7 discussion also related to the Babcock matter. In short, the fact that the April 7 telephone message was attached to notes about the Babcock matter, coupled with the fact that all of Mrs. Clinton's time entries for discussions with Denton relate to that matter, call into question Denton's new "refreshed" recollection that he spoke with Mrs. Clinton about the Ward loans, and not the Babcock matter.

Denton's new story has another significant flaw. His documents contain two copies of the March 31, 1986 loan agreement for $400,000 loan from Madison Guaranty to Ward secured by a mortgage on the Holman Acres property.[390] With those notes is a mortgage dated March 31, 1986[391] and attached legal description of the Holman Acres property.[392] That legal description is the *correct* legal description of the Holman Acres property. (As discussed in a more detail below, the May 1, 1986 option agreement for the Holman Acres property that Mrs. Clinton prepared had an *incorrect* legal description of the property.) It is hard to understand how, if Denton provided Mrs. Clinton the Ward loan agreement with the correct legal description of the Holman Acres property on April 7, she

would have prepared an option agreement on May 1 with an incorrect legal description of the same property.

Finally, and consistent with Mrs. Clinton not having been provided a correct legal description of the Holman Acres property when she prepared the option agreement on May 1, the Madison Financial board resolution of May 1 (notarized May 5 and signed by John Latham) that approves the option agreement contains an incorrect legal description of the Holman Acres property—the same incorrect legal description that is in the May 1 option that Mrs. Clinton prepared.[393] This common mistake strongly suggests that neither Mrs. Clinton nor the preparer of the May 1 board resolution had been provided the note agreement for the Ward $400,000 loan secured by the mortgage Holman Acres property that attached the correct legal description of the property.

Taken together, the unusual circumstances of Denton's sudden recollection of the telephone conversation with Mrs. Clinton after ten years and the contemporaneous documentation that appears to contradict Denton's story raise serious questions about his credibility. In any event, as discussed below, even if Denton did discuss the Ward loans with Mrs. Clinton, it does not suggest that her actions in preparing the May 1 option agreement were in any way improper.

(3) The May 1, 1986 Option Agreement

On or about May 1, 1986, Madison Financial paid Ward $1,000 for an option to purchase the Holman Acres property for $400,000.[394] There are two signed versions of the option agreement, with different legal descriptions of the property that is the subject of the option. It appears that Mrs. Clinton prepared the first version of the option agreement, with an incorrect legal description, and the first two pages were later retyped to change the description to the Holman Acres property.* Denton told the FDIC investigators that he had the option agreement retyped after a bank examiner pointed out the incorrect legal description.[395]

There is no dispute that Mrs. Clinton had some involvement in the preparation of the first version of the option. According to the Rose Law Firm, the computer document code that appears on the first version of the document, and that is on all but the first two (retyped) pages of the second version, indicates the document was prepared by Mrs. Clinton.[396] In addition, Mrs. Clinton's time records contain an entry on May 1, 1986, billed to "Madison Guaranty General" recording two hours of time for "Conference with Seth Ward; telephone conference with Seth Ward regarding option; telephone conference with Mike Schauffler [Ward's accountant]; prepare option."[397] There are no records indicating that any other Rose Law Firm attorneys worked on the May 1 option agreement.

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*Document No. SW1–070–074 is one signed version, with a legal description of 6.667 acres in Pulaski County, Arkansas, beginning on page one and continuing to page two. Document No. SW1–063–068 is another signed version, with a brief legal description reading "Part of Tracts 27 & 28, Holman Acres, Pulaski County, Arkansas," at the bottom of page one and page two apparently re-typed with the same terms as the other document, but omitting the portion of the legal description that did carry over to that page. That version of the document also includes notarized acknowledgements for the signatures of Seth and Yvonne Anna Ward and John Latham, dated May 5, 1986.

Mrs. Clinton has testified that she has no recollection of preparing the option[398] and has no recollection of the two hours referenced in her time records, other than what the records state.[399] She did speculate that perhaps Ward "had something that had already been prepared by somebody else and wanted my secretary to make some changes in it. That was not uncommon for Mr. Ward, and I would have talked to him about it and maybe he needed some piece of information from Mr. Schaufele [sic]."[400]

In his 1987 lawsuit against Madison Guaranty Ward testified under oath that the option had nothing to do with the commissions on the IDC transactions.[401] Ward reaffirmed his 1987 testimony in 1996 when he was deposed, again under oath, by the staff of the Special Committee:[402]

> Q: Did you view that option agreement as having anything to do with the commissions that you felt were owed by Madison?
> A: No. They paid me $1,000 for that option.
> Q: They wanted to buy the property, so they paid you $1,000 for an option on it?
> A: That's right.

In that deposition Ward also disputed testimony by John Latham in the 1987 trial that the exercise of the option was to be the means by which Ward was paid his commissions:[403]

> Q: That's not your understanding of what happened?
> A: No, it wasn't.
> Q: And again, why do you think Mr. Latham's testimony is wrong?
> A: Because that's not the way it was.
> Q: And why was that not the way it was?
> A: I guess they were trying to win their trial.

The jury found for Ward in the 1987 trial[404] and, as the 1987 and 1996 testimony set out above shows, Ward has consistently denied that the option agreement was related to his commissions. This point is significant, less so today as to whether or not the option in fact had anything to do with the commissions, than to what Mrs. Clinton may have been told at the time about the option. Since for ten years Ward has consistently sworn, under penalty of perjury, that the option had nothing to do with the IDC commissions, there is no reason to believe he told Mrs. Clinton anything different in 1986. (Ward testified in his February 1996 Special Committee deposition that he does not recall discussing the May 1 option agreement with Mrs. Clinton.)[405]

Thus while the available evidence indicates that Mrs. Clinton played some role in the preparation of the first version of the option, and Denton's recent recollections (if credited) suggest that she may have been aware of Ward's loans when she prepared the option, there is no evidence that she knew anything about Ward's agreement with Madison Guaranty regarding the purchase of the IDC property the prior year.* She only recorded two hours, in total,

*As Pillsbury Madison & Sutro observed: If, instead, one credits Ward's view that the option had nothing to do with the commissions (as the jury in *Ward* v. *Madison* obviously did), then

Continued

for work relating to the preparation of the option.[406] Her April 7 time entry for the discussion with Denton shows that she spoke with Denton for only two-tenths of an hour—twelve minutes.[407] The option she prepared contained an incorrect legal description of the property and the first two pages were subsequently retyped at Denton's direction to reference the correct property. As Pillsbury Madison & Sutro noted: "This [the incorrect legal description] suggests that Mrs. Clinton had not been told the entire reason, or perhaps any reason, for the option; after all, she evidently misunderstood what property it was to cover."[408] Moreover, there is nothing on the face of the option agreement itself that would lead one to question its purpose[409]—it is a straightforward option agreement that makes good economic sense standing alone. The small amount of time reflected in her time records, combined with the innocuous nature of the document itself and the error in the legal description, all support the conclusion that Mrs. Clinton knew very little, if anything, at the time she prepared the option about the agreement between Ward and Madison Guaranty concerning the original IDC acquisition six months earlier—a conclusion that is wholly consistent with the fact that she does not remember anything about the matter now, over ten years later.

The reason for the option agreement may never be established definitively. It is not necessary to establish the purpose of the agreement to come to a conclusion about Mrs. Clinton's role in the matter, however. The evidence collected by the Special Committee, including Denton's recent recollections of a brief discussion with Mrs. Clinton about Ward's loans, does not indicate that Mrs. Clinton knew anything about the arrangement between Ward and McDougal for the IDC purchase, which had closed six months earlier. The evidence indicates that Mrs. Clinton did very little work on the option, did not know its purpose, and was not privy to any "straw man" arrangement between Ward and McDougal (if indeed that was such an arrangement,* a charge Ward vigorously disputes).

b. The Rose Law Firm and Mrs. Clinton played no role in the resales of IDC parcels that Federal regulators have called "Sham Transactions"

Between the closing of the IDC transaction on October 4, 1985, and March 1986, most of the IDC commercial property that Ward had purchased was resold in a series of six transactions that apparently were orchestrated* by James McDougal.[410] In 1996 the Com-

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the author of the option need not have known anything about Ward's commissions, let alone his 100 percent financing or the other terms embodied in the September 24, 1985 letter. For these reasons, the option seems, at most, tangentially related to the acquisition itself. (PM&S Supplemental Rose Report, 2/25/96, p.157.)

* Pillsbury Madison & Sutro concluded "having reached this point, however, it must be conceded that the argument that Ward was a straw[man] is weaker * * * one must grant that Ward's recent testimony about his desire to buy the IDC property himself, and his ability to do so, might well influence a trier of fact to find that Ward was not a straw man. Certainly a man who was ready, willing and able to buy a property, but did not do so because he recognized that he [owed] a duty of loyalty to his principal, seems much less like a straw than someone who never had the slightest interest in a property but simply was doing the bidding of another." (PM&S Supplemental Rose Report, 2/25/96, p.149; Ward, 2/12/96 Dep. pp.112-114, 121.)

* Pillsbury Madison & Sutro stated that these transactions "were engineered by McDougal and exemplify the nature of Madison Guaranty's lending and investment practices during McDougal's tenure at the institution." A Report on Certain Real Estate Loans and Investments

mittee reviewed these transactions at public hearings on January 30, January 31, and February 7. In summary, those transactions were as follows:

1. The October 25, 1985 sale of 6.6 acres and an industrial warehouse leased to Levis Strauss & Co. to Davis Fitzhugh for $500,000 (the loan amount was $525,000, of which $25,000 purportedly was to be used to establish a building maintenance account.[411]
2. The October 25, 1985 sale of 35 acres of commercial property to Jim Guy Tucker for $125,000 (the loan amount was $260,000, of which $135,000 purportedly was to be used for a feasibility study on the property).[412]
3. The November 20, 1985 sale of 9 acres of commercial property to Larry Kuca for $120,000.[413]
4. The January 20, 1986 sale of 486 acres of the IDC commercial property to former United States Senator J. William Fulbright for $777,600.[414]
5. The February 14, 1986 sale of the IDC water and sewer facilities to Castle Water & Sewer, Inc. (a corporation formed by Jim Guy Tucker and R.D. Randolph) for $1.2 million.[415]
6. The March 11, 1986 sale of 59 acres of industrial property to Master Developers, Inc. (a corporation formed by R.D. Randolph, James Henley, and David Henley; the Henleys were Susan McDougal's brothers) for $472,000.[416]

These transactions also were analyzed in detail by Pillsbury Madison & Sutro in their report entitled, "A Report on Certain Real Estate Loans and Investments made by Madison Guaranty Savings & Loan and Related Entities," which was submitted to the Resolution Trust Corporation on December 19, 1995. On four of the six transactions described above (all but the Fulbright and Kuca transactions) Madison Guaranty suffered losses when the borrowers failed to repay their loans.[417] (The only losses attributable to the Fulbright and Kuca transactions were real estate commissions of $77,600 and $12,000, respectively, paid to Susan McDougal on the two transactions.)[418] Pillsbury Madison & Sutro concluded that "[o]f these transactions, all but the Fulbright transaction appear to be suspect,"[419] and reported that the total losses* to Madison

made by Madison Guaranty Savings & Loan and Related Entities, ("PM&S Madison Guaranty Real Estate Report"), Prepared for the Federal Deposit Insurance Corporation by Pillsbury, Madison & Sutro, Dec. 19, 1995, p.1.

*This total includes losses attributable to the February 28, 1986 Dean Paul Ltd. transaction, in which Dean Paul Ltd., a company formed by David Hale's friend and business associate Dean Paul, borrowed $825,000 from Madison Guaranty to purchase three properties from Hale at inflated prices. Hale then used the profits from the fraudulent sale of those properties to obtain federal matching funds for his Small Business Administration investment company, Capital Management Services, Inc. ("CMS"), some of which allegedly were used to loan Castle Sewer and Water, Inc. $150,000 for the downpayment on the purchase of the IDC water and sewer facilities. (A $300,000 loan by CMS to a Master Marketing, a company formed by Susan McDougal, also allegedly funded through the Dean Paul transaction.) Dean Paul Ltd. never repaid the $825,000 loan. Pillsbury Madison & Sutro reported that as of December 1995 the total loss to Madison Guaranty on the Dean Paul Limited loan was $1,208,640.58. (PM&S Madison Guaranty Real Estate Report, 12/19/95, pp. 25-26.) In another report, however, Pillsbury Madison & Sutro stated that "the RTC recovered a judgment against Dean Paul and Dean Paul, Ltd. of approximately $600,000 (net). The judgment was sold to a joint venture in which the RTC is a venturer. If money is collected on the judgment, the RTC will stand to benefit. (A Supplemental Report on Madison Guaranty Savings & Loan and Whitewater Development Company, Inc., ("PM&S Whitewater Development Report"), Prepared for the Resolution Trust Corporation by Pillsbury, Madison & Sutro, Dec. 13, 1995, p.33, n.146.)

Guaranty relating to the IDC transactions was $3,809,581.93 in unpaid principal and interest.[420]

As noted above, on January 4, 1996, additional Rose Law Firm billing records for legal services provided to Madison Guaranty were located in the White House. Those records were provided to the Special Committee[421] and Pillsbury Madison & Sutro[422] on January 5, 1996. In addition to records of work done in connection with the initial IDC purchase, the billing records contain attorney time entries describing work that the Rose Law Firm did for Madison Guaranty during the time that the IDC transactions described above were taking place. None of those time entries refer are for work on any of the IDC transactions listed above.

On February 25, 1996, after analyzing the Rose Law Firm billing records, collecting additional relevant information, and interviewing Mrs. Clinton, Pillsbury Madison & Sutro concluded:

> For the reasons set forth in the [December 19, 1995] Real Estate Report, a number of the sales of IDC parcels to McDougal's friends appear to have been sham transactions designed to create the illusion of profits. There is no evidence, however, that the Rose Law Firm had anything to do with these sales; in essence, the evidence suggests that these transactions were put together by McDougal and others at Madison Guaranty, on occasion with the cooperation of others such as David Hale, Dean Paul and Jim Guy Tucker.[423]

The Special Committee's investigation confirmed the conclusion of Pillsbury Madison & Sutro that the Rose Law Firm had nothing to do with these allegedly fraudulent transactions. Davis Fitzhugh was a vice president at Madison Financial in 1985 when he purchased the Levi Strauss warehouse property.[424] Fitzhugh testified that no attorneys were involved in the purchase of the property and that he drafted the non-recourse language in the loan agreement himself.[425] Rose Law Firm attorneys Thomas Thrash and Richard Donovan testified that they did not do any work on the IDC transactions described above.[426] Although the Special Committee could not take testimony from all of the parties involved in these transactions, due in part to objections raised by the Independent Counsel with respect to obtaining testimony of certain witnesses, the testimony and documents obtained by the Special Committee support the conclusion that the Rose Law Firm and Mrs. Clinton had no involvement in any of the allegedly fraudulent real estate transactions.

4. The Rose Law Firm's work for Madison Guaranty on IDC matters was legitimate, well-documented, and appropriately billed

a. Introduction

Although the Rose Law Firm did not do any legal work on the sales of IDC parcels described above, the firm did provide legal services to Madison Guaranty on other matters relating to the development of the IDC commercial property. James McDougal reportedly planned to develop the commercial IDC property north of

145th Street through various projects, including a motel, a brewery, a convenience store, a gas station, a dance hall, a restaurant, and a sporting goods store.[427] These development efforts would complement McDougal's plans for the property south of 145th Street, where he intended to develop and sell residential lots. In connection with McDougal's plans for the development of the commercial portions of the IDC property, Mrs. Clinton and the Rose Law Firm were asked to research and analyze two legal issues. One project was to determine whether a brewery could be licensed in a "dry" township after that township had been incorporated into a larger "wet" township. The other project was to determine whether the existing sewer and water facilities on the IDC property could be extended to provide utility services to areas outside of the property.

The Rose Law Firm became involved in the liquor license and utility issues when Ward asked the law firm to conduct some legal research on those issues.[428] Ward, who was overseeing the development of the IDC property for Madison Guaranty, dealt with Mrs. Clinton on these issues. Mrs. Clinton has testified that it was her "understanding that [Ward] was in some manner employed by Madison to help them develop property around Little Rock."[429] Moreover, Mrs. Clinton has stated that she dealt exclusively with Ward as opposed to Latham or McDougal:

> Well, in most of my dealings in the last months preceding this on behalf of Madison, I dealt with Mr. Ward. He was the person I dealt with on the brewery issue. He was the person that we dealt with on the utility issue. He was Madison as far as I was concerned.[430]

Ward does not recall the circumstances of the Rose Law Firm's retention, but has confirmed that he must have been working with Mrs. Clinton on the liquor license issue, "I must have, because she gave me [Donovan's memorandum]. * * * And I had forgotten it, and I still don't remember getting it, but I must have, And I passed it on to—and if I did, I passed it on to Jim McDougal."[431]

b. The liquor license issue

The liquor license research resulted from a business proposal that McDougal presented to William Lyon, an Arkansas businessman whose business interests included banking, construction, and lumber sales. Lyon and McDougal had been acquaintances in college, and Lyon testified that McDougal was a "wheeler-dealer" who had often offered Lyon business opportunities.[432] One of those opportunities was a proposal by McDougal that Lyon operate a brewery on the IDC property.

At the time of McDougal's proposal, Lyon owned and operated a small microbrewery in Little Rock.[433] Lyon built the brewery with a $100,000 loan from Madison Guaranty.[434] As he expanded the operation, Lyon obtained additional financing from McDougal and Madison Guaranty. Throughout the course of the brewery's existence, Lyon borrowed approximately $360,000 from Madison Guaranty.[435] McDougal's familiarity with the microbrewery operation apparently led him to approach Lyon with a proposal to move the operation to the IDC property.[436]

Lyon recalls that in the fall of 1985 McDougal approached him about operating a microbrewery and brew pub on the IDC property south of Little Rock.[437] McDougal suggested that Lyon could buy a warehouse located at IDC and move his brewery there from Little Rock. Lyon testified that he was not particularly interested in McDougal's brewery proposal, but felt he had to indulge McDougal because he owed Madison Guaranty so much money on the brewery loans.[438]

The warehouse was on the commercial portion of the IDC property north of 145th Street that Seth Ward had bought in October and optioned to Madison Financial Corporation (discussed above). On November 20, 1985, Jim McDougal wrote a memorandum to Seth Ward indicating the progress of sales on the IDC parcels that Ward had purchased and optioned to Madison Financial.[439] McDougal stated in the memorandum that "[Bill Lyon], subject to approval by the ABC * * * will place his brewery in the shell building, along with a tasting room."[440] Ward testified that he never took McDougal's idea for a brewery on the IDC property seriously, but he did visit Lyon's microbrewery in Little Rock and arrange for Lyon to see the IDC property.[441]

Lyon toured the warehouse with Ward and contacted the Arkansas Alcoholic Beverage Commission (the "ABC") about moving his brewery to the IDC property.[442] When he contacted the ABC, Lyon was told that the IDC property was in a "dry county" where alcoholic beverages could not be sold.[443] Lyon testified that when he advised McDougal that the county was dry, McDougal said he could "take care of it."[444] Lyon recalls that McDougal said he would speak with Governor Clinton and would pursue regulatory relief from the state authorities.[445]

As noted above, McDougal's November 20, 1985 memorandum to Ward indicates that McDougal had recognized the necessity of obtaining ABC approval for the brewery project. The Rose Law Firm billing records indicate that on November 26, 1986, Mrs. Clinton had a conference with Ward, followed by conferences with her partners Thomas Thrash and Webster Hubbell.[446] Neither Mrs. Clinton nor Thrash nor Hubbell can remember now, almost ten years later, whether these conferences related to the brewery proposal. Other evidence collected by the Special Committee, however, suggests that may have been the case.

Mrs. Clinton had a number of telephone conferences with Ward in December.[447] On December 20 Mrs. Clinton's time records indicate that after a telephone conversation with Ward she searched for a map.[448] The time entry for December 23 appears incomplete, perhaps due to a typing error, but it seems to indicate that Mrs. Clinton visited Ward's office.[449] Mrs. Clinton recalls that she did some preliminary research before meeting with Ward on the liquor license issue.[450] After another telephone conference with Ward on December 24, Mrs. Clinton apparently enlisted the assistance of a Rose Law Firm associate to research the issue.

The Rose Law Firm billing records indicate that on December 30 Richard Donovan, then a young associate, began researching "local option election records."[451] On December 31 Donovan billed time for a "conference with ABC regarding wet/dry precincts" and further research on local option law.[452] On January 2 Donovan billed

three hours completing his research and drafting a memorandum. On January 3 he revised the memorandum.

Donovan's memorandum is dated January 3, 1986, and is addressed to Mrs. Clinton. The memorandum analyzes whether or not the location for the proposed brewery at IDC* was within a "dry" or "wet" county.[453] Specifically, the memorandum considers whether a smaller "dry" township (where the property at issue was located) retains its "dry" status or becomes "wet" when it is incorporated into a larger "wet" township.[454] Donovan found that there was "no Arkansas law on that point,"[455] but concluded based on law from other jurisdictions that "the smaller township would retain its dry status" when incorporated into a wet township until otherwise changed by an election.[456] Donovan's memorandum also notes that in a minority of jurisdictions the "smaller township would lose its dry status" when incorporated into a larger "wet" township.[457] His memorandum concluded: "It would seem the only chance for successfully building the brewery would be to convince the ABC the site is not within the old Union Township or convince the ABC and ultimately the courts that Arkansas should adopt the minority position that when 'wet' and 'dry' areas are joined, the resulting entity becomes all 'wet'."[458] After receiving Donovan's memorandum Mrs. Clinton apparently then met with Ward and gave him a copy of the memorandum.[459] Mrs. Clinton's time records show a conference with Ward on January 7.[460] Ward seems to have asked for further analysis of the issue.[461] The billing records show that Donovan and Mrs. Clinton met on January 14 regarding further "fact investigation."[462] On January 15 Donovan had another telephone conversation with the state election commission and county clerk "regarding what happened to old Union Township."[463] Then, on January 16, 1986, he asked Rose Law Firm paralegal Becky Arnold to research County Clerk's Office "records from 1953 until the present time and try to locate the record of the County Court's action in dissolving, merging, or rezoning the old Union Township."[464] On January 19 and 22 Donovan researched the "effect of township dissolution on 'wet/dry' status" and drafted another memorandum.[465]

In his second memorandum, dated January 23, 1986, Donovan advised Mrs. Clinton that "the overwhelming majority of cases hold that the consolidation, dissolution or merger of a given entity which had voted 'wet or dry' pursuant to a local option election retains its 'wet or dry' status even though it is incorporated into a "wet" political/geographic entity."[466] Donovan then outlined two alternative strategies that might be employed to gain approval for a brewery on the IDC property: (1) file an application with the ABC Board and if denied attempt to "convince the Board to adopt the minority rule"; or (2) "obtain signatures to place the 'wet dry' issue on the ballot" and hope that the old Union Township's "dry" status could be changed to "wet" by popular vote.[467]

Despite Donovan's diligent efforts to find a solution that would permit the brewery operation to be licensed, the client apparently decided not to try to overcome the legal obstacles. McDougal for-

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*It is noteworthy that the memorandum does not make any reference to "Castle Grande." This point is discussed further below.

warded Donovan's January 23 memorandum to Jim Guy Tucker* on February 7, 1986 with a note stating "It looks like our township is dry."[468] Although the Rose Law Firm billing records indicate that Becky Arnold did some additional research in February[469] and March[470] regarding the "old Union Township boundaries," there is no evidence that the Rose Law Firm or McDougal ever contacted the Governor's office or took any other steps to try to change the "dry" status of the property.

c. The utility service issue

With respect to the utility service research, Rose Law Firm billing records indicate that on February 11, 1986 Donovan began researching public utility law issues and "supplying of water" by the IDC water system.[471] On February 12 and 13 he continued his research, spoke with the state Public Service Commission legal staff, and began drafting a legal memorandum.[472] The Rose Law Firm records show that on February 16, 1986, Donovan revised a memorandum "regarding public utility issues."[473] On February 17, 1986, Donovan provided a memorandum to Mrs. Clinton addressing whether Madison Guaranty could "become a public utility" and whether Madison Guaranty could "sell water to a business outside the IDC Development* and to another real estate development [Maple Creek]."[474] Donovan found that in order to operate a public utility, Madison Guaranty would have to "submit itself to the jurisdiction of the [Arkansas Public Service Commission]" and "obtain licenses and permits" from the Arkansas Board of Health and the Arkansas Pollution Control System.[475] Donovan's memorandum concluded that under relevant Arkansas legal authorities, "[a]ssuming an expansion of water and sewer services to customers outside the IDC Development does not impede or impair services to present patrons, Madison Guaranty/IDC is free to extend it services beyond the IDC Development."[476]

On March 4, 1986, Donovan prepared a follow-up memorandum to Mrs. Clinton on the water and sewer service expansion issue.[477] That memorandum analyzed whether "the fact that Madison Guaranty/IDC's potential water customers are within the Little Rock corporate city limits preclude the extension of services to those customers by Madison Guaranty IDC."[478] The Rose Law Firm billing records indicate that in researching this issue Donovan made telephone calls to legal staff at the Public Service Commission and manager at the Little Rock Water Works.[479] Donovan also did additional research to verify the legality of the proposed expansion of utility services. Donovan concluded, "Not only is there no state statute or city ordinance which would preclude such an extension of Madison/IDC's water services, but the common law general rule is that a municipality has no authority to enact an ordinance or to require persons within its territorial limits to use municipally supplied water to the exclusion of a privately owned system."[480]

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*As discussed above, Tucker had purchased 35 acres of the IDC commercial property in October 1985.

*As with the Donovan January 23, 1986 memorandum referenced above, it is noteworthy that this memorandum to Mrs. Clinton refers to the property as the "IDC Development," consistent with other evidence collected by the Special Committee indicating that the property that Seth Ward optioned to Madison Financial was not known as "Castle Grande" at the time the Rose Law Firm was doing legal work for Madison Guaranty.

d. Conclusions

Pillsbury Madison & Sutro observed that "[n]o theory has been advanced that the [liquor license and utility research by the Rose Law Firm] aided any sort of wrongdoing."[481] The evidence obtained by the Special Committee is consistent with that conclusion. The evidence indicates that Madison Guaranty needed legal counsel on two relatively routine legal issues relating to the development of the IDC commercial properties. The Rose Law Firm was asked to research the regulatory limitations that might apply to constructing a brewery on the IDC property and expanding a sewer and water utility outside of the IDC complex. These were technical legal issues requiring analysis and interpretation of Arkansas laws and regulations, and it is not surprising that Madison Guaranty would have looked to an outside law firm for assistance.[482] Mrs. Clinton, recalls that she "conducted research and explored possible issues pertaining to [the brewery and utility matters], both on my own and in partnership with Mr. Donovan."[483] The Rose Law Firm billing records confirm Mrs. Clinton's recollection of her involvement in these matters. All of the research memoranda on these matters were addressed to Mrs. Clinton. Finally, internal Madison Guaranty documents, such as the note from McDougal to Tucker discussed above,[484] confirm Mrs. Clinton's work on these matters.

With respect to the liquor license issue, Lyon testified that he had no reason to believe that anyone in the Governor's office ever interceded on his behalf in the brewery matter.[485] Both Donovan and Thrash testified that the work the Rose Law Firm did for Madison Guaranty were straightforward legal matters, and they were never asked to do anything improper in connection with these matters.[486] In the end, Lyon never pursued the construction of the brewery in the IDC property. The Rose Law Firm never filed a petition with the ABC to obtain approval for a brewery. Thus there is no suggestion that Mrs. Clinton or anyone else at the Rose Law Firm ever sought to influence any state officials on behalf of Madison Guaranty.

The Rose Law Firm billing statements show that Mrs. Clinton first recorded time on IDC matters on November 14, 1985, for a telephone conference with Seth Ward.[487] Mrs. Clinton has stated that because of the technical subject matter, she conducted some preliminary research on the issues.[488] Mrs. Clinton has also testified that as a client, Ward could be quite demanding. As noted above, it appears that in both cases, after Mrs. Clinton reported to Ward, he asked that further legal work be done. After Mrs. Clinton spoke with Ward, Donovan did follow-up memoranda on both the liquor license and utility service issues. Accordingly, Mrs. Clinton has stated that in order to adequately address Ward's concerns, "I believe I would have had to conduct additional research in order to satisfy Mr. Ward that [Donovan's] initial memo was legally correct and discussed with him possible avenues that could be pursued despite the legal research."[489]

The Rose Law Firm billing records indicate that in the January 1986 billing statement Mrs. Clinton's billings were adjusted, with the charge for Mrs. Clinton's time increased from $912.50 to $2,731.75.[490] At Mrs. Clinton's hourly billing rate of $125.00, this

adjustment represents an addition of approximately 14.5 hours. The Special Committee reviewed whether these additional 14.5 hours might represent billings for work during the September-October period in 1985 when the agreement was reached between Ward and McDougal for Ward to purchase a portion of the IDC property and option it to Madison Financial (the alleged "straw buyer" arrangement discussed above). The Special Committee's investigation has established that the adjustment to Mrs. Clinton's billings did not relate to work in the fall of 1985.

Ron Clark, Rose Law Firm's chief operating officer, testified that if Mrs. Clinton would have "[billed these hours] in September or October they would have been included on the September and October internal bills that were rendered, but that's not necessary to the case.* * * I would think that since the extra hours were on the January bill, it would have been time that she would have spent sometime after October 29th, which was the next previous bill."[491] Moreover, Mrs. Clinton has stated that the reason for the adjustment was an effort by the Rose Law Firm to bill clients for all services provided prior to January 31, the end of the firm's fiscal year, and "a tremendous effort was made to bill, not only all matters and hours that had already been recorded in the computer, but any work in progress as well to try to clear the decks before the end of the fiscal year."[492] Mrs. Clinton explained that the adjustment to her billings was for "work in progress" that had not yet been entered into the computer when the January 1986 statement was prepared.[493] Clark confirmed Mrs. Clinton's explanation:

> "If you will notice, I mean the date of the billing memorandum is dated January 21; of course, the date of the bill is only January 30th. And it looks like the last time entry was January 15th and Mrs. Clinton's last time entry was January 7. So I would anticipate at the time of preparing the bill there had been additional time rendered since the last date of the last bill which was added to this. This is especially true at this time of the year which is the end of our fiscal year: especially in these years, our accounting department was very backed up because they were generating the bills that were putting the timekeeping in. So typically we would have to manually add time during the last months of the year to properly reflect our bills."[494]

Finally, it should be noted that some confusion has arisen as to whether the entire property purchased from IDC was known as "Castle Grande." This issue arose because prior to the discovery of the Rose Law Firm billing records, Mrs. Clinton had stated that she did not do any work on Castle Grande.[495] The Rose Law Firm billing records show that she did some work on IDC matters, as discussed above. The documents and testimony provided to the Special Committee clearly indicate that within the Rose Law Firm, the work was known as the IDC matter.* Although with the pas-

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*On January 18, 1996, during the testimony of Ronald Clark, the Chief Operating Officer of the Rose Law Firm, Mr. Clark was questioned about what appeared to be a Rose Law Firm invoice that had a handwritten "CG" on it. (Clark, 1/18/96 Hrg. pp.108-116.) Majority Counsel questioned whether this invoice indicated that within the Rose Law Firm the term "Castle Grande" had been used, contrary to the prior statement of Mrs. Clinton that she did not work

sage of time the entire property has sometimes been referred to as Castle Grande,** the evidence collected by the Special Committee established that during the relevant time period—in 1985 and 1986 when the Rose Law Firm was providing legal services to Madison Guaranty—only the portion of the IDC property south of 145th Street was called Castle Grande.[496] That was the name James McDougal gave to the residential development he started on that portion of the IDC property.[497] John Latham testified that the residential area which was named Castle Grande was "really a small part of" the IDC property.[498] The projects Mrs. Clinton worked on were related to the other, commercial, portions of the IDC tract, and did not involve the Castle Grande residential development. Thus Mrs. Clinton's prior statement that she did not work on Castle Grande is consistent with the evidence obtained by the Special Committee.

I. David Hale's false allegation against Governor Clinton

1. Introduction

David Hale is the only witness who has claimed that as Governor of Arkansas, Bill Clinton participated in discussions of financial transactions concerning Madison Guaranty Savings and Loan Association and Capital Management Services, Inc. Hale, a twice convicted felon and an admitted liar and perjurer, has claimed that on three occasions in late 1985 and early 1986 Governor Clinton spoke with him about an illegal $300,000 loan Hale was considering making to Susan McDougal.

Mr. Clinton has denied ever speaking with Hale about a loan to Susan McDougal. No document or witness before the Special Committee has corroborated Hale's assertion in any way.

Hale's allegation concerning Governor Clinton, as unreliable as it is, pales in comparison with the exaggerated versions of Hale's statements published, uncritically, in the nearly three years since Hale first surfaced. Ever since operatives of Citizens United, the ultra-conservative anti-Clinton group responsible for the 1988 Willie Horton television advertisement, first introduced Hale to the national media in 1993, the press has consistently reported Hale's story as an allegation that Governor Clinton "pressured" Hale to make the loan to Susan McDougal. It was not until the recently

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on Castle Grande. (Rose Law Firm Voucher # V 4372 for Madison Financial Corporation) At that time Mr. Clark was unsure what the invoice represented.

The question was answered in January 31, 1996 letter to the Special Committee from Mr. Clark. He explained that he saw the "CG" invoice for the first time during the January 18 hearing, then went on to state: "After reviewing the document further, it appears that the voucher actually was photocopied while laying on top of a Rose Law Firm invoice, thus creating a single paper with the voucher on top half and an incomplete copy of the Rose Law Firm invoice on the bottom of the page. I have consulted with our accounting department, and I am told that we did not use documents like this in 1985-1986 (as we do not today)." In addition, Mr. Clark's letter stated, "I believe this document is not from the Rose Law Firm but instead probably is an internal document from Madison Guaranty or Madison Financial." (January 31, 1996 Letter from Ron Clark to Chairman Alfonse D'Amato and Ranking Member Senator Paul Sarbanes, Special Committee; *see also* Rose Law Firm Billing Records, Matter #5 I.D.C.: DKSN 028930; DKSN 028979; DKSN 028980; DKSN 029011 through DKSN 029020; FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.50.)

** *See, e.g.*, Mary Hargrove, Don Johnson, Michael Whiteley, "They Called It Castle Grande," *Arkansas Democrat-Gazette*, Aug. 30, 1994. Even the reports prepared by Pillsbury Madison & Sutro refer to the entire IDC parcel as Castle Grande. *See, e.g.*, "A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings & Loan and Related Entities," Dec. 19, 1995, p.7.

concluded Tucker/McDougal trial—at which the prosecution was required to disclose Hale's prior interviews with law enforcement officials and the television networks were required to produce "outtakes" of Hale's 1993 interviews with NBC, CNN and ABC—that the Committee learned what Hale actually told the government and the media about the Susan McDougal loan. These materials provided important evidence in direct conflict with the exaggerated "pressure" story.

The jurors in the Tucker/McDougal trial, at which Hale and President Clinton both testified, made clear after the trial that they rejected Hale's unsubstantiated claim about Governor Clinton. One juror, Colin Capp, stated that the jurors considered Hale "an unmitigated liar [who] perjured himself. David Hale invoked the President's name for one reason: to save his butt. We all thought that way."[499] Another juror, Earnest Williams, agreed, adding, "I didn't believe a thing Hale said."[500]

In stark contrast, the jurors stated after the trial that they believed President Clinton when he denied having spoken with Hale about the loan Hale made to Susan McDougal. Sandra Wood, the jury foreperson, told the press, "The President's credibility was never an issue. I just felt like he was telling us to the best of his knowledge what he knew."[501] Juror Tracy Pleasants added, "I just felt as though he [President Clinton] was telling the truth, and I wasn't so sure about David Hale."[502]

Even Ray Jahn, the lead prosecutor in the case who presented Hale's plea-bargained testimony at the trial on behalf of the Office of the Independent Counsel, backed away from Hale's unsupported assertion about Governor Clinton. In his closing argument, Jahn told the jury that no one, including Hale, had alleged wrongdoing by Governor Clinton.[503] The lead prosecutor told the jury what anyone who had taken the trouble to review the actual testimony (rather than the hype) already knew—that there was no evidence presented at the trial, including Hale's testimony, that anyone pressured Hale to make the loan to Susan McDougal or her company, Master Marketing.[504]

Hale refused to testify before the Special Committee without a grant of blanket use immunity. Fortunately, the Special Committee has in its record an abundance of evidence, including 1600 pages of transcript covering nine days of Hale's testimony at the Tucker/McDougal trial, that sheds considerable light on Hale's veracity. Consistent with the view expressed by the jurors, the evidence in the Committee's record compels the conclusion that Hale's unsupported allegation regarding Governor Clinton is false.

2. Hale's personal circumstances changed dramatically in 1993 when he learned that law enforcement officials had detected his criminal conduct and were about to indict him for numerous felonies

Hale first spoke with law enforcement officials about his company's $300,000 loan to Susan McDougal on October 10, 1989, when the FBI interviewed him as part of its criminal investigation into the failure of Madison Guaranty Savings and Loan Association. At the time of Hale's FBI interview in October 1989, Hale's own crimi-

nal conduct had not yet attracted the attention of law enforcement officials, and Hale was not a suspect of any criminal investigation.

Hale described for the FBI how he came to make the $300,000 loan to Susan McDougal back in 1986. FBI Special Agent Gary A. Aaron memorialized Hale's statements as follows, in a formal interview report (Form FD-302) prepared after the interview:

> Hale stated that he recalled making a $300,000 loan to Susan McDougal, doing business as Master Marketing. He had been dealing with Jim McDougal previously on some items and recalled telling Jim McDougal that he had some money he wanted to lend. Hale offered to lend McDougal some as a tie-in with some of Madison Guaranty Savings and Loan ventures. Hale recalled that later on McDougal mentioned to him that his wife, Susan, needed some money for a business. He recalled having an additional discussion with Jim McDougal regarding this in February, 1986. In March, 1986, Susan brought some documents to his office which included the personal financial statement of Jim and Susan McDougal, and the financial statement of Madison Guaranty Savings and Loan. Susan told Hale that she was going to use the money to promote Madison Guaranty and some new land development. She offered Hale a mortgage on some property which was located near Castle Grande. The McDougals personally guaranteed this loan. Hale stated that he declined the mortgage which Susan offered on the property because SBA viewed this type of thing more favorably when it is made on an unsecured basis. Hale stated that the loan he made Susan was for five years and the loan currently is in default.[505]

Thus, at a time when he was not in any criminal trouble himself, Hale described the $300,000 Master Marketing loan in extensive detail for the FBI without making any mention of any involvement by Bill Clinton. Contrary to his plea-bargained testimony several years later, Hale said nothing to the FBI in 1989 about any discussions or meetings with Governor Clinton, and he said nothing about Governor Clinton or anyone else encouraging or pressuring him to make the loan. Instead, Hale told the FBI in 1989 that he and the McDougals worked out the deal and that he was the one who initiated the conversations about the loan because "he had some money he wanted to lend."[506]

However, Hale's personal circumstances changed dramatically in 1993. On May 5 of that year, the Small Business Administration notified Hale that it had referred him and his Small Business Investment Company, Capital Management Services, Inc., to the agency's Inspector General for an investigation of alleged fraud.[507] Shortly thereafter, the Small Business Administration referred the matter to the FBI in Little Rock and the United States Attorney for the Eastern District of Arkansas.[508] On July 21, 1993, the FBI executed a federal court search warrant at Hale's offices in Little Rock and seized a large number of incriminating documents.[509] Hale retained Little Rock lawyer Richard Mays shortly after the FBI raid on his offices.[510] Mays met once with officials of the United States Attorney's Office to determine whether he would be able

to resolve the case quickly and easily for Hale.[511] When Mays learned that the case was very serious and not likely to be easily resolved, he withdrew from the representation.[512]

Hale then hired a criminal defense lawyer named Randy Coleman, whose law partner had served as campaign finance chairman for Sheffield Nelson, the Republican gubernatorial nominee Governor Clinton had defeated in 1990.[513] Coleman quickly learned from prosecutors that Hale faced imminent indictment in federal court on several felonies involving millions of dollars of fraud against the Small Business Administration and others.[514]

3. Hale tried to extract an offer of blanket immunity from federal prosecutors by offering to provide undefined information about high-ranking Arkansas politicians

Facing many years in prison, millions of dollars in fines, and the loss of his law license and municipal court judgeship, Hale authorized Coleman to seek a plea agreement with Paula Casey, the United States Attorney in Little Rock. Coleman met with Casey in early September 1993 and demanded that Casey either give Hale blanket immunity from prosecution or allow Hale to plead guilty to a single misdemeanor offense in exchange for Hale's provision of undefined information about unidentified members of the "Arkansas political elite."[515] Coleman testified that he sought this extraordinarily lenient deal from Casey, despite the seriousness of Hale's crimes, to enable Hale to retain his law license and continue serving as a municipal court judge in Little Rock.[516]

Casey told Coleman that she was interested in receiving whatever information Hale had to offer.[517] But Casey made clear that Hale would have to provide the FBI with a factual proffer of his information before any plea agreement could be struck, and that any such agreement would have to include a guilty plea to a felony offense.[518] Assistant United States Attorney Michael Johnson, a career federal prosecutor in Casey's office with 22 years' experience, testified that it is common practice "when dealing with potential defendants who seek leniency in exchange for information to demand and obtain from them a proffer, that is, a preview of the evidence they have to offer before agreeing to the arrangement."[519] As several career Department of Justice prosecutors testified, Casey would have risked "buying a pig in a poke" if she had agreed to a plea bargain without first insisting on a factual proffer from Hale, because without a proffer Casey would have had no way of determining whether Hale's information would be useful to the government.[520]

Johnson added that a proffer would have allowed the FBI and the United States Attorney's Office "to assess and corroborate the information, and to make the determination whether to enter into a plea arrangement whereby Mr. Hale would receive leniency in exchange for the information and testimony. It was standard Department of Justice operating procedure."[521] Special Agent Steve Irons, the lead financial fraud investigator in the FBI's Little Rock field office in 1993, and later a senior agent detailed to the Office of Independent Counsel Kenneth Starr, agreed with Johnson: "Usually, it's just that you come in and tell us, and we'll decide after that."[522]

Rather than make a proffer, however, Hale chose to contact Jim Johnson, a pro-segregationist retired Justice of the Arkansas Supreme Court and one of President Clinton's most ardent and vociferous political opponents.[523] Records indicate that Hale made more than forty telephone calls to Justice Johnson's office in the period following the July 21, 1993 FBI raid on Hale's offices.[524] With Johnson's assistance, Hale and his lawyer also soon were in touch with Floyd Brown and David Bossie, the two leading anti-Clinton operatives of Citizens United.[525]

Hale then went to the media. While still refusing to provide his purported information to law enforcement officials, Hale first appeared on Floyd Brown's radio show[526] and then gave lengthy interviews to several national television networks and to *The New York Times* and *The Washington Post.*[527]

David Bossie of Citizens United was present throughout an on-camera interview Hale gave to NBC on November 4, 1993 at Coleman's law office. As established by the testimony of Joseph (Mike) Narisi, the cameraman who filmed the interview for NBC, Bossie prompted Hale's answers during the interview:

> Bossie greeted employees of the office by their first names and appeared to be well-acquainted with Coleman and the employees at Coleman's law office. Bossie consulted with Hale and Coleman before the taping of the interview began, was present throughout the interview, and prompted Hale during the videotaping of the interview.[528]

Assistant United States Attorney Johnson testified that Coleman and Hale were "manipulating public perception, in part through the news media, in an effort to scare [the United States Attorney's Office] into capitulating" regarding Hale's indictment.[529] John Keeney, the Principal Deputy Assistant Attorney General in the Criminal Division at the Department of Justice and a career prosecutor with almost 50 years' experience, testified that it was "totally inappropriate" for Coleman and Hale to use the press to pressure the prosecutors into agreeing to any particular plea deal.[530]

One example of Hale's use of the media to manipulate the public's perception was a statement Hale made during his November 4, 1993 interview with NBC. "Out-takes" of the interview indicate that when asked about the status of his plea negotiations with the United States Attorney's Office Hale stated that the prosecutors had told him: "We are not interested [in your information]. We want you to come over here and plead guilty and shut up."[531] This, of course, was a false and grossly misleading statement of the position of the United States Attorney, who had told Hale and his lawyer repeatedly, as had her assistants and FBI Special Agent Irons, that she wanted to receive a detailed proffer of whatever information Hale had to provide.[532]

Hale's lawyer also sought to manipulate the White House during this time period. Coleman contacted William Kennedy, an attorney in the White House Counsel's Office, and told him that he had a client facing federal criminal prosecution who was considering offering incriminating information about President Clinton.[533] Coleman testified that he contacted Kennedy because he hoped that the

White House would misuse the information and do something "foolish" with respect to the federal government's investigation of Hale.[534] As discussed elsewhere in this report, the evidence established that no one at the White House or anywhere else in the Clinton Administration made any effort to silence Hale by interfering with his prosecution.

Despite Hale's extraordinary efforts to coerce an unreasonably lenient plea agreement from the United States Attorney's Office, a federal grand jury in Little Rock issued a four-count indictment against Hale on September 23, 1993.

Donald MacKay, a career prosecutor in the Justice Department's Fraud Section, took over the prosecution of Hale on November 8, 1993, following the recusal of Paula Casey and the United States Attorney's Office in Little Rock.[535] MacKay and the career prosecutors working with him at the Department of Justice took the same position with regard to Hale's plea demands that Casey had taken. MacKay informed Coleman that he would not reach a plea bargain with Hale until Hale had informed law enforcement officials what information he could provide in exchange for the agreement.[536]

Hale continued his refusal to make a proffer to law enforcement officials absent an advance promise of blanket immunity or the dismissal of charges.[537] Instead, Hale repeated his unsubstantiated allegation about Governor Clinton in the media, in a continuing effort to manipulate public opinion.[538]

4. Hale eventually reached a plea bargain with the independent counsel that required him to plead guilty to two felonies

Hale finally agreed on March 19, 1994, following the appointment of an Independent Counsel, to plead guilty to two felonies—a harsher plea agreement than that upon which Paula Casey and the career Justice Department officials had insisted.[539] Assistant United States Attorney Michael Johnson testified:

> The United States Attorney's Office offered Mr. Hale a plea agreement which would have required him to plead guilty to a single felony. He rejected that and insisted on receiving immunity, or at most, pleading to a misdemeanor offense. This issue was ultimately resolved between Mr. Hale and the Independent Counsel's Office when Mr. Hale pled guilty to two felony offenses, not one.[540]

Although Hale faced the possibility of a longer period of incarceration under his plea bargain with the Independent Counsel than he would have faced under the plea required by Paula Casey, Hale's deal with the Independent Counsel nevertheless was generous to Hale in other respects. In exchange for Hale's guilty pleas to two felonies, the Independent Counsel gave Hale a broad transactional immunity from prosecution "for any crimes related to his participation in the conduct of the affairs of Capital Management Services, Inc., Diversified Capital, Inc., and Madison Guaranty Savings and Loan, and any other crimes, to the extent David L. Hale has disclosed such criminal activity to this Office as of the date of this Agreement."[541] In addition, the Independent Counsel promised that, if Hale continued to provide substantial assistance to the prosecution, he would file a motion asking the judge to exempt

Hale from application of the Federal Sentencing Guidelines and to show leniency for Hale at the time of sentencing.[542]

Hale entered his two felony guilty pleas on March 22, 1994 before United States District Court Judge Stephen M. Reasoner. Judge Reasoner placed Hale under oath at the hearing and cautioned him to tell the truth:

> The Court: Now, Mr. Hale, since you are now under oath let me caution you if you were to make any false statement to me during these proceedings this morning that could be used against you in later proceedings for perjury or false statement.[543]

Hale then told the court, under oath, that he did not benefit personally from any of the fraudulent loan schemes to which he was pleading guilty:

> The Court: What happened to the money you obtained from the SBA by this plan?
> Mr. HALE: It was loaned to various entities.
> The Court: That's what I was asking. Who was it loaned to?
> Mr. HALE: I can't recall right off, Your Honor. I'm sorry, I can't recall that.
> The Court: Were any of the entities that you had an interest in?
> Mr. HALE: I don't believe so.[544]

Two years later, after having received a reduced sentence from Judge Reasoner, Hale admitted on cross-examination at the Tucker/McDougal trial that he had benefitted personally from the fraudulent loan schemes to which he pled guilty and that he had misled Judge Reasoner, under oath:

> Q. And what you said to Judge Reasoner when you were pleading guilty was not true, was it?
> A. Like I said when he asked me, I did not know I was going to have to say anything, and when you are standing up there, I was scared to death and I don't even recall what I said except it's recorded.
> Q. Do you lie when you are scared?
> A. No, but I was scared and I don't remember what I said.
> Q. Well, you were talking, though, to the judge.
> A. Yes, sir, I was.
> Q. Mr. Hale——
> A. And I would not under any circumstances want to mislead the judge at all.
> Q. Yeah, but you did.
> A. If that's what I said, I did.[545]

In fact, Hale and companies he owned benefitted significantly—in the amount of at least $500,000—from illegal loans made by Capital Management Services, Inc. For example, Hale received $280,000 from an illegal loan he made through Capital Management Services, Inc. to the Sunbelt Corporation.[546] Similarly, Hale received a $200,000 benefit when Dean Paul released him from a

$200,000 mortgage obligation in return for an illegal $200,000 loan Hale made to Paul through Capital Management Services, Inc.[547]

On an analogous subject, Hale also admitted at the Tucker/McDougal trial that he has not paid taxes on any of his ill-gotten gains and that he has no intention of paying taxes on the approximately $63,000 in cash payments he has received from the FBI over the past two years.[548] As with Hale's admittedly false sworn testimony, Hale has not been prosecuted for income tax evasion.[549]

When Hale finally went before the court for sentencing on March 25, 1996, the Independent Counsel asked the court to grant Hale a downward departure from the amount of prison time otherwise required by the Federal Sentencing Guidelines.[550] The court gave Hale a significant break, sentencing him to only 28 months in prison instead of the 46 to 57 months otherwise called for by the guidelines. The court also sentenced Hale to three years of supervised release, imposed a fine of $10,000, and ordered Hale to pay $2.04 million dollars in restitution to the Small Business Administration.[551]

Hale reluctantly admitted on cross-examination at the Tucker/McDougal trial that he hopes to receive yet another reduction in his sentence with the assistance of the Independent Counsel. Hale admitted that he intends to file a motion for reduction of sentence under Rule 35 of the Federal Rules of Criminal Procedure by March 25, 1997 and that he hopes Independent Counsel Starr will support his motion to the sentencing judge.[552]

5. Hale's history of fraud and duplicity

The two felonies to which Hale pled guilty each involved serious fraudulent and deceitful conduct on Hale's part.

Hale's first felony guilty plea was to a conspiracy to defraud the Small Business Administration through the making of false statements concerning the capitalization of his company, Capital Management Services, Inc., and the status of certain loans on its books.[553] One overt act of the conspiracy involved $800,000 Hale fraudulently removed from an innocent woman's account at Prudential-Bache.[554] Specifically, Hale withdrew $800,000 from Louise Townsend's account on November 4, 1988 without Townsend's knowledge or permission. Hale then used the $800,000 in a series of fraudulent transactions that enabled him to obtain federal matching funds from the SBA by falsely claiming additional capitalization of Capital Management Services, Inc. Hale described the fraud as follows during his testimony at the Tucker/McDougal trial:

> [W]e took the $800,000 and put [it] into CMS, and then took the $400,000 to apply for funds from [the] SBA. I credited $400,000 between Sunbelt, Grasby and eighty-two fifty on MaBe Communications [delinquent loans]. Then I turned around and loaned that money back out to McIntire, LAME and River Valley, and [then the] funds [were] returned to the Townsend account.[555]

Hale's second felony guilty plea, also related to the conspiracy to defraud the Small Business Administration, was based on a wide variety of false statements and representations Hale made to the agency between 1985 and 1991. Hale made these false statements

and representations with the specific intent to defraud Capitol Management Services, Inc. and its shareholders and to obtain SBA funds through "false and fraudulent pretenses." [556]

Hale admitted at the Tucker/McDougal trial that in the 1985–1991 time period covered by his guilty plea he submitted to the SBA false reporting forms regarding SBA-backed loans he made to a large number of companies, including Arkansas Commercial Realty Company, Weaver-Bailey, International Trading, Midwest Consulting, Liberty Mortgage, Campobello, Castle Sewer and Water, The Communications Co., Master Marketing, and Paul Sales.[557] Hale testified that he intentionally provided false information to the SBA "so that it wouldn't appear that it was a fraudulent document. * * * I did it for the purpose of covering the fraudulent activity that I had done." [558]

Hale testified at the Tucker/McDougal trial about a few of the many other fraudulent schemes for which he was excused from prosecution pursuant to his plea bargain with the Independent Counsel. One such scheme involved the falsification of loan files to deceive the Small Business Administration into believing that bad loans were in good condition. Hale explained:

> If I had a loan that wasn't paid that looked like it might get classified, I would show it on the books being sold to another entity, and that entity would in turn give Capital Management a note.[559]

Wayne Foren, the Director of the Office of Economic Development at the Small Business Administration and a career official with sixteen years' experience at the agency,[560] testified that Hale's conduct involving the affairs of Capital Management Services, Inc. was "one of the most blatant cases of fraud in the [Small Business Investment Company] program I have ever seen." [561]

The Special Committee also learned about an allegedly fraudulent burial insurance scheme for which Hale still faces a likely state prosecution in Arkansas. Hale purchased the National Savings Life Insurance Company in 1986. At the time, National had 43 insurance agents who sold burial insurance to low-income persons in the area of Pine Bluff, Arkansas, a predominantly African-American community south of Little Rock. For a premium of as little as $1 per month, National committed to pay for a casket and funeral service when a policyholder died.

It has been reported that when National filed its financial statements with the Arkansas Insurance Department in March 1993 the statements showed a capital deficiency, rendering the company insolvent. Arkansas Insurance Commissioner Lee Douglas directed Hale to cure the capital deficiency, and in July 1993 Hale deposited $150,000 into a company account.[562]

It has been reported that in September 1993, a few days before Hale was indicted by the federal grand jury in Little Rock, the president of National notified state insurance regulators that the $150,000 had disappeared. The Insurance Department sent examiners to conduct a surprise audit, and they found that the $150,000 had been transferred out of National to another company controlled by Hale on the same day in July 1993 on which Hale had put the money into National to cure the capital deficiency.[563]

State insurance regulators seized National as insolvent on September 27, 1993, and in April 1994 Commissioner Douglas referred Hale's alleged looting of the company to Pulaski County Prosecuting Attorney Mark Stodola for possible prosecution.[564] Stodola has stated publicly, as well as in a letter to Independent Counsel Starr, that he intends to obtain a grand jury indictment against Hale prior to the expiration of the statute of limitations period on July 6, 1996.[565]

Abundant evidence demonstrated that Hale defrauded even his friends and business associates. Dean Paul, for example, a former law client and business associate of Hale's, testified at the Tucker/McDougal trial about Hale's extraordinary abilities as a con man:

> Q. David had been your lawyer?
> A. Yes.
> Q. And you trusted him as a lawyer?
> A. Yes.
> Q. And you trusted him as your lawyer?
> A. As my lawyer.
> Q. And he used that trust to tell you we were going to get us an insurance company, didn't he?
> A. He used that trust. Yes, he painted that picture, yes.
> Q. David painted pictures well, didn't he?
> A. Yes, he did.
> Q. Is David an eloquent man?
> A. I think he is. To me he is.
> Q. Does he present a persuasive picture when he talks?
> A. About as good as I've ever seen.
> Q. And he can paint a picture and make you believe it, can't he?
> A. He did me.
> Q. Have you been conned before so well?
> A. No.[566]

Indeed, it appears that no one drawn into Hale's orbit was safe from his rapacity. In 1986, Hale learned that his secretary's family was having trouble making mortgage payments on the family farm. Hale offered his assistance, suggesting that if the farm were deeded over to a company controlled by him the land could be developed and the creditors kept at bay. At the end of the day, no development took place, foreclosure ensued, and the family lost the farm. But that was after Hale had helped himself to 133 acres.

According to news reports, testimony in a subsequent civil suit showed that Hale was having an affair with his secretary at the time and that he persuaded her to convince her family to "just sit and wait." In 1991, Judge Reasoner entered a $468,496 civil judgment against Hale. The family's claims against Hale for fraud are still in litigation.[567]

Finally, Hale's recent claim that as a cooperating witness he required the security services of federal law enforcement officers to protect him from undisclosed threats must be considered in light of Hale's past behavior as a municipal court judge in Little Rock. For while Hale was committing all of the aforementioned crimes in the mid-1980s and early 1990s, he also was sitting two or three

days per week as a judge hearing traffic and hot-check misdemeanor cases.

During this time, at considerable expense to the taxpayers, Hale had a bulletproof screen installed in front of his bench and a metal detector placed in front of the door to his courtroom. On one occasion, Hale, claiming that a group of current and former employees were "plotting to kill him," arranged to have a deputy sheriff escort him from the municipal courthouse. Apparently, one of the "plotters," a former employee of Hale's, was celebrating a girlfriend's birthday at a local restaurant where she confided in a state trooper, "if Hale died I wouldn't cry." This was the sum and substance of the supposed murder plot.[568]

The cost to the federal government of guarding Hale for the two years leading up to the Tucker/McDougal trial (in addition to the $63,000 cash the FBI paid to Hale for living expenses) has not been disclosed.

6. Hale's unsubstantiated assertion about Governor Clinton

It was in the context of his imminent federal indictment, in the fall of 1993, that Hale asserted for the first time, in press interviews, that Governor Clinton had expressed an interest back in late 1985 and early 1986 in Hale's making a $300,000 SBA-backed loan to Susan McDougal.

Hale told the press of three supposed encounters with Governor Clinton. Hale claimed that the first encounter occurred in December 1985 outside the State Capitol Building in Little Rock. According to Hale, Governor Clinton approached Hale outside the building and asked him, "Are [you] going to be able to help us out, help Jim and I (sic) out?"[569]

Hale claimed that the second encounter occurred in late January or early February 1986 at Jim McDougal's office trailer at the Castle Grande Estates. According to the story Hale told the press, Governor Clinton offered to put up "some land in Marion County" as collateral for the loan but insisted that his "name cannot show up in the documents."[570]

Hale claimed that his third encounter with Governor Clinton occurred at the University Mall in Little Rock. According to Hale, Governor Clinton approached him in the mall and asked, "Have you heard what that blankety blank Susan has done [with the money]?"[571]

7. Hale's allegation that Governor Clinton showed interest in the master marketing loan is riddled with internal inconsistencies

Hale's unsubstantiated assertion about Governor Clinton's supposed interest in Hale's loan to Susan McDougal is riddled with internal inconsistencies that further discredit it. A few examples of these inconsistencies follow.

Hale claims that at a meeting at McDougal's office trailer in early 1986 Governor Clinton offered to put up some land in Marion County as collateral for the loan.[572] Hale also claims, however, that at the same meeting Governor Clinton stated repeatedly that his name "cannot show up on this."[573]

These two assertions of Hale's cannot stand when viewed together. It simply does not make sense that Governor Clinton—a

trained lawyer—would have offered to put up land in his own name as collateral for a loan if he was adamant that his name not be associated with the loan. Hale was questioned about this internal inconsistency at the Tucker/McDougal trial:

> Q. When you own property, that's recorded at the recorder of deeds, isn't it?
> A. If you put up any property, in order to have title, you must record it.
> Q. All right. Now, isn't it also true that if Mr. Clinton had owned property, it would have been forever at the recorder of deeds in Marion County, forever?
> A. Not if he sold it.
> Q. If he sold it, the old deed is still there recorded, isn't it?
> A. It is there, but is shows it was taken out of his name and put in somebody else's.
> Q. But it shows, doesn't it?
> A. Yes, sir.
> Q. Could [anyone] go and find out the sitting governor of Arkansas owned it just before it was conveyed to a Sunbelt type of corporation?
> A. They could have.[574]

Also according to Hale, McDougal initially requested a loan of only $150,000 and then later increased his request to $300,000. Hale claims that he quickly responded "that that would be fine."[575]

Hale's willingness to double the amount of the loan is not consistent with any notion that he needed encouragement from Governor Clinton to convince him to make the loan in the first place. If Hale truly had been reluctant initially to make the loan, then it is extremely unlikely that he would have agreed so quickly to double the amount.

8. Hale cannot keep his story straight

Additional inconsistent statements Hale has made about significant aspects of the $300,000 loan to Susan McDougal cast even further doubt on Hale's credibility. As in the previous section, a few examples will suffice here.

As discussed above, Hale now claims that in early 1986 Governor Clinton offered to put up some land in Marion County as collateral for the loan. In 1989, however, Hale said nothing in his interview with the FBI about Governor Clinton having any involvement with the loan—much less about Governor Clinton offering land as collateral. Instead, Hale told the FBI that Susan McDougal "offered [him] a mortgage on some property which was located near Castle Grande."[576]

It is interesting to note that at the Tucker/McDougal trial Hale testified that Governor Clinton referred to the land he supposedly offered as collateral simply as "some property in Marion County." Hale told the jury that Governor Clinton "didn't say" what property he was referring to and that he "didn't know anything about [the Clintons' investment in] Whitewater" at the time. "I did not know Whitewater," he said. "I did not know what they owned up there."[577]

However, back in the fall of 1993, as Justice Jim Johnson, Floyd Brown, David Bossie and other anti-Clinton forces were facilitating Hale's access to the national media, Hale told Jeff Gerth of *The New York Times* that at the 1986 meeting Governor Clinton identified the property in Marion County as "White-something." As reflected in the notes of Bruce Lindsey and Mark Gearan, Gerth then reported Hale's allegation to them.[578] Hale's inclusion of the term "White-something" in 1993 appears to have been an attempt to pique the interest of the media by fabricating a connection between the Susan McDougal loan and Whitewater.

Another example of Hale's inconsistent statements about the Master Marketing loan concerns Hale's claimed relationship with Governor Clinton. Hale testified at the Tucker/McDougal trial that he did not consider himself "a close personal friend of Bill Clinton,"[579] a point clearly established by President Clinton in his sworn deposition.[580] But in an interview with NBC in November 1993, Hale stated that he was "old friends" with President Clinton and Governor Tucker and that he and President Clinton were "close political friends."[581]

Hale, of course, never was a close personal or political friend of Bill Clinton's. Nor was he a friend or political ally of Tucker's or McDougal's. Hale was appointed to his municipal court judgeship by Governor Frank White, a Republican and prominent political opponent of Mr. Clinton's, and he made several campaign contributions to Republican candidates, including a $2,000 contribution to White in 1986, when White ran unsuccessfully to unseat Governor Clinton in the general election.[582]

Finally, Hale testified at the Tucker/McDougal trial that at the time he made the $300,000 loan to Susan McDougal he was looking "to Jim McDougal and Bill Clinton" for repayment.[583] Yet when the loan failed, Hale made no effort to collect any funds from Governor Clinton.[584]

9. President Clinton testified that he never spoke with Hale about a loan for Susan McDougal

President Clinton appeared by videotape as a witness at the Tucker/McDougal trial on May 9, 1996 and testified that he never spoke with Hale about any loan to be made to Susan McDougal:

> Q. Were you ever present in Mr. McDougal's office on 145th Street when a discussion occurred about financial assistance from David Hale or his Capital Management Services company involving any other business that you or Mr. McDougal may have had?
>
> A. No, sir, never.
>
> Q. Were you ever present at any time for any meeting between Jim McDougal and David Hale?
>
> A. Never, I never was present at any meeting.
>
> Q. Were you ever present when there was any discussion of getting any kind of loan from David Hale or his S.B.I.C.?
>
> A. No.
>
> Q. Did you ever make a statement that your name could not appear on any loan documents or financial documents

related to any type of loan from David Hale or his S.B.I.C.?

A. Absolutely not.

Q. Did you ever get assurance from Jim McDougal that your name would be secreted from any loan documents pertaining to any loan from David Hale or his S.B.I.C.?

A. No, we never had any conversation about it at all.

Q. Did you ever tell David Hale that you had property in Marion County, Arkansas that you could use as collateral or security for a loan from him?

A. I did not do that, no.

Q. Did you ever ask David Hale to make you a loan?

A. No.

Q. Did you ever ask David Hale to make Jim McDougal a loan?

A. No.

Q. Did you ever ask David Hale to make Susan McDougal a loan?

A. No, I didn't.

Q. Did you ever ask David Hale to make Jim Guy Tucker a loan?

A. No.

Q. Did you ever, in any shape, form, or fashion, put any pressure on David Hale for the purpose of obtaining a loan or for the purpose of causing him to make loans through his S.B.I.C.?

A. I did not put any pressure on David Hale.[585]

10. The jurors in the Tucker/McDougal trial believed President Clinton's testimony and concluded that Hale committed perjury

Several of the jurors in the Tucker/McDougal trial spoke with the press after the verdict and made clear that they believed President Clinton's sworn denials of Hale's allegation. Juror Tracy Pleasants stated: "I just felt as though he was telling the truth. . . . The president's credibility was—I held him in high esteem as far as credibility."[586] Jury foreperson Sandra Wood added: "The President's credibility was never an issue. . . . I just felt like he was telling us to the best of his knowledge what he knew."[587]

On the other hand, the jurors concluded that Hale fabricated his testimony concerning his supposed discussions with Governor Clinton about the loan to Susan McDougal. Juror Colin Capp stated that the jurors considered Hale "an unmitigated liar . . . [who] perjured himself. . . . David Hale invoked the President's name for one reason: to save his butt. We all thought that way."[588] Juror Earnest Williams agreed: "I didn't believe a thing Hale said."[589]

Consistent with these comments, the jurors indicated that the guilty verdicts they returned in the case were not at all based on Hale's testimony. Juror Risa Gayle Briggs stated: "There were so many witnesses presented and called, we were able to use all the other witnesses. . . . We didn't need to use David Hale's testimony."[590] Juror Capp added: "I decided I wasn't going to take away anyone's freedom on the testimony of David Hale. . . . He's one of the greatest con men whom I've ever seen. . . . I think it was an

absolute travesty that Hale got sentenced to [only] 24 (sic) months." [591]

11. Hale's technique of embellishment

It would appear that Hale's testimony about Governor Clinton's supposed interest in the $300,000 loan to Susan McDougal was an embellishment fabricated by Hale with the hope that it would help him secure a better plea deal with an Independent Counsel. It is a well known device of a skillful liar to use an established fact to provide credibility for his false story. In this case, that "fact" was Governor Clinton's prior relationship with Jim McDougal. Since McDougal was no shrinking violet in touting that relationship, all Hale needed to do was embroider his story a bit here and there to involve Governor Clinton.

Hale provided an illuminating example of his proclivity to embellish his story at the Tucker/McDougal trial, when he testified that he knew that part of the proceeds of the $300,000 loan went to the Clintons' benefit in Whitewater.[592] In an earlier CNN interview, Hale claimed to "know that $110,000 of that money went into Whitewater Development, which was owned by the McDougals and the Clintons, and then in turn Whitewater Development used the $110,000 for a downpayment to International Paper on a $550,000 piece of property." [593]

In testimony at the Tucker/McDougal trial, Hale reiterated his claim that the Clintons benefited from the $300,000 loan.[594] However, Hale was forced to admit under cross-examination that the basis for this statement was not contemporaneous information provided to him by Governor Clinton or the McDougals, but subsequent information supposedly provided to his "lawyer" by a reporter from The Washington Post.[595]

In fact, while $25,000 was used by McDougal to make a downpayment on property purchased from International Paper, McDougal quickly moved the property out of the Whitewater account and never told the Clintons about it. It is undisputed that the Clintons never benefitted from McDougal's International Paper deal. [596]

Another likely example of Hale's penchant for embellishment was his testimony at the Tucker/McDougal trial that McDougal told him he was going to meet with Governor Clinton at the Governor's Mansion on a particular Saturday in early January 1986 to discuss the Master Marketing loan.[597] Given Hale's other problems with dates and the sequence of events, one may wonder at the clarity and specificity of this recollection, particularly since it does not appear to have been recorded in any statement Hale provided to the FBI in the forty-plus interviews of him the FBI conducted before his appearance at the trial. Is it possible that Hale somehow became aware that a log of meetings at the Governor's Mansion on Saturday, January 18, 1986, showed that Governor Clinton met with McDougal that day.[598] In fact, contrary to Hale's embellishment, evidence in the form of contemporaneous memos establishes that the January 18, 1986 Clinton-McDougal meeting was entirely unrelated to the Master Marketing loan.[599]

Also illustrative of Hale's inventiveness as a liar was his unsupported assertion that in seizing records from his office on July 21,

1993 pursuant to a search warrant, the FBI lost or destroyed a document which supposedly supported Hale's claim regarding Governor Clinton's involvement in the Master Marketing loan.[600] Inconveniently for Hale, the FBI agent who supervised the search, Special Agent Steven Irons, subsequently became one of the senior agents assigned to Independent Counsel Starr's Little Rock operation. No more was made about the "missing" document.

12. Hale's refusal to testify before the special committee without a grant of blanket use immunity

Despite having testified for nine days at the Tucker/McDougal trial on the same subjects about which the Special Committee sought to question him, Hale asserted a fifth amendment privilege and refused to testify before the Committee absent a grant of blanket use immunity. Such a grant of immunity, had it been provided, likely would have had the effect of interfering with the stated intention of Arkansas state authorities to prosecute Hale for other serious alleged criminal conduct. The use immunity demanded by Hale was precisely the same as that conferred upon Oliver North and John Poindexter, whose subsequent Iran-Contra convictions were reversed as a direct result of their immunized testimony before Congress.

The Special Committee considered many factors in determining whether to grant Hale the blanket use immunity he demanded. These factors included the importance of Hale's testimony to the Committee's investigation, the strength of Hale's fifth amendment claim, the risks that a grant of immunity would pose to the future state prosecution in Arkansas, the public nature of Hale's nine days of sworn testimony at the Tucker/McDougal trial, and the absence of any such precondition set by any of the more than 200 other witnesses who appeared before the Committee. In a vote of the Special Committee on June 11, 1996, a resolution favoring a grant of immunity for Hale failed to achieve the two-thirds majority required by statute.

Hale's lawyer informed the Special Committee in a letter dated May 23, 1996 that Hale would not appear as required by Committee subpoenas for deposition and public hearing testimony, which at the time were scheduled for May 24, 1996 and June 4, 1996, respectively. Hale's lawyer referred in his letter to the threatened state prosecution in Arkansas relating to Hale's allegedly fraudulent burial insurance scheme and stated that Hale was asserting his fifth amendment privilege against compulsory self-incrimination.[601]

The Special Committee sought the opinion of the Senate Legal Counsel as to the validity of Hale's fifth amendment claim. In several well-researched and carefully written memoranda, the Senate Legal Counsel advised the Committee that although he could not say with certainty how a court would rule if presented with the issue, he believed that Hale's claim to a fifth amendment privilege with regard to matters within the scope of S.Res. 120 was weak. More specifically, the Senate Legal Counsel advised the Committee that it was unlikely that Hale could be prosecuted further, in either federal or state court, for crimes related to any of the matters covered by his anticipated testimony before the Committee.

The Senate Legal Counsel thus advised that as long as the Committee limited its questions of Hale to the subjects within the scope of S.Res. 120—that is, as long as the Committee did not question Hale about his allegedly fraudulent burial insurance scheme, for which Hale clearly possessed a valid privilege against compulsory self-incrimination—Hale likely did not have a valid basis on which to assert a fifth amendment privilege against testifying before the Committee. Minority staff made clear that it would forego questioning Hale about the burial insurance matter if that would secure his appearance.

The Senate Legal Counsel also advised the Special Committee of the serious risks that a grant of blanket use immunity could pose to any future state prosecution of Hale for his alleged burial insurance fraud. Those risks emanate principally from the binding decision of the United States Court of Appeals for the District of Columbia Circuit in *United States* v. *North,* 910 F.2d 843 (D.C. Cir. 1990).

In that decision, the court reversed Oliver North's criminal convictions arising from the Iran-Contra affair, holding that the prosecution had failed to meet its heavy burden of establishing that North's immunized testimony before Congress had no effect on any aspect of North's subsequent criminal prosecution. The court stated:

> [The fifth amendment] does not prohibit simply "a whole lot of use," or "excessive use," or "primary use" of compelled testimony. It prohibits "any use," direct or indirect. From a prosecutor's standpoint, an unhappy byproduct of the fifth amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, or after the trial) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. We readily understand how court and counsel might sigh prior to such an undertaking. Such a Kastigar proceeding could consume substantial amounts of time, personnel, and money, only to lead to the conclusion that a defendant—perhaps a guilty defendant—cannot be prosecuted.[602]

The court thus cautioned that the grave risks to future prosecutions must be carefully considered before a decision is made to confer a grant of use immunity:

> [T]he fifth amendment requires that the government establish priorities before making the immunization decision. The government must occasionally decide which it values more: immunization (perhaps to discharge institutional duties, such as congressional fact-finding and information-dissemination) or prosecution. If the government chooses immunization, then it must understand that the fifth amendment and Kastigar mean that it is taking great chance that the witness cannot constitutionally be indicted or prosecuted.[603]

In light of the Court of Appeals' decision in *North,* the Senate Legal Counsel cautioned the Special Committee that Hale could obtain for himself an "immunity bath" from all future prosecutions, including the state prosecution for his alleged burial insurance fraud, by providing immunized testimony to the Committee which, even if not technically responsive to the Committee's questions, touched on matters related to the future prosecutions.

It must be emphasized that the accusations against Hale relating to his alleged burial insurance fraud, described above, have not been proven. Nevertheless, the accusations are extremely serious—that Hale cynically defrauded the poorest members of society, who used their modest savings to try to provide for a proper burial for their loved ones. Many on the Special Committee felt it is was very important to avoid any actions that could needlessly interfere with the ability of Arkansas state authorities to bring Hale to justice for this alleged fraud.

The Majority's focus on Independent Counsel Starr's statement that he did not oppose immunity for Hale misses the point. It was Starr, after all, who first approached the local prosecutor in Arkansas and asked him to drop the state prosecution altogether. The local prosecutor considered the Independent Counsel's request and rejected it in a February 13, 1996 letter to Starr:

> We have completed our review of a state investigation of David Hale and have decided to charge him with violating Arkansas law. Mr. Hale has not only committed multiple crimes against the federal government, but there is also probable cause to believe he has independently violated state law as well. I understand your preference is that this issue be addressed at Hale's federal sentencing; however, I cannot oblige. * * *
>
> In the final analysis, it is ultimately a decision for the prosecutor, either state or federal, to determine how to best protect society's interest in bringing wrongdoers to justice. In the case at bar, David Hale should be held to answer for what I believe to be his fraudulent representations to the State Insurance Department, which are even more egregious considering that he has also defrauded the federal government.[604]

Many Members were concerned that Hale, by making a baseless assertion of privilege, was trying to manipulate the Committee into giving him a grant of immunity he did not need. Many Members failed to understand why Hale was insisting on a grant of immunity to testify before the Committee about the same matters about which he had already testified—without use immunity—for nine days at the Tucker/McDougal trial. Members were concerned that Hale was seeking immunity from the Committee for the improper purpose of obtaining an "immunity bath" so that he could avoid subsequent prosecution for the alleged burial insurance fraud in Arkansas.* As Senator Kerry stated:

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*A letter Hale's lawyer sent to the Committee on June 6, 1996 referred to Hale's concerns about unspecified federal prosecutions in addition to his concerns about state prosecutions. (June 6, 1996 letter from John A. Mintz to Chairman D'Amato and Senator Sarbanes). Since Hale's plea agreement with the Independent Counsel limits Hale's protection from federal prosecutions to federal crimes Hale disclosed before March 19, 1994, the letter from Hale's lawyer

> Let's have him come up here. If he has no assertable Fifth Amendment privilege, let's put that to the test. Let the system work the way it ought to work. But let the Committee not be bamboozled and bullied by a legal scheme into giving an immunity that we don't need to give. * * *
>
> By what rights should he go to the [Independent Counsel], cut a deal and agree to talk in court, get a lesser sentence and now come up to the Senate Committee and bamboozle the Committee in an [attempt] to come in here and say absolutely anything that he wants whatsoever with the notion that for whatever he says here he can never be prosecuted? [605]

Senator Boxer added:

> I think it's fair to say that we don't know if he will be indicted, but I have to tell you, to me, if this is true and this is a person who stole from the poorest of the poor who wanted to bury their loved ones, for me to play a part, in essence granting a pardon in advance because, in a sense, that's what it is when you grant immunity—and he may blurt something out—I don't trust him not to. This man, you are not dealing with someone who has a record of honesty here. * * * I think it would be a mistake.[606]

Members also noted that little new information was likely to be obtained from Hale's testimony before the Special Committee. The Committee already had in its possession 1600 pages of transcript of Hale's testimony in the Tucker/McDougal trial on the same subjects about which the Committee sought to question Hale; to the extent evidentiary rulings at the trial precluded Hale from testifying about certain events, the Committee also had in its possession numerous out-of-court statements by Hale relating to those events. Thus, there was a lesser need for the Committee to obtain Hale's testimony without regard to cost than there might have been had Hale never testified or spoken previously in a public forum. This simply was not a situation in which the Committee faced an "immunity or nothing" decision. As Senator Kerry stated:

> [Hale] has already spent nine days in a court of this country testifying under oath. He has been subjected to cross-examination. That testimony is in our record. There is no great mystery about what he is going to say except what he might say if he had a blanket use immunity, for which he can say anything.[607]

In addition, the Committee had the benefit of the jurors' post-trial comments about Hale's lack of credibility as a witness. Not only did these comments cause some Members to doubt the sincerity of Hale's privilege assertion, they also raised significant doubt about the value of any testimony Hale might provide to the Committee.

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raised the question whether Hale has committed additional crimes, as yet undisclosed, that would be effectively excused by a grant of blanket use immunity.

Finally, several Members of the Committee recognized that Hale's insistence upon a grant of blanket use immunity was unique. The Committee had called before it more than 200 witnesses, and not one of them had sought a grant of immunity.

Accordingly, at the Special Committee's public meeting on June 5, 1996, the Committee agreed not to vote on a prepared resolution to confer blanket use immunity on Hale. Instead, the Committee agreed that Hale would be brought in for a deposition on June 7, 1996 and that any privilege assertions Hale made in response to specific questions posed at the deposition would be ruled on first by the Chairman and then by the full Committee, as required by S.Res. 120 and other Senate precedents. The Committee agreed that if Hale continued to refuse to answer the Committee's questions the Committee would seek to bring the matter to federal court for a prompt judicial determination of the validity of Hale's assertions of privilege.

After the June 5, 1996 hearing, the Senate Legal Counsel advised the Committee that the process of litigating the privilege issue in federal court would not be concluded in time for the Committee to obtain a court order requiring Hale's un-immunized testimony before June 14, 1996, the final day for public hearings under the Special Committee's charter.

On June 6, 1996, the Chairman proposed that the question of the validity of Hale's assertion of privilege be put to a Special Master. This proposal was foreclosed, however, by a letter the Committee received later the same day from Hale's lawyer.

The June 6, 1996 letter from Hale's lawyer made clear that Hale would not testify before the Special Committee on any subject whatsoever without a court order granting him blanket use immunity. The letter made clear, therefore, that Hale would not abide by the ruling of a Special Master, who had no legal authority to bind Hale. Hale's lawyer wrote:

> I have advised the Committee orally and now confirm in writing that Mr. Hale will claim the protection of his Constitutional privilege under the Fifth Amendment to the Constitution of the United States and respectfully decline to testify at deposition and at a public hearing if he is compelled to appear in response to the subpoenas.
>
> In the absence of a court order to testify and a grant of immunity as provided by Federal law, any testimony by Mr. Hale regarding any matters before the Special Committee may be used against him in some fashion in connection with an announced criminal prosecution of Mr. Hale in Arkansas and any other state or federal prosecution.[608]

Citing the letter from Hale's lawyer, the Chairman canceled Hale's scheduled deposition and noticed a meeting of the Committee for June 11, 1996 to vote on whether to grant immunity to Hale. At the meeting, the Committee voted 10–8 in favor of granting use immunity to Hale. Because a two-thirds majority vote is required to pass a resolution granting use immunity, the resolution failed.

The Minority wanted Hale to testify before the Special Committee. Indeed, the Committee's record establishes beyond any doubt

that, beginning in November 1995 and continuing through the late spring of 1996, the Minority sought in vain to persuade the Majority to bring Hale before the Committee.[609] As Senator Sarbanes stated at the Committee's public hearing on January 31, 1996:

> Mr. Chairman, I would like to ask about David Hale. * * * [I]n October of last year [1995] you and I wrote to Kenneth Starr, the Independent Counsel, and advised him that the Committee intended to proceed with [its] investigation, notwithstanding Starr's concerns about the effect the Committee's hearings might have on his investigation because of the Committee's strong interest in concluding its work by February 29, 1996 as provided for in the Senate Resolution 120.
>
> * * * On December 7, [1995], after a meeting with Independent Counsel Starr, who, of course, has interposed objections to us hearing from a number of witnesses, the Chairman asked Minority counsel to work with Majority counsel to arrange for Hale's deposition. Throughout December our counsel, in fact, urged the Majority counsel to begin the process of arranging for Hale's testimony. And we pointed out in early January that no document subpoena or deposition notice had been sent to Hale.
>
> * * * Now, we have not, as I understand it, issued a subpoena for the Hale documents, we have not made any arrangements to take the Hale deposition, despite efforts to do so beginning well back in the fall. Now, I'm at a loss to understand why there hasn't been any follow-up on this matter, and I've put it on the public record because repeated efforts to explore this matter with the Majority have been unsuccessful.
>
> * * * We've raised this issue and pressed it repeatedly. No action has been taken. I gather there have been communications by Majority counsel with Hale's lawyer, and I take it with the Independent Counsel as well in which we have not been involved or included, and I just feel that, you know, if it's the intention not to proceed, then I think we ought to know that, but I think that we ought to move ahead and we ought to have a subpoena for the Hale documents and a subpoena for his deposition and then we'll see how Mr. Hale and his attorney react to that request from the Committee. We've been seeking that now for months, literally months, and have gotten—haven't gotten anywhere with it.[610]

Despite its repeated attempts to obtain Hale's testimony, the Minority voted against a grant of blanket use immunity for Hale. The Minority considered all of the factors discussed above and concluded that the risk that an immunity order would pose to the anticipated state prosecution in Arkansas was too great to endure in light of the seriousness of the alleged burial insurance fraud and other possible but unspecified charges to which Hale's lawyer alluded in his letter to the Committee, the public availability of Hale's nine days of testimony at the Tucker/McDougal trial and numerous out-of-court statements by Hale, the absence of a valid

legal basis for Hale's assertion of privilege, the apparent lack of credibility of Hale's testimony, and the absence of any other requests for immunity by any of the more than 200 other witnesses who appeared before the Committee.

J. THE PILLSBURY MADISON & SUTRO INVESTIGATION

1. Introduction

Pillsbury Madison & Sutro ("PM&S") was retained by the Resolution Trust Corporation (the "RTC") in February 1994 to investigate potential civil fraud claims * relating to Madison Guaranty Savings & Loan ("Madison Guaranty") and Whitewater Development Corporation.[611] PM&S was assisted by the forensic accounting firm of Tucker Alan Inc. ("Tucker Alan") on the Madison Guaranty and Whitewater investigations. PM&S and Tucker Alan spent over two years investigating Whitewater and Madison Guaranty, at a cost to taxpayers in excess of $3 million.[612]

The findings of this comprehensive, independent investigation, as set out in a series of seven written reports totalling over 545 pages, are consistent with the evidence collected by the Special Committee over thirteen months of investigation involving the review of tens of thousands of documents, 282 depositions, 51 days of public hearings, and 8 public meetings: There is no credible evidence of any wrongdoing by President or Mrs. Clinton in connection with Whitewater or Madison Guaranty.

The fact that two separate, independent governmental investigations, each conducted at enormous effort and taxpayer expense, reached the same result is a point that merits emphasis. The following discussion summarizes the key findings of the PM&S investigation and explains how those findings are consistent with the evidence developed in the Special Committee's investigation.

2. The PM&S investigation was conducted by capable, experienced lawyers who were not subject to any outside influence

Charles Patterson, a senior partner in the Los Angeles office of PM&S, was in charge of the overall investigative effort undertaken by PM&S on behalf of the RTC. Patterson also was the PM&S attorney with primarily responsibility for the Castle Grande and 1308 Main Street investigations. Bruce Ericson, a partner in the San Francisco office of PM&S, was the attorney with primary responsibility for the Whitewater and Rose Law Firm investigations. Jay B. Stephens, a partner in the Washington, DC office of PM&S and a former United States Attorney for the District of Columbia, assisted Patterson and Ericson with the investigation in the preliminary stages, but did not devote substantial attention * to the matter after the fall of 1994.[613]

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* "On February 4, 1994, the Resolution Trust Corporation ("RTC") issued an Order of Investigation in the matter of Madison Guaranty Savings and Loan. * * * The Order was issued consistent with 12 U.S.C. §1441a(b)(14), as modified by the RTC Completion Act of 1993 Public Law 103–204. That statute extended the limitations period applicable to RTC claims arising from fraud, intentional misconduct resulting in unjust enrichment and intentional misconduct resulting in substantial losses to the institution." (General Report On The Investigation of Madison Guaranty Savings & Loan And Related Entities, Prepared for the Resolution Trust Corporation by Pillsbury, Madison & Sutro, December 28, 1995, p. 1.)

* During the Special Committee's hearings an issue arose concerning Mrs. Clinton's description of her work for Madison Guaranty as a "minimal amount." (Senator Shelby, 1/11/96 Hrg. pp. 96–97; Hillary Rodham Clinton Whitewater Press Conference, April 22, 1994.) Comparing

Patterson, Ericson, and Stephens appeared before the Special Committee on May 17, 1996. At the May 17 hearing, Patterson and Ericson defended the quality of their investigation, the independence of their firm, and the validity of the analysis and conclusions in their reports. Ericson testified that, "The buck stopped somewhere, and as far as I am concerned, the buck stops with our firm. Our name went on it and we had to be satisfied with the finished product. If we weren't we wouldn't have put our name on it." [614] While Stephens testified that he was not sufficiently involved in the investigation to comment on its findings,* he described Patterson and Ericson as "very experienced and talented" attorneys "who conducted themselves with the highest ethical standards." [615]

Patterson and Ericson told the Committee that no one at the RTC ever sought to influence the conduct of their investigation or the conclusions in their reports. Patterson testified that PM&S's "conclusions as reached in our reports, were not influenced in any untoward way by any outside source." [616] Ericson confirmed that all of the conclusions in the Pillsbury Madison & Sutro reports reflected his best independent and professional judgment.[617] Patterson also testified that no one ever reviewed the firm's preliminary conclusions and suggested that they needed to be changed.[618] Patterson summed up his firm's role as follows: "We are an independent law firm and we were asked to perform an independent investigation. And I firmly believe that if the RTC had asked us to change our conclusions, the stated conclusion that they did not

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Mrs. Clinton's Madison Guaranty billings with the billings by Jay Stephens on the PM&S investigation sheds some light on this issue. Stephens testified that he did "minimal" work on the PM&S investigation of Madison Guaranty, but his billing records show that he billed 339.75 hours over 12 months, or an average of 28.3 hours per month. (Stephens, 5/17/96 Hrg. pp. 41–45; April 30, 1996 FDIC letter, Alice C. Goodman to Chairman Alfonse D'Amato and Senator Paul Sarbanes, attaching billing statements submitted to the RTC by Pillsbury, Madison & Sutro [Documents Not Numbered].) Mrs. Clinton in contrast, billed 63.5 hours over 15 months, or an average of 4.23 hours per month. The fact that Mr. Stephens testified under oath that his work was "minimal" in amount, when the records of the time he billed to the government show he did far more work in 1994 and 1995 than Mrs. Clinton did in 1985 and 1986, demonstrates that Mrs. Clinton's description of her work for Madison Guaranty as "minimal" is fair and accurate. (Id.) (The comparison also suggests that Mrs. Clinton's critics may be applying a double-standard in an effort to score political points.)

*When Ericson, Patterson, and Stephens appeared before the Special Committee at a public hearing on May 17, 1996, the Majority asserted that, in light of Stephens's limited involvement in the PM&S investigation, the numerous press accounts which reported that the PM&S investigation was spearheaded by Stephens and referred to the reports collectively as the "Stephens Report" were unfair and inaccurate. (At that hearing the Majority Chief Counsel stated that a computer search had yielded 429 news stories associating the PM&S report with Stephens. (Giuffra, 5/17/96 Hrg. p. 7).) Stephens testified that he had expressed to his partners "some concern . . . that I was getting the credit or blame for the reports, since I hadn't written the reports." (Stephens, 5/17/96 Hrg. p. 9). While Stephens's role may have been overstated by the news media, it is not surprising that the press and the public focused on Stephens. As a former federal prosecutor who had brought high-profile cases in Washington, DC, and had considered seeking the Republican nomination for the United States Senate from Virginia, his involvement in an investigation of matters relating to a Democratic President naturally was the subject of considerable media attention. (See, e.g., Stephens, 5/17/96 Hrg. pp. 38–40; "Stephens Considers a Senate Race; Former U.S. Attorney May Seek GOP Nomination in Virginia", The Washington Post, 5/15/93; "Ex-Prosecutor Stephens Quits Va. Senate Race", The Washington Post, Jan. 7, 1994.) Press reports at the time of the retention of PM&S by the RTC focused on Stephens's involvement in the investigation and on concerns allegedly raised at the time by some Clinton Administration officials about Stephens's partisan identification. (See, e.g., "RTC Lawyer Drew White House Ire; Clinton Aides Questioned Hiring", The Washington Post, 3/26/94.) After these initial reports, Stephens's name continued to be linked with the PM&S investigation in press reports, and it is to be expected that the press and others, who had no way of knowing that his role had diminished, continued to associate Stephens with the investigation. The Committee found no evidence that the RTC misrepresented Stephens's role or sought to misuse the fact of his participation.

agree with, we would not have done that."[619] Stephens said he had "no reason to question Mr. Patterson's statement."[620]

Senior RTC officials confirmed that the agency never sought to influence the outcome of the PM&S investigation. Former RTC General Counsel Ellen Kulka testified that the RTC never sought to influence the PM&S investigation:[621]

> Q: Are you aware of any instances where Pillsbury, Madison wanted to look at certain issues or transactions and they were told by the RTC not to look at those issues or transactions?
>
> A: Absolutely not.

RTC Senior Counsel Mark Gabrellian also testified that no one at the RTC ever attempted to influence the findings or the conclusions of the PM&S reports.[622] RTC Legal Division Counsel James Igo testified that he was not aware of any instances in which the RTC gave PM&S instructions as to the scope or limitations of their investigation.[623]

3. PM&S's investigation and findings on the Whitewater investment

In April 1995 PM&S and Tucker Alan submitted a preliminary report on Whitewater that described the history of the venture.[624] The findings of the preliminary report were consistent with prior public statements by the Clintons that they had been passive investors in Whitewater and that James McDougal had managed the investment. The preliminary report also concluded that the McDougals had contributed more money to pay Whitewater expenses, primarily interest on bank debt, than the Clintons. The preliminary report did not, however, answer the question of whether the Clintons were aware that money from the McDougals (as opposed to money from Whitewater land sales) had been used to pay Whitewater expenses.

In December 1995 PM&S and Tucker Alan completed a supplemental report on Whitewater.[625] With respect to the question of what the Clintons knew about the McDougals' payments of Whitewater expenses, the supplemental report concluded that "on this record, there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the source of the funds used to make payments on the bank debt."[626] That report "recommended that no further resources be expended on the Whitewater part of this investigation."[627]

4. PM&S findings on the Rose Law Firm's legal work for Madison Guaranty

PM&S prepared two reports on the representation of Madison Guaranty by the Rose Law Firm (the "RLF").[628] The first RLF report, completed on December 28, 1995, concluded that "[t]he evidence does not provide a basis * * * on which to assert claims against the Rose Law Firm that could be pursued in a cost-effective manner."[629] In testimony provided to the Special Committee, the PM&S attorneys amplified on this point and made clear that PM&S's conclusion that legal action should not be brought against the RLF did not turn on whether or not such action would have

been cost effective for the RTC. When Ericson was questioned at his May 10, 1996 deposition about Madison Guaranty's retention of the RLF, he testified that the cost-effectiveness consideration "was of pretty marginal materiality. * * *"[630]

On February 25, 1996, PM&S completed a second report on the RLF entitled "A Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm" (the "Supplemental RLF Report").[631] With respect to the question of whether the retention of the RLF caused any harm to Madison Guaranty, the Supplemental RLF Report concluded:

> Mrs. Clinton's recollections and Mr. Massey's recollections differ in some respect, but for present purposes the differences are not material * * * it makes little difference who was right. There is no hint of fraud or intentional misconduct in either version, and the mere act of retaining the Rose Law Firm did not harm Madison Guaranty in any respect.[632]

In their May 17 hearing testimony Ericson and Patterson testified that nothing has come to their attention since the completion of the reports that would change their conclusion regarding the retention of the RLF.[633] The PM&S attorneys also dismissed the significance of differing recollections of exactly how the RLF came to be retained by Madison Guaranty. At his May 10, 1996 deposition Ericson testified that "there is still probably consistency" between Mrs. Clinton's recollection of how Madison Guaranty became a client of the Rose Law Firm and Massey's recollection.[634]

As to the securities matters on which the RLF advised Madison Guaranty, PM&S concluded: "It does not appear that the Rose Law Firm's work deterred Arkansas regulators from doing anything they might have done."[635] The report also noted that "if anything, the Arkansas regulators took a more aggressive position toward Madison Guaranty than did the FHLBB."[636] (As discussed above, Arkansas Securities Commissioner Beverly Bassett recommended to federal authorities in 1987 that Madison Guaranty be closed, but the federal authorities did not act on that recommendation until 1989.)

After the RLF billing records were found in the White House in January 4, 1995, and provided to the RTC, PM&S conducted further investigation of the RLF's work for Madison Guaranty. The Supplemental RLF Report describes the significance of the billing records as follows:

> The billing records found at the White House and other newly acquired evidence add considerably to the sum of knowledge with respect to this matter. Taken as a whole, however, the new evidence does not change the conclusions stated in the Rose Report. The new evidence has very little effect on the analysis of what the Rose Law Firm knew and did before the acquisition of the IDC property closed. The new evidence shows that, after the acquisition closed, lawyers at the Rose Law Firm (and in particular Mrs. Clinton) had more contact with Seth Ward and performed more services for Madison Guaranty than previously was known, but there remains no substantial evidence that

> these lawyers knew of or intended to aid and abet McDougal's apparent misconduct.[637]

The Supplemental RLF Report found that "a trier of fact is highly unlikely to find that there was anything untoward, let alone fraudulent or intentionally wrongful, in the circumstances of the Rose Law's retention by Madison Guaranty."[638] Ericson testified that PM&S found no evidence that either the Clintons or the RLF engaged in any fraudulent activity in connection with the matters under investigation:[639]

> Q: The conclusions that you reached and put forward involved conclusions about activities of others and involved conclusions about fraud. What was your conclusion about whether Mr. or Mrs. Clinton engaged in fraudulent activity or whether the Rose Law Firm engaged in fraudulent activity?
>
> A: We found no evidence of either.
>
> Q: No evidence of fraud either by the Clintons or the Rose Law Firm in connection with the matters under investigation? Is that correct?
>
> A: That's right.

PM&S also concluded in the Supplemental RLF Report that Madison Guaranty did not retain the RLF as a means to pay $2,000 a month to the Clintons:

> The alleged economic motivation makes no sense. McDougal suggests the Clintons needed $2,000 a month, and the implication is that this accounts for the monthly retainer in that amount, but there is no evidence that the Clintons ever received anything like $2000 a month from this engagement, and every reason to believe that they never received more than a trivial sum of money.[640]

After over two years of investigation, and with the benefit of having analyzed the RLF billing records for the Madison Guaranty engagement, PM&S dismissed the theory that the purpose of Madison Guaranty's retention of the RLF was to confer an economic benefit on the Clintons.

5. PM&S key findings on conspiracy theories involving the Rose Law Firm

PM&S also investigated whether RLF attorneys were involved in any misconduct by Madison Guaranty officials in connection with the IDC acquisition and the subsequent resales of parcels of that property (discussed above). PM&S found no evidence that RLF attorneys were aware of any wrongdoing in connection with the IDC and Castle Grande property. The first RLF report by PM&S concluded:

> The evidence taken as a whole does not amount to convincing proof that the Rose Law Firm knowingly aided and abetted a fraud, or a scheme to circumvent the Arkansas investment limitation regulation. This conclusion does not necessarily mean that the evidence exonerates anyone; it simply means, given the applicable legal standards and the statutory mandate under which the RTC operates, that

> no reasonable basis has been found to recommend the filing of a claim relating to the acquisition of Castle Grande against the Rose Law Firm.[641]

PM&S reaffirmed this conclusion in the Supplemental RLF Report[642] and in their testimony at the May 17 hearing.[643] With respect to conspiracy theories, PM&S concluded:

> It simply would not be persuasive to argue that, for $21,000 [the amount of legal fees Madison Guaranty paid to the RLF], McDougal corrupted the Rose Law Firm and convinced half a dozen lawyers, most of whom he did not know, to join him in a scheme to violate the law.[644]

In his testimony at the Committee's May 17 hearing,[645] Ericson also confirmed another conclusion on conspiracy theories set out in the Supplemental RLF Report:

> The conspiracy theory [involving the RLF] is hopelessly flawed. The Independent Counsel already has alleged a different conspiracy—the conspiracy with Tucker—involving the same property, IDC/Castle Grande * * * The principals were cut in on the deals, and relatively large amounts of money changed hands (six figures, it is alleged). Whatever one thinks of that, however, it strains common sense to place a second set of conspirators on the same property—a set that included half a dozen lawyers who had never met McDougal before, a set that was not cut in on the deals, a set whose senior members stood to gain something on the order of $20 a month.[646]

In short, PM&S found no credible evidence that Rose Law Firm attorneys were participants in whatever misconduct may have occurred in connection with the IDC property.*

6. The Role of Jay Stephens

The PM&S reports, particularly the two Whitewater reports and the two RLF reports, generally have been viewed as favorable to the Clintons and the RLF. Based upon the questions raised at the May 17 hearing, it appeared that some Committee members may have suspected that RTC officials sought to have Stephens removed from the investigation, perhaps because of the well-publicized concerns about Stephens that allegedly were expressed by some Clinton Administration officials when PM&S initially was retained by the RTC. There is no evidence of any such RTC action or influence. The PM & S attorneys all testified that Stephens's diminished involvement in the investigations after the summer of 1994 reflected an internal staffing decision by the law firm and was not the result of any outside influence. Patterson assigned the areas of investigative responsibility, and Stephens's role diminished because the

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*The Majority's report emphasizes information recently provided to FDIC investigators by former Madison Guaranty loan officer Don Denton. (FDIC Office of Inspector General Interviews of Don Denton, June 3 and June 11, 1996 [Documents Not Numbered].) Pillsbury Madison & Sutro interviewed Denton in April 1994. (Doc. Nos. SEN 21633—SEN 21648, Interview of Don Denton, April 28, 1994.) There are significant differences between Denton's statements to Pillsbury Madison & Sutro in April 1994 and his statements to the FDIC in June 1996. There are also significant differences between the June 3, 1996 and June 11, 1996 FDIC interview memoranda. These differing versions of statements to federal investigators call into question Denton's credibility and reliability as a witness.

work was being done by Patterson and Ericson with support from the firm's Los Angeles and San Francisco offices. Patterson testified that no one at the RTC ever suggested that he remove Stephens from the investigation.[647]

It also should be noted that Stephens was invited to review the reports his partners had prepared, but agreed to do so only in one instance. In late 1994 Ericson provided Stephens a draft of the preliminary Whitewater report and solicited his comments on the draft.[648] Stephens gave Ericson comments, and Ericson took those comments into account in preparing the final version of the preliminary report.[649] Later in 1995, after the preliminary report on Whitewater had been made public and reported on by the press as generally favorable to the Clintons,* Stephens declined to review drafts of the final reports:

> Well in fact the RTC asked me to read all the reports when the reports were filed in December. I declined to do that because I had not been involved in the engagement. I thought it was improper and inappropriate for me to review those reports simply so the RTC could have my imprimatur on those reports.[650]

Patterson indicated that he called the RTC about Stephens's position on review of the draft reports, and they said, "no problem."[651] The RTC did not pursue the matter or pressure the firm to have Stephens review the drafts.

It is not clear why Stephens thought it was "improper" for him to review drafts of the final PM&S reports when the client[652] and his partners[653] asked him to do so. Stephens seems to have worked on the project enough to be generally familiar with the issues in the investigation (he billed the RTC $67,950 for 339.75 hours of work in 1994 and 1995).[654] In view of Stephens's expertise in criminal law and experience as a United States Attorney and a senior official at the Department of Justice, it was reasonable for the RTC to ask him to review the reports and provide comments.[655] Clients often ask law firms to have a member of the firm who has expertise in a particular substantive area review a document and provide comments.[656] In fact, the RTC even followed this procedure internally, asking a staff member who had not been involved in the Madison Guaranty investigation to review drafts of final PM&S reports.[657] The RTC attorney agreed to review the reports even though he had not been involved in the investigation. Stephens, in contrast, refused to review the drafts, because he did not want to put his "imprimatur" on the reports. The question remains, however, why the RTC, after paying the law firm in which Stephens was a partner over $2 million for legal services and paying the firm $67,950[658] for Stephens's own work on the project, was not entitled to have Stephens review and provide comments on the final draft reports (as he had done with the preliminary Whitewater report). In any event, Stephens refused the requests of his client and his partners and did not review the draft reports.[659]

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*See, e.g., "Report on Arkansas S&L backs up Clintons on Whitewater", The Atlanta Journal and Constitution, June 26, 1995; "Whitewater Report Supports Clintons", Arkansas Democrat-Gazette, June 27, 1995.

7. Questions concerning the thoroughness of PM&S's investigation and the validity of the conclusions in the PM&S reports

The Special Committee reviewed the thoroughness of the PM&S investigation and the validity of conclusions in the PM&S reports. At the May 17 hearing the Committee explored whether PM&S should have interviewed more witnesses in Arkansas. The hearing testimony established that PM&S exercised professional judgment as to whether or not interviewing a particular witness was likely to yield relevant evidence and therefore merited deposing or interviewing. While PM&S attorneys acknowledged that it always is helpful to interview or depose additional witnesses, they did not concede that their inability to interview all the persons involved undermines the analysis or conclusions in their reports.[660]

At the May 17 hearing the Majority pointed out that PM&S did not interview the McDougals, David Hale, Jim Guy Tucker, Chris Wade (except a very preliminary initial interview), Seth Ward, John Latham, David Knight, and the Rose Law Firm attorneys involved in the acquisition of the IDC property. Ericson and Patterson explained that the Office of the Independent Counsel refused to allow PM&S to interview some of the witnesses.[661] As to other witnesses, including bank officials involved in the Whitewater loan (Frank Burge, James Patterson, Ron Procter, and Robert Ritter), Ericson testified that their testimony would have been "of marginal interest and basically a waste of money."[662]

Although in a complex investigation it always is difficult to establish conclusively that a particular witness need not be interviewed (in effect doing so requires one to "prove a negative"), the PM&S attorneys asserted that they conducted sufficient interviews and that the additional witnesses suggested by the Majority at the May 17 hearing likely would not have provided evidence that would change the conclusions reached by PM&S and Tucker Alan.[663] Perhaps most important, the hearing testimony made clear that the selection of witnesses was made by PM&S without any interference from the RTC or anyone else in government and that no one at the RTC ever told PM&S not to interview certain witnesses.[664]

Questions also were raised at the May 17 hearing as to whether the cost of the PM&S investigation was justified by the amount of potential damages the RTC could potentially recover in any civil litigation relating to Madison Guaranty that might have been initiated by the agency. The concern raised by the Majority seems to have been that while it was apparent to PM&S and the RTC early in the investigation that litigation would not be cost-effective, lengthy reports that were favorable to the Clintons and the Rose Law Firm nonetheless were prepared. The witnesses examined by the Special Committee uniformly explained that for the RTC the investigation involved the integrity of the agency, so more than the cost-effectiveness of litigation was at stake.[665] Gabrellian confirmed that money was only one factor in the agency's decision to conduct a complete investigation: "It was pretty clear from the dollars involved that, on its own, any claims identified out of the relationship with Whitewater would not be cost-effective."[666] With respect to the larger question of the credibility of the agency, however, Gabrellian explained:[667]

> I think that * * * with respect to pursuit of the investigation phase involving Whitewater Development Corporation, and the explanation that I believe was given on the record before congressional committees by the [RTC] general counsel and [RTC] deputy CEO, as well as the explanations given to me by my upper management, was that Whitewater Development should be thoroughly investigated, and that even though, in and of itself, it may not be a cost-effective claim to pursue, that there were issues of RTC credibility that necessitated pursuing that phase of the investigation as well as other phases of the investigation that may, in and of themselves, lead to cost-effective claims.

The Committee also explored whether any "new facts" have come to light since PM&S issued their reports that might change the conclusions in the reports. Patterson and Ericson did not concede that any of the so-called "new evidence" that has been obtained by the Special Committee since PM&S completed its reports would alter the conclusions in those reports.* Ericson testified that no new evidence had come forward since the completion of the PM&S reports that made him feel that the conclusions in those reports were not accurate.[668]

In short, the conclusions reached by PM&S after two years of investigation remain valid and now have been confirmed by the Special Committee's own exhaustive investigation.

ENDNOTES

[1] Lasater, 2/22/96 Dep. pp.17, 20.
[2] Lasater, 2/22/96 Dep. p.269.
[3] Lasater, 2/22/96 Dep. p.270.
[4] Lasater, 2/22/96 Dep. p.18.
[5] Lasater, 2/22/96 Dep. p.270.
[6] Lasater, 2/22/96 Dep. pp.17–18, 270.
[7] Lasater, 2/22/96 Dep. p.96.
[8] Lasater, 5/1/96 Hrg. p.5.
[9] Lasater, 2/22/96 Dep. p.17.
[10] Lasater, 2/22/96 Dep. p.19.
[11] Lasater, 2/22/96 Dep. p.19.
[12] Lasater, 2/22/96 Dep. p.19.
[13] Lasater, 2/22/96 Dep. p.25.
[14] Drake, 1/24/96 Dep. p.9.
[15] Drake and Lasater, 5/1/96 Hrg. pp.48–49.
[16] Chandler, 5/1/96 Hrg. p.237.
[17] Doc. Nos. DKSN 026137—DKSN 026148, Arkansas Development Finance Authority, Bond Underwriters, Bond Counsel & Special Tax Counsel.
[18] Drake, 5/1/96 Hrg. p.48.
[19] Drake, 1/24/96 Dep. p.49.
[20] B. Wright, 4/25/96 Hrg. p.193.
[21] Bratton, 4/23/96 Dep. p.81.
[22] Chandler, 5/1/96 Hrg. pp.236–237.
[23] Chandler, 5/1/96 Hrg. p.237.
[24] Hardwicke, 2/15/96 Dep. pp.79–80.
[25] Hardwicke, 5/1/96 Hrg. pp.235–236
[26] G. Wright, 5/1/96 Hrg. p.236.
[27] G. Wright, 5/1/96 Hrg. p.206.

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*As noted above, the Majority report emphasizes information Don Denton recently provided to FDIC investigators. (FDIC Office of Inspector General, Interviews of Don Denton, June 3 and June 11, 1996 [Documents Not Numbered].) That information was not available when the PM&S attorneys testified before the Special Committee, although PM&S attorneys had interviewed Denton in April 1994 and been told that Denton was not aware of any involvement by Rose Law Firm attorneys in the IDC transactions. Denton, who has been given immunity by the Office of Independent Counsel and is now a cooperating witness in that investigation, apparently has now changed his story from what he told PM&S in 1994.

[28] Doc. No. DKSN 026171—DKSN 026172, ADFA (AND AHDA) Use of Professional Firms as Underwriters and Bond Counsel.
[29] Stout, 5/1/96 Hrg. p.231.
[30] Hardwicke, 2/15/96 Dep. pp.30–31; G. Wright, 4/24/96 Dep. p.24.
[31] Chandler, 4/27/96 Dep. pp.37–38.
[32] Chandler, 4/27/96 Dep. pp.74–75.
[33] Chandler, 4/27/96 Dep. p.39.
[34] Chandler, 4/27/96 Dep. pp.61–62.
[35] Chandler, 4/27/96 Dep. p.42.
[36] Chandler, 5/1/96 Hrg. p.197.
[37] Chandler, 4/27/96 Dep. p.84.
[38] Epes, 2/5/96 Dep. p.208.
[39] Epes, 2/5/96 Dep. pp.71–72.
[40] Lasater, 5/1/96 Hrg. p.37.
[41] Lasater, 5/1/96 Hrg. pp.8–9.
[42] Epes, 2/5/96 Dep. p.48.
[43] Epes, 2/5/96 Dep. p.56.
[44] Epes, 2/5/96 Dep. pp.220–221.
[45] Drake, 1/24/96 Dep. p.201.
[46] See Garner, 6/13/96 Dep. pp.21–22, 25–27, 29–31, 43.
[47] Chandler, 4/27/96 Dep. pp.51, 69, 71.
[48] Chandler, 5/1/96 Hrg. p.255.
[49] Chandler, 4/27/96 Dep. p.52.
[50] Chandler, 4/27/96 Dep. p.70.
[51] Chandler, 4/27/96 Dep. p.54.
[52] Hardwicke, 2/15/96 Dep. p.43.
[53] Hardwicke, 2/15/96 Dep. p.44.
[54] G. Wright, 4/24/96 Dep. p.37.
[55] G. Wright, 4/24/96 Dep. pp.26–27.
[56] G. Wright, 4/24/96 Dep. pp.40–41.
[57] Epes, 2/5/96 Dep. pp.85–86.
[58] Epes, 2/5/96 Dep. p.87.
[59] Snider, 2/7/96 Dep. pp.42–44; Young, 2/27/96 Dep. p.13.
[60] Stout, 5/1/96 Hrg. pp.181–182.
[61] Stout, 5/1/96 Hrg. p.181.
[62] Stout, 5/1/96 Hrg. p.183.
[63] Stout, 5/1/96 Hrg. pp.185–186.
[64] Stout, 5/1/96 Hrg. p.187.
[65] Stout, 5/1/96 Hrg. p.260.
[66] Hardwicke, 5/1/96 Hrg. p. 209.
[67] Hardwicke, 5/1/96 Hrg. p. 217.
[68] Hardwicke, 5/1/96 Hrg. pp. 260–261.
[69] G. Wright, 5/1/96 Hrg. p. 211.
[70] G. Wright, 5/1/96 Hrg. p. 262.
[71] Nash, 4/30/96 Hrg. p. 121.
[72] Nash, 4/30/96 Hrg. p. 121.
[73] G. Wright, 5/1/96 Hrg. pp. 205, 208.
[74] Stout, 5/1/96 Hrg. pp. 223–224.
[75] Stout, 4/30/96 Dep. p. 53.
[76] Stout, 4/30/96 Dep. pp. 77–78.
[77] Stout, 4/30/96 Dep. p. 78.
[78] Lasater and Drake, 5/1/96 Hrg. p. 54; Doc. Nos. DKSN 026171—DKSN 026172, ADFA (and AHDA) Use of Professional Firms as Underwriters and Bond Counsel.
[79] Hardwicke, 5/1/96 Hrg. p. 228.
[80] Lasater, 2/22/96 Dep. pp. 154–155.
[81] Doc. Nos. DKSN 026475—DKSN 026476, January 4, 1985 letter from Dan R. Lasater to Honorable Bill Clinton, with Resume of Donald M. Spears.
[82] Doc. Nos. DKSN 026450—DKSN 026452, Current Members of Board Number 053 Arkansas Development Finance Authority, 1/24/86.
[83] Doc. No. DKSN 026582, April 3, 1985 letter from Patsy L. Thomasson to The Honorable Bill Clinton.
[84] Doc. No. DKSN 026581, April 5, 1985 letter from Bill Clinton to Patsy L. Thomasson.
[85] Epes, 2/5/96 Dep. p. 211; Doc. Nos. DKSN 026450—DKSN 026452, Current Members of Board Number 053 Arkansas Development Finance Authority dated 1/24/86.
[86] Doc. No. DKSN 027451, March 31, 1983 letter from David A. Collins to The Honorable Bill Clinton.
[87] Chandler, 4/27/96 Dep. pp. 53–54.
[88] Chandler, 4/27/96 Dep. p. 45.
[89] Doc. Nos. DKSN 026609, May 1, 1985 letter from Dan R. Lasater to the Honorable Bill Clinton; DKSN 026606, May 1, 1985 letter from Dan R. Lasater to the Honorable Bill Clinton; DKSN 026616, May 1, 1985 letter from Dan R. Lasater to the Honorable Bill Clinton.
[90] Doc. Nos. DKSN 026608, May 23, 1985 letter from Bill Clinton to Dan Lasater; DKSN 026605, May 23, 1985 letter from Bill Clinton to Dan Lasater; and DKSN 026615, May 23, 1985 letter from Bill Clinton to Dan Lasater.
[91] Epes, 2/5/96 Dep. p. 211; Doc. No. DKSN 026450—DKSN 026452, Current Members of Board Number 053 Arkansas Development Finance Authority, 1/24/86.
[92] Hardwicke, 2/15/96 Dep. pp. 46–47.
[93] G. Wright, 4/24/96 Dep. pp. 10, 14.

[94] Doc. No. DKSN 026397, Recommendations for Arkansas Development Finance Authority.
[95] Drake, 5/1/96 Hrg. p. 55.
[96] Goodwin, 4/30/96 Hrg. p. 45.
[97] Goodwin, 4/30/96 Hrg. p. 11.
[98] Doc. No. DKSN 017816, "Arkansas State Police Communication Systems Financing Alternatives October 1, 1984."
[99] Snider, 2/7/96 Dep. p. 58–59.
[100] Young, 2/27/96 Dep. pp. 18–19.
[101] Snider, 2/7/96 Dep. p. 64.
[102] Young, 4/30/96 Hrg. p. 87.
[103] Young, 2/27/96 Dep. p. 31.
[104] Snider, 2/7/96 Dep. p. 67–68.
[105] Snider, 2/7/96 Dep. p. 71.
[106] Drake, 5/1/96 Hrg. p. 90.
[107] Young, Dep. pp. 28–29.
[108] Snider, 2/7/96 Dep. pp. 77–78.
[109] Young, 2/27/96 Dep. pp. 29–30.
[110] Drake, 1/24/96 Dep. p. 88; *See* Drake, 5/1/96 Hrg. pp. 97–98.
[111] Lasater, 2/22/96 Dep. p. 246.
[112] Young, 4/30/96 Hrg. p. 30.
[113] Snider, Dep. pp. 77–78.
[114] Doc. Nos. DKSN 018193–DKSN 018199, Arkansas Act 817 signed by Gov. Clinton on April 4, 1985.
[115] Young, 4/30/96 Hrg. p. 75.
[116] Wright, 4/25/96 Hrg. p. 211.
[117] Young, Goodwin, Mitchum, 4/30/96 Hrg. p. 51; Young, 4/30/96 Hrg. p. 75.
[118] Bratton, 4/30/96 pp. 125–26, 157.
[119] Doc. DKSN 027584, Minutes of April 4, 1985 meeting of the Arkansas State Police Commission.
[120] DKSN 001396, Minutes of May 3, 1985 Meeting of Financial Screening Committee.
[121] Mitchum, 4/30/96 Hrg. pp. 47, 76.
[122] Mitchum, 4/30/96 Hrg. pp. 48, 77.
[123] Mitchum, 4/30/96 Hrg. p.48.
[124] Mitchum, 4/30/96 Hrg. p.79.
[125] Mitchum, 4/30/96 Hrg. p.80.
[126] Myers, 4/30/96 Hrg. p.80.
[127] Doc. Nos. DKSN 001407—DKSN 001422, State Police Proposed Analysis Dated May 9, 1985.
[128] Myers, 4/30/96 Hrg. p.81.
[129] Myers, 4/30/96 Hrg. p.44.
[130] Young, 2/27/96 Dep. pp.53–54; 126–27.
[131] Young, 4/30/96 Hrg. p.82.
[132] Young, 4/30/96 Hrg. p.104.
[133] Young 2/27/96 Dep. pp.124–125.
[134] Doc. Nos. DKSN 001392—DKSN 001394, Minutes of May 10, 1985 Arkansas State Police Commission Meeting.
[135] Doc. No. DKSN 001393, Minutes of May 10, 1985 Arkansas State Police Commission Meeting.
[136] Doc. No. DKSN 018198, Arkansas Act 817 signed on April 4, 1985 by Gov. Clinton.
[137] Doc. No. DKSN 027248, Minutes of July 10, 1985 meeting of Communications Study Committee.
[138] Wright, 4/25/96 Hrg. p.251.
[139] Doc. No. DKSN 017636, February 27, 1985 article from the Arkansas Democrat–Gazette, "Testimony Links Cocaine Use, Lawmakers' Offspring at Trial."
[140] Goodwin, 4/30/96 Hrg. p.12.
[141] Goodwin, Dep. pp.31–32, 53–54, 120–22.
[142] Goodwin, 4/30/96 Hrg. p.20; April 22, 1996 Memorandum from Investigator Don Birdsong to Sergeant Darrell Stayton Regarding Congressional Subpoena.
[143] Wright, 4/25/96 Hrg. p.243–244.
[144] Lasater, Dep. p.231–232.
[145] Wright, 4/25/96 Hrg. pp.181, 187, 188–89.
[146] Bratton, 4/30/96 Hrg. p.173.
[147] Gaines, 4/30/96 Hrg. p.161.
[148] Lasater, Dep. pp.188–189.
[149] Drake, 1/24/96 Dep. p.96.
[150] Young, 4/30/96 Hrg. p.87.
[151] Young, 2/27/96 Dep. p.152.
[152] Mitchum, 2/9/96 Dep. p.33.
[153] Mitchum, 4/30/96 Hrg. p.77.
[154] Goodwin, 4/30/96 Hrg. p.11.
[155] Mitchum, 4/30/96 Hrg. p.84–85.
[156] Goodwin, 4/30/96 Hrg. p.42.
[157] Doc. No. DKSN 018193, Arkansas Act 817 of signed on April 4, 1985, by Gov. Clinton, p.5.
[158] Young, 4/30/96 Hrg. p.102.
[159] Young, 2/27/96 Dep. p.137–138.
[160] Young, 4/30/96 Hrg. pp.33, 75.
[161] Young, 4/30/96 Hrg. pp.33, 75.
[162] Doc. No. DKSN 027162, May 1, 1985 memorandum from Michael Gaines to Betsy Wright.

[163] Gaines, 4/30/96 Hrg. pp.133, 135.
[164] Gaines, 4/30/96 Hrg. p.154.
[165] Wright, 4/25/96 Hrg. p.224.
[166] Drake, 5/1/96 Hrg. pp.114–115; See Raney Doc. 139–41, April 30, 1985 Memorandum from Michael Drake to Dan Lasater, George Locke and Dan Moudy ("the proposals were submitted well in advance of a financing date").
[167] Drake, 5/1/96 Hrg. p.116.
[168] Lasater, 5/1/96 Hrg. p.10.
[169] Lasater, 5/1/96 Hrg. p.10.
[170] Lasater, 5/1/96 Hrg. p.10.
[171] Lasater, 2/22/96 Dep. pp.124–125.
[172] Lasater, 5/1/96 Hrg. p.10.
[173] Lasater, 5/1/96 Hrg. p.10; Lasater, 2/22/96 Dep. p.125.
[174] Lasater, 5/1/96 Hrg. p.11.
[175] Lasater, 5/1/96 Hrg. p.125.
[176] Lasater, 5/1/96 Hrg. p.28.
[177] Lasater, 2/22/96 Dep. p.134.
[178] Lasater, 5/1/96 Hrg. p.28.
[179] Lasater, 5/1/96 Hrg. p.30.
[180] Locke, 4/25/96 Dep. pp.26–27.
[181] Lasater, 5/1/96 Hrg. p.43.
[182] Lasater, 5/1/96 Hrg. p.44.
[183] Lasater, 2/22/96 Dep. pp.83, 87.
[184] Lasater, 2/22/97 Dep. p.113.
[185] Lasater, 5/1/96 Hrg. p. 61; B. Wright, 4/25/96 Hrg. p. 201.
[186] Lasater, 5/1/96 Hrg. pp. 141–142.
[187] Lasater, 5/1/96 Hrg. pp. 170–171.
[188] Lasater, 5/1/96 Hrg. p. 153.
[189] Lasater, 5/1/96 Hrg. p. 5.
[190] Lasater, 2/22/96 Dep. p. 119.
[191] Lasater, 5/1/96 Hrg. p. 9.
[192] A Supplemental Report On the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm, ("PM&S Supplemental Rose Report"), Prepared for the Federal Deposit Insurance Corporation by Pillsbury, Madison & Sutro, Feb. 25, 1996, p. 26.
[193] Doc. No. 1018026, April 3, 1985 memorandum to File from John Mitchell.
[194] Doc. No. MG0000863, April 18, 1985 memorandum from Jim McDougal to John Latham.
[195] Doc. No. RS 684, April 16, 1985 memorandum from Davis Fitzhugh to John Latham regarding "Statutes on Issuance of Preferred Stock."
[196] Doc. No. RS 000700, April 3, 1985 handwritten notes from Charles Handley to Beverly Bassett concerning "Can a State Chartered Savings and Loan Association Issue Preferred Stock."
[197] Fitzhugh, 1/25/96 Dep. p. 6.
[198] Doc. Nos. RS 000700—RS 000701, April 3, 1985 handwritten notes from Charles Handley to Beverly Bassett concerning "Can a State Chartered Savings and Loan Association Issue Preferred Stock."
[199] Massey, 1/11/96 Hrg. pp. 46–48.
[200] Massey, 1/11/96 Hrg. pp. 18, 44.
[201] Massey, 1/11/96 Hrg. pp. 18, 23–24.
[202] Statement of Richard Massey to the RTC, June 15, 1995, p. 3, [Document Not Numbered].
[203] Massey, 1/11/96 Hrg. pp. 44–45, 82, 150–152.
[204] Latham, 5/16/96 Hrg. p. 24.
[205] Latham, 5/16/96 Hrg. p. 35.
[206] Massey, 1/11/96 Hrg. pp. 137, 230–232, 244–245.
[207] Massey, 1/11/96 Hrg. p. 45.
[208] Latham, 5/16/96 Hrg. p. 15.
[209] Doc. Nos. DKSN 000800—DKSN 000801, Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(a), pp. 34–35; FDIC Interview of Hillary Clinton, 2/14/96, pp. 29–31.
[210] Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(a), pp. 34–35; *See also* Massey, 1/11/96 Hrg. pp. 25–26, 230–232.
[211] Bunch, 5/16/96 Hrg. pp. 20, 39–40; *See* Doc. Nos. 00009179–00009180C, J. Giroir (Rose Law Firm) Oct. 10, 1983 letter to James B. McDougal attaching a Dec. 23, 1981 statement for total fees and costs of $5,893.63 (the date on the statement may be incorrect, as the statement itself indicates that it is for legal services through May 15, 1982); a Madison Bank general ledger debit ticket reflects a $5,000 payment on October 23, 1984 (Madison Bank president Gary Bunch testified that the ledger ticket is for the payment to the Rose Law Firm, Bunch, 5/2/96 Dep. pp. 26–27, 70–71); *See also* Minutes of the Madison Bank and Trust Board Meeting (referring to payment), September 25, 1984 and November 27, 1984; *See also* Rose Law Firm fee credit reports for November 1984 (Doc. Nos. RS 002905–RS 002907).
[212] Bunch, 5/16/96 Hrg. pp. 20, 39–40; *See* Doc. Nos. 00009179–00009180C, J. Giroir (Rose Law Firm) Oct. 10, 1983 letter to James B. McDougal attaching a Dec. 23, 1981 statement for total fees and costs of $5,893.63 (the date on the statement may be incorrect, as the statement itself indicates that it is for legal services through May 15, 1982); a Madison Bank general ledger debit ticket reflects a $5,000 payment on October 23, 1984 (Madison Bank president Gary Bunch testified that the ledger ticket is for the payment to the Rose Law Firm, Bunch, 5/2/96 Dep. pp. 26–27, 70–71); *See also* Minutes of the Madison Bank and Trust Board Meeting (referring to payment), September 25, 1984 and November 27, 1984; *See also* Rose Law Firm fee credit reports for November 1984 (Doc. Nos. RS 002905–RS 002907).
[213] Knight, 5/16/96 Hrg. p. 31.

[214] Knight, 4/26/96 Dep. pp. 17–18.
[215] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp. 29–31.
[216] Massey, 1/11/96 Hrg. pp. 21–24, 44–46; FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp. 28–30.
[217] Doc. Nos., DKSN 000800–DKSN 000801, Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(a), pp. 34–35.
[218] Interview of Hillary Rodham Clinton, Federal Deposit Insurance Corporation, Transcript of Proceedings, In Matter of Madison Guaranty Savings and Loan Association, (hereinafter "FDIC Interview of Hillary Rodham Clinton, 2/14/96, p. ———"), p. 29.
[219] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp. 34, 39.
[220] Massey, 1/11/96 Hrg. pp. 153–155; R. Clark, 1/18/96 Hrg. pp. 93–94; D. Knight 4/26/96 Dep. p. 40.
[221] Massey, 1/11/96 Hrg. p. 107.
[222] Hillary Rodham Clinton Whitewater Press Conference, April 22, 1994.
[223] Senator Shelby, 1/11/96 Hrg. pp. 96–97; Hillary Rodham Clinton Whitewater Press Conference, April 22, 1994.
[224] April 30, 1996 FDIC letter from Alice C. Goodman to Chairman Alfonse D'Amato and Senator Paul Sarbanes, attaching billing statements submitted to the RTC by Pillsbury, Madison & Sutro [Documents Not Numbered]; Stephens, 5/17/96 Hrg. pp. 41–45.
[225] April 30, 1996 FDIC letter from Alice C. Goodman to Chairman Alfonse D'Amato and Senator Paul Sarbanes, attaching billing statements submitted to the RTC by Pillsbury, Madison & Sutro [Documents Not Numbered]; Stephens, 5/17/96 Hrg. pp. 41–45.
[226] As discussed below.
[227] Handley, 1/25/91 Hrg. pp. 57–60.
[228] Doc. No. DKSN 028934, Rose Law Firm 1985 Billing Records: Mrs. Clinton's time records for 4/24/85, 4/24/85, and 4/25/85.
[229] Knight, 4/26/96 Dep. pp. 12–20; Latham, 5/15/96 Dep. pp. 7–15.
[230] Knight, 4/26/96 Dep. pp. 16–18.
[231] Massey, 1/11/96 Hrg. p. 45.
[232] Latham, 5/16/96 Hrg. p.35.
[233] Latham, 5/15/96 Dep. p.7.
[234] Massey, 1/11/96 Hrg. pp.21–24, 44–46; FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.28–30.
[235] William C. Rempel and Douglas Frantz, "Fallout From Collapse of S&L Shadows Clinton", Los Angeles Times, Nov. 7, 1993.
[236] PM&S Supplemental Rose Report, 2/25/96, p.25.
[237] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.22–23, 26; *See also* PM&S Supplemental Rose Report, 2/25/96, p.25.
[238] Knight, 4/26/96 Dep. p.52.
[239] William C. Rempel and Douglas Frantz, "Fallout From Collapse of S&L Shadows Clinton", Los Angeles Times, Nov. 7, 1993.
[240] Knight, 4/26/96 Dep. p.7.
[241] Knight, 4/26/96 Dep. p.46.
[242] Massey, 1/11/96 Hrg. pp.151–152, 170.
[243] Doc. No. DKSN 028934, Rose Law Firm 1985 Billing Record.
[244] Knight, 4/26/96 Dep. p.20.
[245] PM&S Supplemental Rose Report, 2/25/96, p.26.
[246] Doc. No. RS 000700, April 3, 1985 handwritten notes from Charles Handley to Beverly Bassett regarding "Can a State Chartered Savings and Loan Association issue Preferred Stock."
[247] Handley, 1/25/96 Hrg. p.242; Handley, 12/19/95 Dep. pp.48–50.
[248] Handley, 1/25/96 Hrg. p.242; Handley, 12/19/95 Dep. pp.48–50.
[249] Handley, 1/25/96 Hrg. p.242; Handley, 12/19/95 Dep. pp.48–50.
[250] Doc. Nos. RS 000684—RS 000685, April 16, 1985 memorandum from Davis Fitzhugh to John Latham regarding "Statutes on Issuance of Preferred Stock."
[251] Doc. No. DKSN 028943, Rose Law Firm 1985 Billing Record.
[252] Doc. No. DKSN 028943, Rose Law Firm 1985 Billing Record; FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.33–35.
[253] Schaffer, 1/25/96 Hrg. p.44.
[254] Schaffer, 1/25/96 Hrg. p.44.
[255] FDIC Interview Hillary Rodham Clinton, 2/14/96, pp.33–34.
[256] Doc. No. RLF1 03182, April 30, 1985 letter from the Rose Law Firm to Charles Handley regarding "Authorization and Issuance of a class of Preferred Stock by Madison Guaranty, a Savings and Loan Chartered under the laws of the State of Arkansas."
[257] Doc. No. RLF1 03185, May 6, 1985 letter from Charles Handley to Beverly Bassett Schaffer regarding "April 30, 1985 Rose Law Letter to Charles Handley."
[258] Doc. No. RLF1 03184, May 14, 1985 letter from Beverly Bassett to Hillary Rodham Clinton regarding "Authorization and Issuance of a Class of Preferred Stock by Madison Guaranty."
[259] Fitzhugh, 1/15/96 Dep. pp.13–14.
[260] Doc. No. 0000084, May 14, 1985 letter from Richard Massey to Charles Handley.
[261] Doc. Nos. RS 000593—RS 000594, May 22, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."
[262] Doc. No. RS 000594, May 22, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."

[263] Doc. No. RS 000594, May 22, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."

[264] Doc. No. RS 000545, June 17, 1985 letter from Richard Massey to Beverly Bassett, Nancy Jones, and Charles Handley regarding "Application by Madison Guaranty Savings and Loan to engage in brokerage activities."

[265] Doc. No. RS 000546, June 17, 1985 letter from Richard Massey to Beverly Bassett, Nancy Jones, and Charles Handley regarding "Application by Madison Guaranty Savings and Loan to engage in brokerage activities."

[266] Doc. No. RIC–0392, June 18, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."

[267] Doc. No. RIC–0392, June 18, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."

[268] Doc. Nos. RS 000502—RS 000503, July 10, 1985 letter from Richard Massey to Beverly Bassett, Nancy Jones and Charles Handley regarding "Application by Madison Guaranty Savings and Loan Association to Engage in Brokerage Activities."

[269] Doc. Nos. RS 000502—RS000503, July 10, 1985 letter from Richard Massey to Beverly Bassett, Nancy Jones and Charles Handley regarding "Application by Madison Guaranty Savings and Loan Association to Engage in Brokerage Activities."

[270] Doc. No. RIC–039348, July 17, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."

[271] Doc. No. RIC–039349, July 17, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings and Loan Association to form a Second-Tier, Wholly-Owned Service Corporation which would engage in the Securities Broker-Dealer Business."

[272] Doc. Nos. RLF1–03513—RLF1–03514, July 25, 1985 letter from Richard Massey to Beverly Bassett, Nancy Jones and Charles Handley regarding "Application by Madison Guaranty Savings and Loan Association to Engage in Brokerage Activities."

[273] Doc. Nos. RIC–039380—RIC–039381, July 27, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings & Loan Association ("Association") to act as a Broker/Dealer through a Service Corporation."

[274] Doc. Nos. RIC–039380—RIC–039381, July 27, 1985 letter from Charles Handley to Beverly Bassett and Nancy Jones regarding "Application by Madison Guaranty Savings & Loan Association ("Association") to act as a Broker/Dealer through a Service Corporation."

[275] Doc. No. RLF2 03492, September 9, 1985 letter from Richard Massey to Beverly Bassett regarding "Madison Guaranty Savings & Loan Application to Engage in Brokerage Activities."

[276] Doc. No. RLF2 03492, September 9, 1985 letter from Richard Massey to Beverly Bassett regarding "Madison Guaranty Savings & Loan Application to Engage in Brokerage Activities."

[277] Doc. No. RLF2 03492, September 9, 1985 letter from Richard Massey to Beverly Bassett regarding "Madison Guaranty Savings & Loan Application to Engage in Brokerage Activities."

[278] Doc. Nos. RLF1 03174—RLF1 03175, September 12, 1985 handwritten memorandum from Charles Handley to Beverly Bassett regarding "Madison S&L's Application to engage in Brokerage Activities."

[279] Doc. Nos. RLF1 03174—RLF 1 03175, September 12, 1985 handwritten memorandum from Charles Handley to Beverly Bassett regarding "Madison S&L's Application to engage in Brokerage Activities."

[280] Doc. No. RLF1 03178, October 17, 1985 letter from Beverly Bassett to Richard Massey regarding "Madison Guaranty Savings & Loan Application to Engage in Brokerage Activities."

[281] Doc. No. RLF 1 03178, October 17, 1985 letter from Beverly Bassett to Richard Massey regarding "Madison Guaranty Savings & Loan Application to Engage in Brokerage Activities."

[282] Doc. No. RS 000648, December 9, 1985 letter from Charles Handley to Richard Massey regarding "Madison Guaranty Savings & Loan Association ("Madison")."

[283] Doc. Nos. RS 00646—RS 000647, December 18, 1985 letter from Richard Massey to Beverly Bassett and Charles Handley regarding "Madison Guaranty Savings and Loan ("Madison") application to engage in brokerage activities ("Application").

[284] Doc. Nos. KF 0435—KF 0442, July 11, 1986 minutes regarding "Board of Directors Meeting at the Federal Home Loan Bank of Dallas"; Schaffer, 1/25/96 Hrg. p.191.

[285] Schaffer, 1/25/96 Hrg. pp.42–43, 223–224; Doc. Nos. KF 0435—KF 0436, July 11, 1986 minutes regarding "Board of Directors Meeting at the Federal Home Loan Bank of Dallas."

[286] Schaffer, 1/25/96 Hrg. pp.42–43, 223–224; Doc. Nos. KF 0435—KF 0436, July 11, 1986 minutes regarding "Board of Directors Meeting at the Federal Home Loan Bank of Dallas."

[287] Schaffer, 1/25/96 Hrg. pp.42–43, 223–224; Doc. Nos. KF 0435—KF 0436, July 11, 1986 minutes regarding "Board of Directors Meeting at the Federal Home Loan Bank of Dallas."

[288] CNN Interview of Walter Faulk, 4/28/94.

[289] "Madison Guaranty Savings & Loan And Whitewater Development Company, A Preliminary Report to the Resolution Trust Corporation" ("PM&S Whitewater Report"), Prepared for the Federal Deposit Insurance Corporation by Pillsbury, Madison & Sutro, April 24, 1995, p.132.

[290] Clark, 1/30/96 Hrg. p.114.

[291] PM&S Whitewater Report, 4/24/96, p.152.

[292] Doc. Nos. CCBW 884—CCBW 887, July 2, 1986 note to Sam Bratton regarding Madison Guaranty; Doc. Nos. DEK 218778—DEK 218780, June 19, 1986 FHLBB letter from Walter

Faulk to Board of Directors, Madison Guaranty Savings and Loan Association regarding examination of Madison Guaranty's financial condition and operating practices.

[293] Schaffer, 1/25/96 Hrg. pp.21–23; Doc. Nos. CCBW 884—CCBW 887, July 2, 1986 note to Sam Bratton regarding Madison Guaranty.

[294] Schaffer, 1/25/96 Hrg. p.31.

[295] Schaffer, 1/25/96 Hrg. p.50.

[296] Schaffer, 1/25/96 Hrg. p.48.

[297] Schaffer, 1/25/96 Hrg. pp.129–135, 185; Doc. Nos. DEK 218778—DEK 218780; see also, Doc. No. 5722, Madison Guaranty Minutes of Board of Directors, July 18, 1985; FSLIC Order to Cease and Desist, FHLBB Resolution No.: 86–851, August 15, 1986, pp. 27–28.

[298] Schaffer, 1/25/96 Hrg. p.178.

[299] Bratton, 1/5/96 Dep. pp.156–157, 224, 236.

[300] Wright, 1/26/96 Dep. pp.53–55.

[301] Schaffer, 1/25/96 Hrg. pp.129–135, 185.

[302] Schaffer, 1/25/96 Hrg. pp.50–51.

[303] Schaffer, 1/25/96 Hrg. p.193.

[304] Doc. Nos. 5000326–5000327, December 10, 1987 letter from Beverly Bassett to Stewart Root (Director, Federal Savings and Loan Insurance Corporation) regarding insolvent State chartered savings and loan associations.

[305] Schaffer, 1/25/96 Hrg. pp.197–199.

[306] Schaffer, 1/25/96 Hrg. pp.257–259.

[307] CNN Interview of Walter Faulk, 4/28/94.

[308] Handley, 1/25/96 Hrg. pp.194–195.

[309] 54 Fed. Reg. 9890 (1989), published March 8, 1989. Notice is hereby given pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Madison Guaranty Savings and Loan Association, McCrory, Arkansas on February 28, 1989.

[310] "Implications for Soundness," American Banker, November 4, 1985.

[311] Schaffer, 1/25/96 Hrg. pp.54–57.

[312] 49 Fed. Reg. 29, 357 (1984).

[313] 50 Fed. Reg. 20550 (1985). Effective date: 12/5/84.

[314] Handley, 12/19/96 Dep. pp.4–5.

[315] Handley, 1/25/96 Hrg. p.264.

[316] Schaffer, 1/25/96 Hrg. p.93.

[317] Schaffer, 1/25/96 Hrg. pp.270–271.

[318] Schaffer, 1/25/96 Hrg. pp.45–46.

[319] Schaffer, 1/25/96 Hrg. pp.52–54; see also CNN Interview of Walter Faulk, 4/28//94.

[320] PM&S Supplemental Rose Report, 2/25/96, p.49, note 113, citing IG Ex. III–33, a Rose Law Firm "New Matter Master Form" dated Aug. 2, 1985.

[321] FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.44.

[322] PM&S Supplemental Rose Report, 2/25/96, p.49, n. 115, citing Hubbell Interview, Dec. 27, 1995, pp. 8:15–9:8. (Webster Hubbell reportedly recalls that Seth Ward referred the matter to the Rose Law Firm at the direction of James McDougal.)

[323] Doc. No. DKSN 028979, Rose Law Firm 1985 Billing Record.

[324] Doc. Nos. DKSN 028979 and DKSN 029000, Rose Law Firm 1985 Billing Records; see also Thrash, 1/31/96 Hrg. pp.230, 289–292; Dover, 1/31/96 Hrg. pp.255–259.

[325] Doc. No. DKSN 028979, Rose Law Firm 1985 Billing Record.

[326] Doc. No. DKSN 029000, Rose Law Firm 1985 Billing Record.

[327] Doc. No. DKSN 028979, September 20, 1985 Rose Law Firm statement for services rendered to Madison Guaranty on the IDC matter, does not include any charges for work by Mrs. Clinton.

[328] Doc. No. SW1–004, September 3, 1985 letter from Jim McDougal to Seth Ward regarding "Industrial Property."

[329] Doc. Nos. 0000091, September 12, 1986 Minutes of Meeting, Board of Directors, Madison Financial Corporation; RIC 023349, August 20, 1985 Meeting of the Board of Directors of Madison Financial Corporation; *See also* A Report On the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm, ("PM&S Rose Report, 12/28/95"), Prepared for the Federal Deposit Insurance Corporation by Pillsbury, Madison & Sutro, 12/28/95, pp.20–26.

[330] Rule V(C) of the Rules and Regulations of the Arkansas Savings and Loan Association Board, as discussed above; See also PM&S Rose Report, 12/28/95, pp.55–56.

[331] Latham, 5/15/96 Dep. p.36.

[332] Fitzhugh, 1/26/96 Dep. pp.55–56.

[333] Doc. Nos. SEN 21633—SEN 21648, Pillsbury Madison & Sutro Interview of Don Denton, April 28, 1994, p.8 (Memorandum from Gary Davidson to File dated June 1, 1994); *See also* FDIC Office of Inspector General, Interview of Don Denton, June 11, 1996, p.4. [Memorandum of Interview is incorrectly dated 6/11/86] (hereinafter "FDIC–IG Interview of Don Denton, 6/11/96").

[334] Ward, 2/12/96 Dep. pp.10–11, 61.

[335] Ward, 2/12/96 Dep. pp.10–11, 61.

[336] Ward, 2/12/96 Dep. pp.11–12.

[337] Latham, 5/15/96 Dep. p.34.

[338] Ward, 2/12/96 Dep. pp.13, 113–114.

[339] PM&S Supplemental Rose Report, 2/25/96, pp.57–58.

[340] PM&S Supplemental Rose Report, 2/25/96, pp.57–58.

[341] Doc. No. 0000091, September 12, 1986 Minutes of Meeting, Board of Directors, Madison Financial Corporation; RIC 023349, August 20, 1985 Meeting of the Board of Directors of Madison Financial Corporation; PM&S Rose Report, 12/28/95, pp.20–26.

[342] Ward, 2/12/96 Dep. pp.14, 31–34; Doc. No. SW1–040, October 15, 1985 Seth Ward application for loan No. 2962–50.
[343] Doc. No. RIC 023349, August 20, 1985 Meeting of the Board of Directors of Madison Financial Corporation; September 12, 1986 Minutes of Meeting, Board of Directors, Madison Financial Corporation; PM&S Rose Report, 12/28/95, pp.20–26.
[344] Doc. Nos. SW1–005, September 24, 1985 final agreement; Ward, 2/12/96 Dep. pp.6, 16–23, 40, 97–98.
[345] FDIC Office of Inspector General, Interview of Don Denton, June 3, 1996, p.4. [Document Not Numbered] (hereinafter "FDIC–IG Interview of Don Denton, 6/3/96").
[346] Doc. Nos. SEN 21633—SEN 21648, Pillsbury Madison & Sutro Interview of Don Denton, April 28, 1994, p.8 (Memorandum from Gary Davidson to File dated June 1, 1994).
[347] PM&S Rose Report, 12/28/95, pp. 34, 58–60.
[348] Ward, 2/12/96 Dep. pp.42–44, 115.
[349] Latham, 5/15/96 Dep. p.37.
[350] FDIC Office of Inspector General, Interview of James T. Clark, June 10, 1996, p.3. [Document Not Numbered].
[351] Doc. Nos. DKSN 028979—DKSN 028980, Rose Law Firm 1985 Billing Records; Thrash 1/31/96 Hrg. pp.230–231; see also PM&S Rose Report, 12/28/95, pp.24, n.113.
[352] Ward, 2/12/96 Dep. pp.6, 40, 123–124.
[353] Ward, 2/12/96 Dep. pp.6, 16–17.
[354] Hubbell, 2/7/96 Hrg. pp.3–4; Hubbell, 10/26/95 Dep. pp.144–145.
[355] Hubbell, 2/7/96 Hrg. pp.32–33.
[356] PM&S Supplemental Rose Report, 2/25/96, pp.153–154, citing Hubbell, 12/27/95 FDIC Interview, pp. 15:1–16:15.
[357] 2/14/96 FDIC Interview of Hillary Rodham Clinton, pp.59–60; Supplemental Interrogatory Responses of Hillary Rodham Clinton, Jan. 20, 1996, answers to Interrogatories Nos. 49(e) and 49(f), 6–7 (referring to Doc. Nos. SW1–005—SW1–009).
[358] 2/14/96 FDIC Interview of Hillary Rodham Clinton, pp.59–60; Supplemental Interrogatory Responses of Hillary Rodham Clinton, Jan. 20, 1996, answers to Interrogatories Nos. 49(e) and 49(f), 6–7 (referring to Doc. Nos. SW1–005—SW1–009).
[359] Ward, 2/12/96 Dep. pp.30–31, 78; Thrash, 1/31/96 Hrg. p.237.
[360] Ward, 2/12/96 Dep. pp.31–34; Doc. No. SW1–040, October 15, 1985 Seth Ward application for loan No. 2962–50.
[361] Ward, 2/12/96 Dep. pp.114–117.
[362] Ward, 2/12/96 Dep. pp.114–117; Hubbell, 2/7/96 Hrg. pp.32, 200, 211–214.
[363] Doc. No. DD000000020—DD000000021, March 31, 1986, $400,000 loan agreement.
[364] Doc. No. DD000000021, March 31, 1986, $400,000 loan agreement.
[365] Doc. No. DD000000019, Madison Guaranty Loan Committee Minutes.
[366] Doc. Nos. DD000000023—DD000000024, March 31, 1986 $400,000 mortgage and attached legal description; *See also* Doc. No. DD000000053, July 14, 1986 memorandum from Don Denton to John Latham.
[367] *Ward* v. *Madison Guaranty Savings and Loan Financial Corporation,* No. 87–7580 (Pulaski Cty. Cir. Ct.) [hereinafter "Ward v. Madison" or if referenced to the trial transcript, "Ward v. Madison R.T."], p.28 (SEN 32839).
[368] FDIC Office of Inspector General Interview of Don Denton, 6/11/96, p.2.
[369] FDIC Office of Inspector General Interview of Don Denton, 6/11/96, p.2.
[370] Doc. No. DD000000031, April 4, 1986 board resolution.
[371] FDIC–IG Interview of Don Denton, 6/3/96, p.7.
[372] *Ward* v. *Madison R.T.,* pp.51–52 (SEN 32862—SEN 32863).
[373] FDIC–IG interview of Don Denton, 6/3/96, p.10.
[374] Doc. No. DKSN 029024, Rose Law Firm 1986 Billing Record.
[375] FDIC–IG Interview of Don Denton, 6/3/96, p.10.
[376] FDIC–IG, 6/11/96, pp.2–3.
[377] Doc. No. DD000000241, telephone message from "Sandra of Hillary Clinton's Office"; Denton's notes.
[378] Doc. Nos. DD000000242—DD000000243, Denton's handwritten notes relating to the "Babcock" matter.
[379] FDIC–IG Interview of Don Denton, 6/11/96, p.2.
[380] FDIC–IG Interview of Don Denton, 6/11/96, p.2.
[381] FDIC–IG Interview of Don Denton, 6/11/96, p.3.
[382] FDIC–IG Interview of Don Denton, 6/11/96, p.3.
[383] FDIC–IG Interview of Don Denton, 6/11/96, p.3.
[384] FDIC–IG Interview of Don Denton, 6/11/96, p.3.
[385] FDIC–IG Interview of Don Denton, 6/11/96, p.3.
[386] FDIC–IG Interview of Don Denton, 6/11/96, p.3.
[387] Doc. No. DD000000241, telephone message from "Sandra of Hillary Clinton's Office"; Denton's notes.
[388] Doc. No. DKSN 029030, Rose Law Firm 1986 Billing Records.
[389] Doc. No. DKSN 029030, Rose Law Firm 1986 Billing Records.
[390] Doc. Nos. DD000000020—DD000000021, March 31, 1986 $400,000 loan agreement.
[391] Doc. No. DD000000023, March 31, 1986 $400,000 mortgage and attached legal description.
[392] Doc. No. DD000000024, March 31, 1986 $400,000 mortgage and attached legal description.
[393] Compare Doc. No. DD000000035 with Doc. No. SW1–070—SW1–072.
[394] Doc. No. DD000000035, May 1, 1986 Madison Guaranty board resolution approving option; *See also* Doc. No. SW1–070—SW1–074 (original option); Doc. No. SW1–063—SW1–068 (revised option).
[395] FDIC–IG Interview of Don Denton, 6/11/96, p.8.

[396] PM&S Rose Report, 2/28/95, p.32, citing communication between Bruce A. Ericson and Alden Atkins of Vinson & Elkins ("Counsel for the Rose Law Firm states that this option was created at the Rose Law firm and that the letter 'g' in the word processing code identifies the author as Mrs. Clinton"); R. Clark, 1/18/96 Hrg. pp.187–188.
[397] Doc. No. DKSN 029026, Rose Law Firm computer-generated billing memorandum for the Madison Guaranty "General" matter, May 13, 1986.
[398] FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.83.
[399] FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.84.
[400] FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.85.
[401] *Ward* v. *Madison R.T.,* p.56 (SEN 32867).
[402] Ward, 2/12/96 Dep. pp.100–101.
[403] Ward, 2/12/96 Dep. p.101.
[404] *Ward* v. *Madison R.T.,* p.232 (SEN 33043); Ward, 2/12/96 Dep. p.101.
[405] Ward, 2/12/96 Dep. pp.49, 97.
[406] Doc. No. DKSN 029026, Rose Law Firm 1986 Billing Record.
[407] Doc. No. DKSN 29024, Rose Law Firm 1986 Billing Record.
[408] PM&S Supplemental Rose Report, 2/25/96, p. 130.
[409] PM&S Supplemental Rose Report, 2/25/96, p.160.
[410] Ward, 2/12/96 Dep. pp.27–29, 122–123; Fitzhugh, 1/31/96 Hrg. pp.70, 160.
[411] Fitzhugh, 1/31/96 Hrg. pp.107–109.
[412] J. Clark, 1/30/96 Hrg. pp.133–134; PM&S Madison Guaranty Real Estate Report, 12/19/95, pp.14-19.
[413] J. Clark, 1/30/96 Hrg. pp.138–140; PM&S Madison Guaranty Real Estate Report, 12/19/95, pp.10–12.
[414] J. Clark, 1/30/96 p.138; PM&S Madison Guaranty Real Estate Report, 12/19/95, pp.9–10.
[415] J. Clark, 1/30/96 pp.138, 141-142; PM&S Madison Guaranty Real Estate Report, 12/19/95, pp.19–23.
[416] PM&S Madison Guaranty Real Estate Report, 12/19/96, pp.26–29.
[417] PM&S Madison Guaranty Real Estate Report, 12/19/95, pp.7–29.
[418] PM&S Madison Guaranty Real Estate Report, 12/19/95, pp.9,11.
[419] PM&S Supplemental Rose Report, 2/25/96, p.92.
[420] PM&S Madison Guaranty Real Estate Report, 12/19/95, p.29.
[421] January 5, 1996 Letter from David Kendall to Robert Giuffra, Chief Counsel, Committee on Banking, Housing and Urban Affairs. (Cover Letter accompanying DKSN 28928—DKSN 29043).
[422] PM&S Supplemental Rose Report, 2/25/96, p.3.
[423] PM&S Supplemental Rose Report, 2/25/96, p.91.
[424] Fitzhugh, 1/31/96 Hrg. pp. 3, 9–10; Fitzhugh, 1/26/96 Dep. p.13.
[425] Fitzhugh 1/26/96 Dep. p.72.
[426] Thrash, 1/31/96 Hrg. pp.266–267.
[427] Lyon, 12/14/95 Dep. pp.38,43, 81.
[428] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.70–71, 79, 86–87.
[429] FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.71.
[430] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.86–87.
[431] Ward, 2/12/96 Dep. p.75.
[432] Lyon, 1/23/96 Hrg. p.12; Lyon 12/14/95 Dep. p.75.
[433] Lyon, 12/14/95 Dep. p.12; Ward, 2/12/96 Dep. pp.73–75.
[434] Lyon, 1/22/96 Dep. pp.19, 25.
[435] Lyon, 12/14/95 Dep. p.26.
[436] Lyon, 12/14/95 Dep. pp.16–18, 26–28.
[437] Lyon, 12/14/95 Dep. pp.16–18, 26–28.
[438] Lyon, 1/22/96 Hrg. p.33.
[439] Doc. No. MG–000555, November 20, 1985 letter from Jim McDougal to Seth Ward.Doc.
[440] Doc. No. MG–000555, November 20, 1985 letter from Jim McDougal to Seth Ward.Doc.
[441] Ward, 2/12/96 Dep. pp.73–75.
[442] Lyon, 12/14/95 Dep. pp.38–39.
[443] Lyon, 12/14/95 Dep. pp.39, 45–46.
[444] Lyon, 12/14/95 Dep. p.40.
[445] Lyon, 12/14/95 Dep. pp.40–41.
[446] Doc. No. DKSN 29002, Rose Law Firm 1985 Billing Record.
[447] Doc. No. DKSN 29011, Rose Law Firm 1985 Billing Record.
[448] Doc. No. DKSN 29011, Rose Law Firm 1985 Billing Record.
[449] Doc. No. DKSN 29011, Rose Law Firm 1985 Billing Record.
[450] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.70–71.
[451] Doc. No. DKSN 29011, Rose Law Firm 1985 Billing Record.
[452] Doc. No. DKSN 29011, Rose Law Firm 1985 Billing Record.
[453] Doc. No. RLF2 02981–86 (Doc. No. 0000090), January 3, 1986 memorandum from Richard Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.
[454] Donovan, 1/31/96 Hrg. p.223.
[455] Donovan, 1/31/96 Hrg. p.224; Doc. No. 0000090, January 3, 1986 memorandum from Richard Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.
[456] Donovan, 1/31/96 Hrg. p.224; Doc. No. 0000090, January 3, 1986 memorandum from Richard Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.
[457] Donovan, 1/31/96 Hrg. p.224; Doc. No. 0000090, January 3, 1986 memorandum from Richard Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.
[458] Donovan, 1/31/96 Hrg. p.224; Doc. No. 000090, January 3, 1986 memorandum from Richard Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.

[459] Doc. No. RLF2 02988, note from Hillary Rodham Clinton to Richard Massey regarding meeting with Seth Ward [Document Not Dated].
[460] Doc. No. DKSN 29011, Rose Law Firm 1986 Billing Record.
[461] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.70–71.
[462] Doc. No. DKSN 29011, Rose Law Firm 1986 Billing Record.
[463] Doc. No. DKSN 29011, Rose Law Firm 1986 Billing Record.
[464] Document No. RLF2 02968, January 16, 1986 memorandum from Rick Donovan to Becky Arnold regarding research in the Pulaski County Court Clerk's office on "Wet/Dry" issue.
[465] Doc. No. DKSN 29013, Rose Law Firm 1986 Billing Record.
[466] Doc. No. RLF2 02965, January 23, 1986 followup memo from Rick Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.
[467] Doc. No. RLF2 02965, January 23, 1986 follow-up memo from Rick Donovan to Hillary Rodham Clinton regarding "Wet/Dry" issue.
[468] Doc. No. 000090, February 7, 1986 memorandum from Jim McDougal to Jim Guy Tucker.
[469] Doc. No. DKSN 29027, Rose Law Firm 1986 Billing Record.
[470] Doc. No. DKSN 29016, Rose Law Firm 1986 Billing Record.
[471] Doc. No. DKSN 29013, Rose Law Firm 1986 Billing Record.
[472] Doc. No. DKSN 29013, Rose Law Firm 1986 Billing Record.
[473] Doc. No. DKSN 29016, Rose Law Firm 1986 Billing Record.
[474] Doc. Nos. RLF2 02932—RLF2 02943, February 17, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings & Loan/IDC."
[475] Doc. Nos. RLF2 02932—RLF2 02943, February 17, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings & Loan/IDC."
[476] Doc. Nos. RLF2 02932—RLF2 02943, February 17, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings & Loan/IDC."
[477] Doc. Nos. RS 000941—RS 000944, March 4, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings and Loan/IDC."
[478] Doc. Nos. RS 000941—RS 000944, March 4, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings and Loan/IDC."
[479] Doc. Nos. RS 000941—RS 000944, March 4, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings and Loan/IDC."
[480] RS 000944, March 4, 1986 memorandum from Rick Donovan to Hillary Clinton regarding "Madison Guaranty Savings and Loan/IDC."
[481] PM&S Supplemental Rose Report, 2/25/96, p.111.
[482] Knight and Latham, 5/16/96 Hrg. pp.11–14, 36; Latham, 5/15/96 Dep. pp.12–16.
[483] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.68–69.
[484] Doc. No. 000090, February 7, 1996 memorandum from Jim McDougal to Jim Guy Tucker.
[485] Lyon, 1/23/96 Dep. pp.90–91.
[486] Thrash, 1/31/96 Hrg. p.250.
[487] Doc. No. DKSN 029008, Rose Firm 1986 Billing Record.
[488] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.68–71.
[489] FDIC Interview of Hillary Rodham Clinton 2/14/96, p.70.
[490] Doc. No. DKSN 029011, Rose Law Firm 1986 Billing Record.
[491] Clark, 1/18/96 Hrg. p.106.
[492] FDIC Interview of Hillary Rodham Clinton, 2/14/96, p.64.
[493] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.64–65.
[494] Clark, 1/18/96 Hrg. pp.103–104.
[495] FDIC Interview of Hillary Rodham Clinton, 2/14/96, pp.50–52.
[496] Fitzhugh, 1/26/96 Dep. pp. 53, 58–60; *See also U.S.* v. *McDougal and Tucker,* W. Ray Jahn, Opening Statement, 3/11/96 pp.59–60.
[497] Ward, 2/12/96 Dep. pp.9–10; Fitzhugh, 1/31/96 Hrg. pp.42–44.
[498] Latham, 5/15/96 Dep. pp.34–35.
[499] Reuters, "Whitewater Juror Says Clinton Was 'Magnificent,'" May 29, 1996; Stephen Labaton, "Jurors Say Clinton Testimony Was Credible, But Incidental," *The New York Times,* May 30, 1996, p.A1.
[500] Associated Press, "Juror Says There Is No Evidence That Clinton At Fault in Whitewater," May 29, 1996.
[501] ABC "Nightline," 5/28/96.
[502] CNN "Inside Politics," 5/29/96.
[503] *United States* v. *McDougal,* LR–CR–173 (E.D. Ark., May 15, 1996), pp.7968–7969.
[504] *United States* v. *McDougal,* LR–CR–95–173 (E.D. Ark., May 15, 1996), p.7969.
[505] FBI Form FD–302 for interview of David Hale, 10/10/89 pp.1–2.
[506] FBI Form FD–302 for interview of David Hale, 10/10/89 pp.1–2.
[507] Foren, 10/26/95 Dep. p.42.
[508] Foren, 10/26/95 Dep. pp.68–70.
[509] Coleman, 12/1/95 Hrg. p.75.
[510] Mays, 11/21/95 Dep. pp.10–17.
[511] Mays, 11/21/95 Dep. pp.15–16.
[512] Mays, 11/21/95 Dep. p.16.
[513] Coleman, 12/1/95 Hrg. p.81.
[514] Coleman, 12/1/95 Hrg. p.6.
[515] Casey, 11/1/95 Dep. p.104.
[516] Coleman, 11/9/95 Dep. pp.117–118.
[517] Casey, 11/1/95 Dep. pp.65–66.
[518] Casey, 11/1/95 Dep. p.65; Casey, 12/1/95 Hrg. p.196.
[519] Johnson, 12/1/95 Hrg. p.209.
[520] Carver, 10/1/95 Dep. p.130; Nathan, 10/27/95 Dep. p.105; MacKay, 10/18/95 Dep. pp.92–93.
[521] Johnson, 12/1/95 Hrg. pp.209–210.

[522] Irons, 12/5/96 Hrg. p.199.
[523] *United States* v. *McDougal,* LR–CR–95–173 (E.D. Ark., April 5, 1996), pp.3732–3734; James Stewart, Blood Sport, pp.47, 313–314.
[524] *United States* v. *McDougal,* LR–CR–95–173 (E.D. Ark., April 5, 1996), pp.3733–3734.
[525] *United States* v. *McDougal,* LR–CR–95–173 (E.D. Ark., April 9, 1996), pp.4069–4070; James Stewart, Blood Sport, pp.316, 318.
[526] *United States* v. *McDougal,* LR–CR–95–173 (E.D. Ark. April 5, 1996), p.3737.
[527] *United States* v. *McDougal,* LR–CR–05–173 (E.D. Ark., April 4, 5, 8, 9, 1996), pp.3652–3656, 3737, 3899–3903, 3909–3911, 4202–4203, 4241–4243, 4246–4248.
[528] Affidavit of Joseph (Mike) Narisi, June 13, 1996, p.1.
[529] Johnson, 12/1/95 Hrg. p.208.
[530] Keeney, 12/6/95 Hrg. pp.51–52.
[531] NBC Interview of David Hale, 2 of 4, 11/4/93, pp.8–11.
[532] Casey, 12/1/95 Hrg. p.196; Johnson, 12/1/95 Hrg. p.209.
[533] Coleman, 12/1/95 Hrg. pp.10–13.
[534] Coleman, 12/1/95 Hrg. p.81.
[535] MacKay, 10/18/95 Dep. p.13.
[536] MacKay, 10/18/95 Dep. pp.92–93.
[537] MacKay, 10/18/95 Dep. p.40.
[538] *United States* v. *McDougal,* LR–CR–05–173 (E.D. Ark., April 4, 5, 8, 9, 1996), pp.3652–3656, 3737, 3899–3903, 3909–3911, 4202–4203, 4241–4243, 4246–4248.
[539] March 19, 1994 letter from Robert Fiske to Randy Coleman, [Document Not Numbered].
[540] Johnson, 12/1/95 Hrg. p.208.
[541] March 19, 1994 letter from Robert Fiske to Randy Coleman, p.1., [Document Not Numbered].
[542] March 19, 1994 letter from Robert Fiske to Randy Coleman, p.2., [Document Not Numbered].
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IV. Foster Phase

A. INTRODUCTION

Senate Resolution 120 authorized the Committee to review "whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death." This inquiry focused on the entry by three White House officials of Foster's office the night he died, the review two days later of documents in Foster's office by White House officials in the presence of law enforcement personnel, and the subsequent disposition of those documents, including personal papers of President and Mrs. Clinton.

Some witnesses had differing recollections regarding those events or were unable to recall events in detail. This is not surprising, given the emotional stress that many of those individuals experienced following the suicide and the two years that have passed since those events. It is inevitable that the testimony is incomplete or contradictory in some respects.

The Majority seeks to make much of these inconsistencies. Yet, the Majority often ignores divergent testimony when the testimony does not fit its theories. The Majority's selective recitation of testimony, however, cannot alter the fact that the Committee has not heard evidence demonstrating an effort to destroy or suppress any documents that were in Foster's office at the time of his suicide.

With respect to the entry of Foster's office the night he died, it has not been established that any improper conduct occurred. At the request of David Watkins, Patsy Thomasson entered Foster's office the night of July 20, 1993 to look for a suicide note. Bernard Nussbaum and Margaret Williams also entered the office, to look for a note and grieve. While their recollections differ as to the order in which they entered and left the office, they all testified that they remained in the office briefly, reviewed no documents, and removed nothing.

With respect to the review of documents, the procedures employed by White House Counsel Bernard Nussbaum did not impede the investigation of Foster's death. The Park Police had no authority to review all the documents in Foster's office, and in any event were interested only in documents that would shed light on Foster's state of mind. The Park Police were provided with all documents in which they expressed an interest; some were provided to them on the spot while others were provided within a few days.

Finally, with respect to the disposition of documents, it was appropriate for Nussbaum to transfer the Clintons' personal files to the custody of their private attorney, Robert Barnett of Williams & Connolly. No evidence presented to the Committee indicates that any personal files of the Clintons' present in Foster's office at the

time of his death were removed or altered before they were transmitted to Williams & Connolly.

1. Events at Foster's office the night of his death

a. David Watkins asked Patsy Thomasson to look in Foster's office for a suicide note

In July 1993, David Watkins was serving as Assistant to the President for Management and Administration. In that position, he supervised the provision of administrative and personnel services to the fourteen agencies within the Executive Office of the President. Watkins's principal assistant was Patsy Thomasson, Special Assistant to the President and Director of the Office of Administration.

Because his duties frequently involved interaction with the United States Secret Service, Watkins was one of the first members of the White House staff to learn of Foster's death. On the night of July 20, 1993, Watkins was paged by the Secret Service. When he returned the page, the Secret Service informed him of the discovery of Foster's body and provided him with a telephone number for the Park Police.[1] Watkins called and arranged for Park Police Sergeant Cheryl Braun and Detective John Rolla to pick him up so that he might accompany them to the Foster home to notify Mrs. Foster of her husband's death.[2]

Watkins described the scene at the Foster home as one of "sadness, extreme grief:"

> * * * I arrived with the officers * * * from the Park Police, Ms. Braun and Mr. Rolla * * * just as we arrived, Sharon Bowman, a sister of Mr. Foster, and Sheila Anthony, another sister, and Web Hubbell arrived. * * * The officers notified Lisa that Vince had shot himself and there were cries of anguish and everyone was trying to comfort the family and comfort those that were there.[3]

A short while later, Watkins paged Thomasson from the Foster home to notify her of Foster's death:

> I beeped Patsy to notify her of the death. She was my deputy. She knew Vince. She was from Arkansas, and just to notify her.[4]

Watkins had learned from the Park Police officers that no suicide note had been found at Fort Marcy Park.[5] By the time Thomasson returned Watkins's page, there had been conversation at the Foster home regarding a suicide note and it was apparent that Foster had not left a suicide note at his home either.[6] Watkins "advised her of Vince's death and I asked her to go to his office and look for a note, a suicide note."[7]

> I said we were wondering if there might be a note in Vince's office, would you go look for one? That's what I asked her.[8]

Thomasson's recollection of how she came to enter Foster's office that night corresponds with Watkins's. She testified

> On July 20, 1993, I had dinner with a friend from Arkansas. * * * As we left the restaurant after dinner, I re-

> ceived a page from the White House operator telling me to page David Watkins with my location. * * * I went into the restaurant and called from a pay phone. The White House operator asked me to give her a phone number so that Mr. Watkins could call me. I told her * * * I would prefer to hold while she got Mr. Watkins on the phone for me.
>
> After a wait of several minutes, the operator connected Mr. Watkins and me. He told me at that time that Vince Foster had killed himself. I was in shock. I was in disbelief. I could not believe that my friend and colleague had killed himself. I asked Mr. Watkins at the time to repeat that message to me. I immediately asked David how I could help. He asked me to go to Vince's office to see if Vince left a suicide note. He told me to page him after I looked and let him know what I found.[9]

Watkins did not discuss the contents of Foster's office with Thomasson, did not ask her to look for any papers in Foster's office other than a suicide note, and did not ask her to remove any papers from the office.[10]

b. Patsy Thomasson briefly looked in Foster's office for a suicide note

After her telephone conversation with Watkins, Thomasson took a taxi to the White House and entered her own office briefly. On the first floor of the West Wing, she recalled seeing several White House staff members, including White House Counsel Bernard Nussbaum. Thomasson recalled the mood at the White House was one of shock and grief:

> Everyone who was at the White House that I saw was very distraught. Most everyone there was in tears, both men and women.[11]

She described her own state of mind as "distraught:"

> I was so crushed that my friend killed himself, someone I worked with on a day-to-day basis. I felt somehow that I had failed. To not recognize in someone you work with every day that they were depressed and that stressed out was somehow a failure on the part of those who worked with him every day.[12]

Thomasson recalled that she and Nussbaum entered Foster's office together.[13] She told the Committee of her brief, unsuccessful effort to locate a suicide note in the office:

> As we entered, I looked on the surfaces of the furniture to see if I could see a note. Nothing was immediately apparent. * * * I sat at Vince's desk, opened the drawers to the desk to see if there was anything that looked like a suicide note. I looked in the top of his briefcase, which was sitting on the floor.[14]

Thomasson did not study the particular documents in or on Foster's desk. She noted,

> I didn't go through every individual file in his desk or anything like that. I just looked in the top of the drawers and the top of the desk to see if there was something there that would be a suicide note.[15]

She did not pull out the papers that were in the briefcase.[16]

Thomasson recalled that Nussbaum left the office for a few minutes, during which time Margaret Williams entered.

> Maggie Williams came in and sat down opposite me. She was crying and visibly grieving. We sat together, me at Vince's desk, Maggie across from me, crying, and asking each other why.[17]
>
> We did talk about Vince and we talked about how helpful he always was to us * * * and so we were really going to miss him.[18]
>
> She and I talked and cried together for several minutes and then Maggie left and Nussbaum came back in.[19]

Thomasson recalled she spent approximately 10 minutes in Foster's office that night.[20] She recalled that she and Nussbaum left Foster's office together, removing nothing.[21] Neither she, nor Nussbaum, nor Williams removed or destroyed any documents from Foster's office.[22]

c. Bernard Nussbaum also entered Foster's office to look for a suicide note

While Nussbaum recalled his movements that night somewhat differently than did Thomasson, he also recalled that they were in Foster's office for no more than 10 minutes and removed nothing. Nussbaum was paged in a restaurant on the night of July 20 and informed of Foster's apparent suicide. Nussbaum returned first to the White House residence; after President Clinton left the residence for the Foster home, Nussbaum returned to the White House Counsel's suite. He intended to telephone members of his staff from his office to break the news of Foster's death.[23] He recalled that Thomasson and Williams were in Foster's office when he arrived:

> As I walked to my office it occurred to me that perhaps Vince left a note telling us why he had taken his life. I decided to go to his office, which was next to mine, to see if there was a suicide note. When I reached the White House Counsel's suite at around 10:45 p.m., I found the door open. Patsy Thomasson and Maggie Williams * * * were in Vince's office. Maggie was sitting on Vince's sofa crying. Patsy, who was sitting behind Vince's desk, said they had just arrived. * * * Patsy told me she was looking for a suicide note. Patsy and I checked the surfaces in Vince's office. We opened a drawer or two looking for a note. No one * * * looked through Vince's files. Patsy did not examine any individual file. She did not rummage through or examine any individual file, nor did I.
>
> * * * The three of us then left the office. Nothing was removed by any of us. We were there no more than 10 minutes.[24]

Thomasson described Nussbaum's activities in Foster's office that night as follows:

> Bernie was grieving. He was walking back and forth in the office. * * * running his hands through his hair. * * * He was very upset that night. * * * He was very distraught about Vince's death that night. * * * it was apparent that Mr. Nussbaum had been crying * * * [25]

Nussbaum was quite clear that while the Counsel's suite may have been unlocked for approximately one hour, during which time he was calling his staff from his office, he, Thomasson and Williams were in Foster's office for only 10 minutes.[26]

d. Margaret Williams went to Foster's office out of a sense of grief

Margaret Williams, Assistant to the President and Chief of Staff to the First Lady, received two telephone calls at home from Mrs. Clinton on the night of July 20. Mrs. Clinton first called en route from California to Arkansas, informing Williams she would call again after her airplane landed.[27] Mrs. Clinton then called again and informed Williams of Foster's suicide. Mrs. Clinton made no reference to any files in Foster's office.[28] Mrs. Clinton did not instruct Williams to go to Foster's office.[29]

Williams testified she called her assistant, Evelyn Lieberman, "almost immediately" after speaking with Mrs. Clinton.[30] Mrs. Lieberman's recollection was the same:

> Maggie called and she said either Vince was dead or Vince committed suicide. She was very upset, very upset, and I just said stay there, I'm coming to get you, and I put down the phone. I mean, it was very brief.[31]

Mrs. Lieberman testified she picked Williams up: "she got into the car, and she was crying, pretty hysterical." [32]

Williams and Mrs. Lieberman then returned to the White House; Lieberman explained:

> we wanted to see if we were needed. I didn't know what else to do, and we just drove over there. I don't think there was much talk of where should we go and what should we do.[33]

Once at the White House, Williams reviewed a copy of the press release announcing Foster's death, and sought a copy of the First Lady's schedule, to determine if any events needed to be canceled.[34]

Later that night, Williams entered Foster's office. She described her reasons for doing so as follows:

> At some point in that evening, I noticed a light was on in Vince Foster's office. All evening, I had been avoiding looking in the direction of Vince's office as I entered and left the First Lady's suite. But in a strange way, when I saw the light on in his office, I had this hope, albeit irrational, that I would walk in and I would find Vince Foster there.[35]

Williams recalled that Thomasson was in Foster's office when she entered:

> When I walked into his office, I found Patsy Thomasson sitting behind Vince's desk, looking, as I later learned, possibly for a suicide note. I began to cry. I sat on Vince's couch, and I cried the whole time.[36]
>
> I remember her saying * * * something to the effect that we could give Lisa some comfort if there was a note or if there was a note, we could give Lisa some comfort.[37]

While Thomasson recalled that Williams entered after Nussbaum left, Williams recalled that Nussbaum entered while she was in Foster's office. Her description of Nussbaum's behavior echoed that of Thomasson:

> Bernie Nussbaum at one point came in and wandered around the office. He seemed at a loss for what he should do.[38]
>
> He was pacing and scratching the back of his head and trying to think of something to say to either of us.[39]

Williams's recollection, that she and Nussbaum left "fairly close to each other in time"[40], with Thomasson remaining in the office, differs from Thomasson's recollection. As described above, Thomasson recalled that Williams left first and that she and Nussbaum left together.

After returning home late that night Williams spoke by telephone with the First Lady, and spoke with her again the next day. They did not have any discussion of files in Foster's office.[41]

e. Officer O'Neill's testimony

On duty at the White House the night of July 20, 1993 was Officer Henry O'Neill of the Uniformed Division of the U.S. Secret Service. Alone among the witnesses who appeared before the Committee, Officer O'Neill recalled that Margaret Williams had removed something from the White House Counsel's office that night.

In July 1993, Officer O'Neill was assigned the task of accompanying cleaning crews as they went about their nightly rounds in the West Wing of the White House. At 10:42 p.m. on July 20, 1993, Officer O'Neill unlocked the door of the White House Counsel's suite in the West Wing so that the cleaning crew could enter.[42] Officer O'Neill recalled that shortly thereafter, Bernard Nussbaum "walked into the office, and just about the same time I noticed other figures walk in behind him and I heard women's voices."[43] Officer O'Neill could not recall whether Nussbaum was accompanied by one or two other people.[44] He recalled that they entered Nussbaum's office, not Foster's.[45]

Officer O'Neill recalled that after leaving the Counsel's suite, he encountered Howard Paster, Assistant to the President for Legislative Affairs, who informed him of Foster's suicide.[46] He then returned to the hallway outside the Counsel's suite, where he recalled that he spoke with a woman who appeared to him to have just come out of the suite.[47] He recalled that this woman, who introduced herself as Evelyn Lieberman, "asked me about locking up the office, and I said I would take care of it."[48]

Officer O'Neill recalled that some time later, he returned to the Counsel's suite to lock it. As he was entering Foster's office, he saw a woman whom he later learned to be Patsy Thomasson sitting at Foster's desk.[49] He left the suite again, and later returned a third time.[50] Officer O'Neill testified that at this time he

> saw Evelyn Lieberman walk out of the counsel's suite. She stood in front of the doorway and I looked at her, and, again, it was mentioned about locking the office. And then a few seconds after I saw her come out, Mr. Nussbaum walked out behind her and walked through the hallway, toward the stairs, past the elevator, and within a few more seconds, I saw Maggie Williams walk out of the suite and turn to the right in the direction that I was standing. * * * She was carrying what I would describe, in her arms and hands, as folders.[51]

Officer O'Neill then locked the Counsel's suite, according to records at 11:41 p.m.[52] Officer O'Neill recalled that Williams was the last person he saw exit the Counsel's suite that night.[53]

f. Contradictions in Officer O'Neill's testimony

In the deposition he gave to Committee counsel on June 23, 1995, Officer O'Neill was uncertain as to what he had seen Williams carry. At his deposition, Officer O'Neill first testified that he saw Williams carrying "files * * * folders on top of each other."[54] At a later point, he added

> In fact, she may have even been carrying a box. I can't remember. She had her hands down in front of her. I remember that, and she was carrying something in front of her. I think I remember folders as I saw her approach in my direction, and it was like folders. But I can't remember if there was a box on top of them, like a cardboard box that is used for files also. I can't remember that.
>
> Q. Do you have some picture in your mind of a box?
>
> A. Kind of like, yeah.
>
> Q. How big is that box in the picture in your mind?
>
> A. Like a hat box, a small hat box. I don't know.
>
> Q. Was the box open?
>
> A. No. I said files originally. I said 3 to 5 inches, and it seemed—I mean, I know that it was a bundle. I told you that. It was something that was of some weight. That's basically how I would like to continue to state it. I don't want to try to dream up a box. This is getting confusing now because I can't remember if I saw her—I know I remember seeing her carry something in her arms.[55]

Asked by Senator Boxer at the Committee's hearing about this testimony, Officer O'Neill suggested, "let's just strike the hatbox."[56]

Officer O'Neill testified before the Committee that the cleaning crew he was escorting never entered Foster's office.[57] In fact, the cleaning crew did remove the trash from Foster's office; Sylvia Mathews later recovered it and it was made available to the investigators. In his deposition, Officer O'Neill testified that there was a burn bag in Foster's office on July 20, 1993, and that he had not

emptied the burn bags in the Counsel's suite that night.[58] One month later, testifying before the Committee, Officer O'Neill could not recall whether there was a burn bag in Foster's office, nor whether he had collected the burn bag material in the reception area of the suite.[59]

Officer O'Neill was not required to file any report concerning the events of that night and did not do so, nor did he make any personal notes of his observations. In fact, he had no opportunity to recount his recollections until April 1994, nine months later, when he was interviewed by FBI agents assigned to Independent Counsel Fiske.[60] In the meantime, press attention had been focused on the contents of Foster's office by a December 20, 1993 newspaper article regarding the removal of Whitewater documents from Foster's office. Officer O'Neill was aware of these articles; at his deposition, he stated

> I remember sometime later, not close or near the time of the events surrounding the [July] 20th, it was sometime later that I remember for the first time noticing in the newspaper about documents, stated in the newspaper articles that I read about documents being taken from the counsel's office. In fact, I think by Maggie Williams, in fact.[61]

While he initially testified before the Committee that he "had never read anything about anyone taking any files out of any office;" he later amended that testimony, saying, "I did read something about it, yes."[62]

Williams was quite clear in her testimony that she did not remove documents from Foster's office:

> I took nothing from Vince's office. I didn't go into Foster's office with anything in mind concerning any documents that might be in his office. I did not look at, inspect or remove any documents. At no time was I instructed by anyone nor was there any suggestion from anyone that I go into Vince's office on the evening of July 20th. I disturbed nothing while I was there.[63]
>
> Mr. Ben-Veniste: When you left the office, Ms. Williams, again, did you take any material of Mr. Foster's from that office?
>
> Ms. Williams: No, I did not.
>
> Mr. Ben-Veniste: Did anyone ask you to take any material, files, folders, boxes, any materials from that office that night?
>
> Ms. Williams: No.[64]

Williams's testimony is supported by the results of two polygraph examinations. The first polygraph was arranged by her counsel and administered by a distinguished expert in the field, a former Federal Bureau of Investigation Special Agent. He asked Williams the following questions:

> Did you remove any documents from Foster's office that night?
>
> To your personal knowledge did anyone remove documents from Foster's office that night?

> Did you discuss removing any documents, excepting a suicide note, from Foster's office that night?
>
> Were you aware that night of others discussing document removal excepting a suicide note?
>
> Do you now know of anyone removing documents from Foster's office that night?
>
> Excepting a suicide note, do you now know of any discussion by anyone about removal of documents from Foster's office that night? [65]

Williams answered "no" to each question, and the polygrapher concluded "it is my opinion Williams was not deceptive (was truthful) when she answered these issue questions above as she did." [66] Williams also volunteered to a polygraph examination by the Office of Independent Counsel. Williams's counsel provided the Committee with a sworn affidavit, stating

> After the examination was completed, the polygrapher advised * * * that the examination indicated that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.

The Special Committee requested a copy of this polygraph report from the Office of the Independent Counsel. The Special Committee also requested reports of interviews the Independent Counsel's Office conducted of Williams and Officer O'Neill.[67] Officer O'Neill testified that he was interviewed by FBI agents and representatives of the Office of the Independent Counsel five or six times.[68] The Independent Counsel declined to produce this information, citing a policy against disclosure of investigative work product. [69] * No explanation has been given to the Special Committee regarding why the Independent Counsel found it necessary to conduct so many interviews of Officer O'Neill.

No witness other than Officer O'Neill claims Williams removed anything from Foster's office that night. Mrs. Lieberman testified she did not see Williams carry any files, folders or boxes the night of July 20.[70] Nussbaum testified that to his knowledge no one removed anything from Foster's office on July 20.[71] Thomasson is not aware of anyone removing any documents from the office that night.[72] Officer O'Neill himself is uncertain as to what he recalls Williams was carrying. He did not memorialize his observations at the time of the events, and testified to them only after reading in the newspapers about documents taken from Foster's office. Officer O'Neill may have seen Williams carrying folders on another occasion, which he now recalls to have been the night of July 20, 1993.** It is also possible that when questioned regarding the events of July 20, 1993, his memory was inaccurately stimulated

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* It is difficult to square the Independent Counsel's unwillingness to make available the FBI polygraph of Ms. Williams or the FBI notes of Officer O'Neill's interviews with his willingness to provide the Committee with FBI work product regarding fingerprint analysis of the Rose Law Firm billing records. See below.

** Officer O'Neill worked a full shift at the White House on July 22, 1995. Ms. Williams testified that she accompanied Thomas Castleton as he carried a box of files out of the White House Counsel's suite that day. See below.

by the news articles of December 1993.*** Given these factors, the evidence does not establish that Williams removed anything from Foster's office on the night of July 20, 1993.

g. White House officials told law enforcement about the search for the suicide note

White House officials told law enforcement officials about the search for a suicide note on July 20. This suggests that their entry into Foster's office was as they testified: a brief review of the office for a suicide note.

Thomasson made no effort to keep her trip to the White House secret. To the contrary, she notified the Secret Service when she entered her office.[73] Further, she recalled she told Nussbaum in the presence of other White House staff that Watkins had asked her to look for a suicide note in Foster's office:

> [Mr. Nussbaum] walked up while I was talking to some of the others and I said, Bernie, I've been asked by David to go up to Vince's office to look for a note, will you go with me?[74]

At his first opportunity, on the morning of July 21, Nussbaum told Detective Peter Markland, the Park Police detective in charge of investigation Foster's death, that he, Patsy Thomasson and Maggie Williams had entered Foster's office the night before to look for a suicide note.[75] Nussbaum testified, "I told him that Patsy and I briefly looked for a suicide note and found nothing."[76] Detective Markland included this information in his report.[77]

2. White House officials did not receive a request from the Park Police to seal Foster's office

Sergeant Braun and Detective Rolla picked up David Watkins at his home and drove him to the Foster home in Georgetown, so he could accompany them when they notified Mrs. Foster of her husband's death.[78] The Park Police officers remained at the Foster home for approximately one hour.

Sergeant Braun recalled that she "had a brief conversation with Mr. Watkins as [she] was on [her] way out the door."[79] While Sergeant Braun does not recall the exact words she used, she remembered that she "asked that Mr. Watkins see that Mr. Foster's office was secured so that we could send somebody in the morning out to check his office."[80] "I explained to him that the office would need to be closed so that we could go through it the next day to look for a suicide note or evidence that would confirm the suicide."[81] She specifically testified that she did not request that the office be "sealed;" she simply "wanted to keep the office intact the way it was when Mr. Foster left it and to keep people from rummaging through."[82] She did not ask, nor did she intend, that White House personnel authorized to enter Foster's office be barred from entry.[83] Sergeant Braun recalled that Watkins "acknowledged my request."[84]

*** The eventual release of the FBI reports of the series of interviews of Officer O'Neill presently withheld by the Independent Counsel may shed further light on the reliability of Officer O'Neill's testimony.

While Sergeant Braun recalls making this request of Watkins, she did not mention making such a request in her written report of the visit to the Foster home.[85] Asked why she did not include this information, she said, "it did not come to me as I was sitting there at the PC putting together my report."[86] Neither did she mention such a request to Captain Hume when she briefed him the next morning on the events of the previous night.[87]

Watkins has no recollection of Sergeant Braun making such a request.[88] He testified further

> the Park Police had been in touch with the Secret Service for some five hours prior to making that request. * * * they had not shown a locality of interest to me, at least, in the office of Vince Foster's [sic]. And I assumed that if this had been of great concern with them, they would have contacted the Secret Service, whom they had been in touch with.[89]

Sergeant Braun, Detective Rolla and Watkins agree that the scene at the Foster house that night was chaotic. Detective Rolla described the scene as "traumatic" and said the family members were "crying, screaming, collapsing."[90] Watkins described it as "a scene of sadness, extreme grief;" there were "cries of anguish" when the Foster family first learned of their loved one's death.[91]

Park Police Captain Charles Hume, Assistant Commander of the Criminal Investigations Branch in Washington, DC, did not believe that a request had been made on July 20 of the White House that Foster's office be sealed. Captain Hume testified that when he arrived at the White House around 11:00 a.m. on July 21, he asked the Secret Service to seal that office.[92] He "thought that was the first request" from the Park Police that the office be sealed.[93] The Secret Service told Captain Hume that the office "had already been sealed or posted."[94]

Major Robert Hines, Public Information Officer for the Park Police, received a telephone call at home at approximately 9:45 p.m. on July 20, 1993.[95] He was told to call White House Deputy Chief of Staff William Burton to inform him of the discovery of Foster's body. Major Hines recalls that in the course of his conversation with Burton, he asked Burton to "secure or lock" Foster's office.[96] Sylvia Mathews recalled that Bill Burton "suggested that the office of Vincent Foster be locked" following a telephone conversation between Burton and the Park Police.[97] She recalled "the general gist was that Mr. Nussbaum should lock the office."[98] Indeed, the office suite was locked at 11:41 p.m.[99]

It seems possible that Sergeant Braun intended to request of Watkins that Foster's office be secured, but neglected to do so in the confusion of events. It also seems possible that she did make the request, but that Watkins did not hear it or register it in the confusion. A further possibility is that Watkins heard and registered the request at the time but does not recall it.

Far from treating the contents of Foster's office cavalierly, White House staff made independent efforts to preserve the contents of the office intact. In July 1993, Sylvia Mathews worked for Robert Rubin, at that time Assistant to the President for Economic Policy. After learning of Foster's death, it occurred to Mathews that the

contents of Foster's trash can might be relevant to his death.[100] She suggested that the contents should be retrieved, to which senior White House staff responded positively.[101] Mathews retrieved the trash bag from Foster's office, brought it to the Chief of Staff's office for safekeeping, and made an inventory of the bag's contents, which were examined later.[102] This action to preserve evidence regarding Foster's death was taken by the White House staff on their own initiative, without any request from the Park Police or any other agency.[103]

3. Park Police had no authority to review all documents in Foster's office

On July 21, White House officials met with representatives of the Park Police and the Justice Department to discuss reviewing the contents of Foster's office. The unanimous opinion of the law enforcement witnesses who appeared before the Committee was that neither the Park Police nor the Justice Department had the authority to enter or review documents in Vincent Foster's office. In the view of Major Robert Hines, Public Information Officer for the Park Police, the Park Police would not have been able to obtain a search warrant for material in Foster's office "without any evidence of a crime being committed."[104] Park Police Detective Markland testified, "we were not under the assumption that we had the absolute right to enter the office."[105] Captain Hume testified that he shared Detective Markland's view.[106]

Deputy Attorney General Philip Heymann testified that the Justice Department could not have obtained a search warrant or a subpoena for items in Foster's office because no crime had been committed.[107] "I would have thought that we did not have the basis for saying that there should be a grand jury to investigate a crime and issue subpoenas."[108] Similarly, Heymann testified the Park Police "lacked probable cause for a search" of Foster's office.[109]

a. Park Police were interested only in documents relevant to Foster's state of mind

In keeping with their limited authority, the Park Police never expressed a desire to review all documents in Vincent Foster's office. To the contrary, their focus was much narrower. All testimony before the Committee, both from the Park Police and other investigators and from the White House, indicated that the Park Police wished to examine Foster's office only for a suicide note or other personal documents that could shed light on Foster's state of mind.

Sergeant Braun testified that in a typical suicide case, she would enter the victim's home "to look for information that would confirm that the suicide victim was despondent or had made prior attempts, anything that would help confirm our suspicions that it was, in fact, a suicide."[110] The Park Police allowed Mrs. Foster to search the Foster home for a suicide note.[111] When no note was found at the scene of Foster's death or in the Foster home, it occurred to Sergeant Braun that Foster might have left a suicide note at his office.

While Sergeant Braun did not go to Foster's office herself, she indicated the type of documents she would have been looking for:

> If it had been myself, I would have been looking for a note, basically, that says I couldn't go on any longer or something to the effect that he had committed suicide. I would be also looking for insurance papers, things to show that he had his life in order and was ready to hand over to his family. I would have been looking for a journal, a diary * * * an appointment book with maybe appointments with psychiatrists or something like that. I would have been looking for things that would have helped confirm that this was a suicide.[112]

Major Hines's explanation of the sort of material the Park Police would look for in Foster's office is in keeping with Sergeant Braun's description. Major Hines stressed that the Park Police wanted to "examine" Foster's office rather than "search" it:

> I'll use 'examination' as opposed to 'search' because we're looking for limited information that might lead us to believe that his suicide—to prove that he had intent.
>
> We would want to find out if there's a suicide note. We would want to find out if there's anything there that he might have left that would give him a reason or show his state of mind. We'd want to check his records and see if he had financial problems * * * items like this.[113]

Park Police Detective Peter Markland was assigned on July 21, 1993 to investigate Foster's death. He testified that when he arrived at the White House that day, expecting to review the contents of Foster's office, he was interested in seeing "anything that might support the physical evidence we had that indicated a suicide."[114] Detective Markland conceded that the death of an attorney does not permit the police authority investigating that death to examine confidential client information in the attorney's files.[115]

The White House staff present at the July 21 meeting made no objection to the Park Police's request.[116] Nussbaum explained,

> The search was for a suicide note, an extortion note or some similar document which reflected depression or acute mental anguish. That is the request law enforcement officials made of me. They did not ask to read every piece of paper in Foster's office, every official White House record there, every personal file there to see if there was any indication of concern about any matter Vince had been working on. I was not faced with a request for some general excursion through documents to determine Vince's state of mind about matters he was working on.[117]

4. Recollections differ as to whether Bernard Nussbaum agreed that Department of Justice attorneys would review Foster's documents

The Committee heard divergent testimony about whether an agreement was reached on July 21, 1993 between Bernard Nussbaum on behalf of the White House and Deputy Attorney General Philip Heymann on behalf of the Justice Department concerning the procedures for the review of the documents in Foster's office. Department of Justice officials (Philip Heymann, David Margolis

and Roger Adams) testified that Nussbaum agreed on July 21 that Margolis and Adams would review Foster's documents. Nussbaum and staff of the White House Counsel's office testified that there was no such agreement.

Heymann cannot recall how he entered into discussions regarding the role Department of Justice lawyers would play in the review of Foster's office.* [118]

> Senator Kerry. * * * You're unclear in your deposition as to how you initiated the first contact with the White House or they with you; is that correct?
>
> Mr. Heymann. That is correct.
>
> Senator Kerry. You're still unclear at this point in time?
>
> Mr. Heymann. I'm still unclear—let me get the right day.
>
> Senator Kerry. The 21st, I think, was your first—
>
> Mr. Heymann. By the end of the 21st, I know that we have an understanding as to how the search of Mr. Foster's office will be done.
>
> Senator Kerry. How many conversations did it take to reach that understanding?
>
> Mr. Heymann. That's what I can't remember. And I can't remember whether—how many of them are conversations between me and Margolis and Adams which are then carried over to conversations between them and Mr. Nussbaum and others, and how many of them are direct conversations between me and Mr. Nussbaum. I know that I must have talked to somebody in the White House to make arrangements that Adams and Margolis are going to go over and represent us and why they were going.
>
> Senator Kerry. Do you have a specific recollection as to at least one conversation with Mr. Nussbaum?
>
> Mr. Heymann. I think that I talked to Mr. Nussbaum that day about it, but I wouldn't bet—I wouldn't bet $500 on it.
>
> Senator Kerry. On what do you base the notion, then, that you had an agreement or an understanding?
>
> Mr. Heymann. Well, besides the fact that I believe that Mr. Nussbaum and I had that conversation and agreed, both Margolis and Adams returned that evening from having met with the White House people. They described the same agreement as having been reached * * *[119]

Heymann cannot remember whether he reached this agreement with Nussbaum, or whether Margolis and Adams reached this agreement with Nussbaum: "I don't remember whether it was directly or through them." * * *[120]

Nevertheless, Heymann recalled that he understood that the Justice Department lawyers would mediate the issue of investigators' access to documents between the Park Police and the White House.[121] He recalled that Margolis and Adams would review the documents:

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*Mr. Nussbaum testified that he called Mr. Heymann: "I thought there might be multiple requests for information, so I called Mr. Heymann...and asked if the Justice Department would agree to coordinate the investigations of Foster's death." (Nussbaum, 8/9 Hrg. p.14).

> The understanding was that they would see, these two senior prosecutors, not the investigators, but the prosecutors would see enough of every document to be able to determine whether it was relevant to the investigation or not.[122]

Heymann testified he did not believe Nussbaum had committed irrevocably to such a procedure:

> I didn't feel that I had a binding commitment by Mr. Nussbaum or anyone else. We simply all had talked about it by then and we all were on the same track, we all were on the same page, we all thought it would be done [that] way * * *[123]

He explained further:

> I don't like calling it an agreement [because] I would have felt perfectly comfortable the next day calling up Mr. Nussbaum and saying, you know what we talked about yesterday, I don't think that's adequate, I think we have to do more.[124]
>
> * * * I had no problem at all with his changing his mind the next day. I didn't think he had promised in a sense that kept him from changing his mind * * *[125]

Associate Deputy Attorney General David Margolis recalled that on July 21, 1993, Heymann asked him to go to the White House with Adams in connection with the investigation of Vincent Foster's death.[126] Margolis recalled that Heymann "said that he had reached a tentative agreement with Mr. Nussbaum that Roger and I were to go through at least the first page or two of each document in order to determine whether they were relevant to our investigation."[127]

> Phil told me that he believed he'd had an agreement in principle with Bernie Nussbaum to do it that way, so I should go finalize it and then begin the search process.[128]

Margolis and Adams met with Nussbaum on July 21 to discuss the procedures that would be used to review the documents in Foster's office. Margolis testified that during his meeting with Nussbaum on July 21, 1993, "we finalized that agreement, and * * * we both agreed to it."[129] Adams testified:

> The purpose of the discussion was to go over the ground rules under which the search would be conducted. The discussion lasted, as best I can recall, 10 or 15 minutes, maybe 20. First thing we agreed on was that because of the lateness of the hour and people from the White House having been through considerable strain the night before * * * that it not take place that day, that it go over until the next day. There was no disagreement on that point.
>
> There then ensued a fairly brief discussion about how the search should be conducted. The gist of the discussion was that Mr. Margolis and myself, together with Mr. Nussbaum, would examine at least the outside of each file to determine, first of all, relevance to the suicide investiga-

> tion, and, if it were deemed relevant, to then address issues of possible privilege.
>
> I think the understanding was just about as I have described it, that Mr. Margolis and I together with Mr. Nussbaum would make this very cursory review of at least the title or possibly the first page of each file.[130]

Adams conceded, however, that he didn't know "what was in Mr. Nussbaum or Mr. Neuwirth's mind."[131]

The possibility that there was no agreement reached between the Justice Department and the White House Counsel's office is raised by the fact that at this very meeting, Assistant White House Counsel Stephen Neuwirth stated that Nussbaum alone would review the documents. Margolis testified:

> When we finished, Mr. Neuwirth on his staff, as I recall, attempted to restate the agreement, and got it what I believe was exactly wrong, and said, 'The way we're going to do it is that Bernie will go through the documents, and he'll give you what is both relevant and non-privileged to review,' and I said that that's exactly wrong. We just agreed to the other procedure. And * * * Mr. Nussbaum agreed with me that Mr. Neuwirth was wrong, and that we had that other agreement.[132]

Adams's testimony was similar:

> After this agreement was reached, Mr. Neuwirth, either attempting to summarize the agreement or to change the terms of the agreement, made a statement to the effect okay, Bernie will examine each file and Bernie will determine issues of relevance and privilege.
>
> He was immediately corrected, I think, by Mr. Margolis, and we restated the agreement, as we had agreed to, which was namely that Mr. Margolis and I would examine the title or the first page of each file to determine issues of relevance and privilege.[133]

Contrary to the testimony of the Department of Justice officials, the White House Counsel's office staff testified clearly that no agreement was reached on July 21 that Margolis and Adams would review the documents. Nussbaum testified,

> One option we discussed on July 21 was the possibility of allowing Justice Department lawyers to look at a portion of each document to see if it was privileged. I said—I did say I would consider that option. I did not say I would agree to it.[134]

Nussbaum was clear that no agreement was reached with Margolis and Adams on July 21:

> Senator Shelby. When you broke up the meeting, did you have an agreement?
>
> Mr. Nussbaum. No.
>
> Senator Shelby. Well, what did you have? Why would they leave?

> Mr. Nussbaum. We had an issue which had remained unresolved and which we agreed to meet the next morning to have further discussions. That is my memory.[135]

Nussbaum said, "we agreed a search would be conducted the next day, and we would conclude the next day as to how the search would be conducted." [136]

Neuwirth testified regarding the discussion on July 21,

> * * * Mr. Nussbaum indicated that one of the ways that an accommodation could be reached that would not undermine the privileges or cause a waiver of the privileges would be for Mr. Nussbaum to be the person who would review the contents of the documents and describe them to law enforcement officials.
>
> I think that from the first time we discussed this, Mr. Margolis expressed a different view. * * * I think that Mr. Margolis suggested that it would be in the best interest of the White House to let Mr. Margolis play the type of role that Mr. Nussbaum suggested that he himself should play in the review.[137]

Neuwirth was certain that there was no agreement:

> Mr. Ben-Veniste. To the best of your recollection, what was Mr. Nussbaum's response to [Mr. Margolis's suggestion] on the 21st?
>
> Mr. Neuwirth. That he didn't agree that that was a procedure that necessarily could work because having the Justice Department play that role could cause the very type of waiver that the accommodation was meant to avoid.
>
> Mr. Ben-Veniste. And to the best of your recollection, how was the matter left then on the 21st?
>
> Mr. Neuwirth. It was left without resolution with the understanding that there would be further discussion about it.[138]
>
> * * * I certainly, during that meeting and at any other time, did not understand there to have been an agreement and, in fact, thought that the disagreement between Mr. Margolis and Mr. Nussbaum was quite clear throughout all of these discussions.[139]
>
> My vivid recollection is that Mr. Margolis and Mr. Nussbaum disagreed about the best option to pursue under the circumstances.[140]

Sloan and Quinn also did not recall an agreement being reached on July 21st.[141]

Nussbaum recalled that he told Margolis and Adams,

> * * * this is a lawyer's office. There is sensitive materials in that office. [sic] There's confidential stuff, there is privileged stuff in that office. * * * I have obligations as a lawyer * * * as counsel to the President in his official capacity * * * that affect me as a government lawyer, as well as the same kind of obligations when I was a private lawyer.

> I got to work out some way of dealing with these issues with you. I just cannot let you go in and open the door and look at every document in the office.[142]
>
> They said we understand it, Bernie, we understand, you know, that you have these obligations as counsel to the President, as a government lawyer, you have these obligations because these obligations apply also to a government lawyer, but they said, maybe we can work something out.[143]

The White House Counsel's office was concerned that allowing the Justice Department attorneys to review Foster's documents directly could constitute a waiver of privileges attaching to those documents.[144] Nussbaum explained these concerns for the Committee:

> As White House Counsel, I was * * * concerned with maintaining the credibility of federal law enforcement, but I was bound to act in accordance with my obligations as a lawyer, and I did not believe that doing so * * * would undermine the credibility of federal law enforcement. It was my ethical duty as a lawyer and as White House Counsel to protect a client's information and confidences and not to disclose them without a prior review by me. It was my duty to preserve the right of the White House, of this President and future Presidents to assert executive privilege, attorney-client privilege and work product privilege. It was my duty to do nothing that could result in an inadvertent waiver of these privileges. It was my duty to protect the confidentiality of other matters as well, including sensitive government documents in that office.[145]

Nussbaum said, "By the next day [July 22], I had determined that this [the procedure suggested by the Justice Department] would create an unacceptable risk of disclosure of confidences and an equal unacceptable risk of waiver of the privileges I was obligated to protect."[146]

5. The Difference of opinion between senior Justice Department officials and White House counsel reflected differing judgments about appearances rather than about legal rights

Margolis and Adams testified that when they arrived at the White House on the morning of July 22, 1993, Nussbaum told them he had changed the procedures for the document review, and that only he would examine the documents for relevance and privilege.[147] Margolis and Adams expressed their opinion that "he was making a mistake."[148] They did not believe that Nussbaum was mistaken as a matter of law; as Adams told the Committee, "I don't think we had any legal tool that we could have pulled out and demanded to see the documents right there."[149]

While Margolis believed that he had more experience than Nussbaum in reviewing documents in connection with a criminal investigation, he was largely concerned about the appearance of impartiality.[150] Margolis testified:

> We were very concerned as how this would appear to the public in terms of law enforcement, and in terms of whether we were running a credible investigation. And—God forbid, but appearances being one thing, if we weren't running a credible investigation regardless of appearances, if we missed something because of the way we were doing it, there could be all hell to pay. So it was very important to us, both in terms of perceptions and fact.[151]

Margolis's and Adams's concern about appearances was consistent with the views of Heymann, who told the Committee,

> I believed then * * * that there was one central question * * * who should determine what documents would be made available to the investigators. * * * I thought that for the White House counsel's office to make these decisions largely by itself, as it did, was simply not an acceptable way of addressing them.[152]
>
> The federal law enforcement authorities have a responsibility to assure a process that credibly promises objectivity when high officials are part of the investigation. To keep this promise of objectivity, even in a case that showed all the early signs of being a suicide, the White House counsel could not be the one to decide what documents would be shown to the investigators and which would be retained or distributed as irrelevant to the investigation or as privileged despite potential usefulness to the investigation.[153]

Heymann also testified that the procedure followed by Nussbaum was legal and ethical.[154] In letting the investigators into Foster's office at all, Nussbaum was, in Heymann's view, "going beyond what could be legally required of the White House counsel."[155] Heymann testified further that Nussbaum's procedures did not obstruct the investigation of Foster's death.[156]

At Margolis's suggestion, Nussbaum spoke by telephone with Heymann. Heymann recalled

> being very angry and very adamant and saying this is a bad—this is a bad mistake, this is not the right way to do it, and I don't think I'm going to let Margolis and Adams stay there if you are going to do it that way because they would have no useful function.[157]

Heymann recalled that Nussbaum responded, "I'll have to talk to somebody else about this or other people about this, and I'll get back to you, Phil."[158] Heymann testified, "I had obviously shaken him enough that he wanted to consider whether he should come back to what we had agreed to the day before on the 21st, but there were other people involved that he had to talk to about that."[159]

Nussbaum did not recall Heymann telling him he was making a mistake.[160] Nussbaum also did not recall that he was to call Heymann back following his discussions with others.[161]

Margolis recalled that Nussbaum "was obviously concerned about the arguments we would make, and he said he wanted to think about them before he reached a final decision."[162] Adams also re-

called Nussbaum "said he was considering whether to allow us to see the documents. * * *"[163]

Following these discussions with Heymann, Margolis and Adams, Nussbaum met with Bruce Lindsey, Jack Quinn, Bill Burton and Steven Neuwirth. Nussbaum recalled that Quinn urged that he not even allow the law enforcement officials into Foster's office:

> I was urged by one senior White House official, Jack Quinn * * * not to permit law enforcement agents to enter Vince Foster's office at all. Jack was not concerned about particular documents or files. We never had a discussion about any sensitive matter. Jack was concerned and properly concerned about setting an unfortunate precedent for the future and the institutional need of the White House to preserve confidentiality, concerns I shared.[164]

Lindsey recalled that Nussbaum was trying to devise a procedure to accommodate the request of the Park Police to look for either a suicide note or some evidence of Foster's state of mind "with the need for protecting documents that could either be covered by one of several privileges—executive privilege, attorney-client privilege, and so forth."[165] Lindsey stated "the purpose of the meeting was to try to balance their needs so that they could feel that their purpose was served and yet still protect the privileges."[166] Lindsey testified the White House officials were not concerned about particular files that might be in Foster's office:

> Senator Kerry. Let me ask you directly, Mr. Lindsey. Was there any discussion there among those present about any issues of embarrassment or liability or questions that you somehow felt were of particular concern?
>
> Mr. Lindsey. Absolutely not. It was simply a question of the legal principles involved.[167]

Lindsey concluded that Nussbaum "decided on a procedure that he thought would accommodate both the Park Police's need and the privilege issue."[168]

Michael Spafford, attorney for the Foster family, recalled that Nussbaum

> was concerned that if he showed any of the documents to one of the investigators it may be construed as a waiver of that privilege. He also said there may be personal documents in there which may raise personal issues * * *[169]

Spafford recalled no discussion of Whitewater documents or Travel Office documents.[170]

Nussbaum explained for the Committee the difficult issues associated with waiver of legal privileges:

> You cannot just partially disclose a portion of a document or of a conversation without waiving not only the entire conversation as to the entire document, but indeed perhaps as to the entire subject matter covered by this document. In other words, there may be other documents covering this subject matter, there may be other communications covering this subject matter. So when you waive is a tricky thing, and two, how much you're waiving is

> even trickier at times. That's what a lawyer thinks about when he's faced with a request for somebody to look at a part of or the first page of various documents. And I was extremely concerned about that at the time.[171]

When the law enforcement officials and White House officials assembled in Foster's office on the afternoon of July 22, Nussbaum explained that he would attempt to balance the interests of the White House and those of the law enforcement personnel investigating Foster's death. Nussbaum recalled he "decided I was not going to keep law enforcement officials out of Vince's office. I chose a middle ground. I chose a procedure that balanced and accommodated the interest of confidentiality and law enforcement interest."[172] "* * * I didn't think it was necessary to bar the door to Foster's office in order to adequately protect our rights, the right to protect confidentiality and privilege and to preserve the right to protect privilege and law enforcement issues."[173]

6. Park Police expressed no interest in reviewing Foster's substantive files

According to Sloan, Nussbaum went through Foster's files, giving a "general description" of each to the law enforcement personnel assembled in the office.[174] No Park Police, FBI or Department of Justice officials ever requested that they be allowed to search the Clintons' personal files to determine if they had any influence on Foster's state of mind:

> Senator Kerry. * * * Did you say these are personal files of the Clintons'?
> Mr. Nussbaum. Yes.
> Senator Kerry. * * * Did they ask to see any of those files?
> Mr. Nussbaum. No, sir.
> Senator Kerry. At no time did they ask to see those?
> Mr. Nussbaum. At no time did they ask to see any of those files.
> Senator Kerry. Did they ask them to be set aside for further review at a later time?
> Mr. Nussbaum. They did not, Senator.[175]

Mr. Nussbaum testified,

> No one said to me, 'Mr. Nussbaum, we want to look through all the files. We want to read every document. We want to see every matter Vince Foster was working on, personal—we want to see every Clinton personal file, because we want to determine the state of mind. We want to see if there's any potential scandal. We want to see what might have driven him to this thing.' No one—there was no basis for that—no one made that suggestion. It was a search * * * for a suicide note.[176]

The Park Police never requested that any of the Clinton personal files be set aside for review during or after the review of documents in Foster's office as evidence of Foster's state of mind.[177] Adams testified that had he known Foster's office contained "things like tax returns and personal financial information of the Clintons," he

"would have assumed they didn't have much to do with a suicide investigation." [178] He said

> we had little interest—or no interest, I should say—in anything that didn't appear to be relevant to a suicide investigation, such as a note or evidence that Mr. Foster was being blackmailed, evidence that he was a victim of a crime, something like that, something that would explain why a man like Mr. Foster would take his own life.[179]

Adams noted that in July 1993 he was not familiar with the name Whitewater and that a Whitewater file would have meant nothing to him.[180]

Margolis himself testified, "the President's personal papers I was not concerned with." [181] According to Margolis, the Park Police were narrowly focused on material setting forth Foster's state of mind, such as a suicide note or an extortion threat." [182] Margolis testified

> if Mr. Nussbaum had showed me a bunch of financial documents that day, I wouldn't have been very interested in them, I wouldn't have understood them, I don't think my agents would have had any interest in them.[183]

Heymann was also quite clear that the investigators were not interested in files pertaining to the Clintons' tax returns or real estate investments.[184] "They would have been prepared to treat them as not relevant to Vince Foster's death." [185]

a. No Instructions Were Conveyed to Bernard Nussbaum Regarding Documents in Foster's Office

Susan Thomases, a partner in the law firm Willkie Farr & Gallagher, has known President Clinton for over 20 years and Mrs. Clinton for nearly 20 years. During the 1992 Presidential campaign, she lived in Little Rock for six months while serving as director of scheduling and advance for the Clinton/Gore campaign.

On the night of July 20, Mrs. Clinton called Thomases at her apartment in New York and told her of Foster's suicide.[186] They shared their grief at the loss of their close friend and colleague. Thomases informed Mrs. Clinton that, in keeping with her longstanding practice of traveling to Washington on Wednesdays to conduct business, she was planning to travel to Washington the following afternoon.[187] Thomases recalled that Mrs. Clinton then

> said, would you please find out when my husband, the President, is going to be there and please be sure to see him; and, also please be sure to talk to Maggie Williams to see if she were okay.[188]

Mrs. Clinton did not suggest that Thomases change her plans so as to arrive in Washington earlier.[189] Asked whether the contents of Foster's office came up in that conversation, Thomases replied, "Absolutely not." [190]

Telephone records indicate that Thomases made a series of telephone calls to Williams, Nussbaum and McLarty, or their offices, on July 21 and 22, 1993. At 12:15 a.m. on July 21, Thomases paged Williams. Williams called Thomases at 1:10 a.m.; they spoke for fourteen minutes. Thomases recalled that, in their first conversa-

tion after Foster's suicide, Williams told her that she and Thomasson had been in Foster's office.[191] There was no discussion of Foster's documents. Williams testified, in her deposition and before the Committee, that she did not recall speaking with Thomases by telephone during that week, but did recall Thomases coming by her office in person.[192]

On July 22, Williams called the Rodham residence in Arkansas, where the First Lady was staying, at 7:44 a.m. and spoke for one minute. Williams did not recall whether she spoke to Mrs. Clinton at that time.[193] She does not recall discussing Whitewater with the First Lady in connection with Foster's death, nor discussing Foster's documents other than regarding moving documents to the residence.[194] A three-minute call was placed from the Rodham residence to Thomases's hotel in Washington at 7:57 that morning. Thomases did not recall the details of the conversation; she speculated that Mrs. Clinton may have asked her about her conversation with the President, whom she had seen the day before, and that they may have discussed Thomases's decision not to attend Foster's funeral.[195] Thomases does not recall discussing Foster's documents or Whitewater with the First Lady on July 22.[196]

Thomases paged Nussbaum at 8:01 that morning. She called the Rodham residence, where Mrs. Clinton was staying, at 8:25 am. Thomases left a message for Williams at the White House at 9:00 a.m. Thomases called the First Lady's office in the White House at 11:04 a.m. for six minutes, at 11:37 a.m. for 11 minutes, at 11:50 a.m. for four minutes, and at 3:08 p.m. for 10 minutes. These calls were made to Mrs. Clinton's general office telephone number, rather than to Williams's direct line.[197] Thomases called McLarty's office at 9:30 a.m. to leave a message for Burton, at 10:48 a.m. for three minutes, at 11:11 a.m. for three minutes, and at 11:16 a.m. for one minute.

The records do not indicate how many conversations Thomases had, nor with whom. Thomases does not recall the conversations and does not believe she reached McLarty on any of those occasions.[198]

> * * * I was reaching out for Mack and I was anxious to speak to him because he had a very special relationship with Vince, and I wanted to talk to him. And unfortunately I do not believe that I was able, nor can I remember, that I was able to reach him that day.[199]

McLarty also did not recall receiving any telephone calls from Thomases and did not recall speaking with her on July 22.[200] Burton recalled that at one point he spoke with Thomases regarding travel arrangements to a funeral; he could not recall if it was to Foster's funeral or that of President Clinton's mother.[201]

Thomases recalled speaking with Nussbaum on the morning of July 22 and described her motivation for doing so:

> I was not looking for * * * Bernie Nussbaum to talk about the review of documents in Vince Foster's office. I was really trying to reach him to talk about how he was feeling and how he was doing. I had known that he and Vince had grown to be very good friends and that it was a very difficult thing for him to have lost his trusted dep-

> uty at this particular time. I was really calling to check in with my friend to see how he was doing.[202]

According to Thomases, Nussbaum himself raised the subject of the review of documents in Foster's office:

> He told me he had made a decision and that he was in charge, and that he was going to do it, and that he had taken great care into thinking through how it was going to be divided up; and that other people were going to be there, and the proper documents were going to be given to the proper person.[203]

She did not express to him a view that the investigators' ability to review the documents should be limited.[204] At the time of her conversation with Nussbaum, she "had not heard about any issue in the White House" regarding investigators' access to Foster's office.

Nussbaum recalled mentioning the review of documents with Thomases but noted, "I didn't even discuss with her, I don't believe, exactly how it should be done."[205] Nussbaum testified,

> I talked to a number of people about this issue as to how the search for a suicide note should be conducted. But I did not speak to the President or the First Lady about this matter, nor did Susan Thomases or anyone else convey a message to me from either of them. Susan Thomases did not discuss the First Lady's views with me * * *[206]

Thomases did not mention the President or the First Lady during the conversation.[207]

> Senator Boxer. * * * Did the First Lady personally tell you how to handle the papers in the office?
>
> Mr. Nussbaum. No.
>
> Senator Boxer. Did she tell you what to do through Susan Thomases?
>
> Mr. Nussbaum. No.
>
> Senator Boxer. Did she tell you what to do through any other intermediary?
>
> Mr. Nussbaum. No.[208]

Neuwirth stated that, around the time of the review of documents in Foster's office, Nussbaum mentioned a conversation he had had with Thomases.[209] Neuwirth stated his "understanding was that Nussbaum felt that Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office."[210] Nussbaum did not indicate to Neuwirth whether Thomases had spoken with Mrs. Clinton.[211] Nussbaum does not recall these conversations with Neuwirth.[212]

Thomases testified specifically that she did not act as an intermediary for Mrs. Clinton with Nussbaum on this occasion.[213] She testified she was unaware of the meeting on July 22 between Messrs. Nussbaum, Lindsey, Burton, Quinn and Neuwirth regarding the review of Foster's documents and did not call in an attempt to influence that decision.[214] She explained her 8:01 a.m. page to Nussbaum:

> I don't remember making that call, but I want to put it in a context where I think it was. I had not yet talked to

> Bernie who was my very close friend. His deputy, Vince Foster, had shot himself. I wanted to know how Bernie was doing because he had been working with Vince day in and day out and he had been feeling very good about how things were going and then his deputy goes out and kills himself.[215]

She did not pass on to him any information regarding how he should handle the Park Police request for access to Foster's office.[216] Nussbaum agreed:

> I know Hillary Clinton for over 20 years now * * * and in the White House we had quite a good relationship * * * [She] and I have talked on many occasions in our lives. If Hillary Clinton wants to say something to me, she says it to me.* * * If she wants to deliver me a message, Hillary Clinton delivers me a message herself. If I want to deliver her a message, I deliver her a message myself. She doesn't need any messengers to deliver messages between her and myself.[217]

Thomases saw President Clinton at the White House on July 21; during that conversation they shared their sadness at Foster's death.[218] Asked whether there was any discussion of the contents of Foster's office during that conversation, Thomases replied, "None whatsoever."[219]

Williams did not recall whether she actually spoke with Thomases on any of the occasions when Thomases called her office on July 21 and 22.[220] Williams recalled that Thomases came by her office during that time.[221] Thomases recalled speaking to Williams on both July 21 and July 22.[222] Thomases recalled clearly she "had no conversation with Maggie Williams about Vince Foster's papers."[223] She stated,

> I can imagine myself talking to Maggie at length. Maggie was very upset by Vince's death, and I thought of her often on the 22nd. I could have called and talked to her. I could have called and talked to Evelyn [Lieberman] to find out how she was doing. Any of those things could have caused me to call that . . . number. But I wasn't calling Maggie Williams about any papers.[224]
>
> I talked to her about how she was holding up. I talked to her about going to the funeral. I talked to her about how I was holding up. I talked to her about how much work I had and how pressured I was feeling at the time.[225]

Thomases told the Committee:

> I never received from anyone or gave to anyone any instructions about how the review of Vince Foster's office was to be conducted or how the files in Vince's office were to be handled.[226]

She had no conversation with Mrs. Clinton regarding the documents in Foster's office.[227]

> I'm absolutely firm that had [Mrs. Clinton] discussed documents with me at this time, I would have noticed it. It would have been a memorable thing for her to have

> mentioned because we were talking about emotions, children, religion, feelings, friendship; and had she brought up documents, it would have been so distinct I believe I would have remembered it.[228]

She testified again, "I remember no discussions about documents with either Mrs. Clinton or Maggie Williams. The only person who discussed documents with me during that period was Bernie Nussbaum."[229]

7. Park Police investigation was not hindered by Nussbaum's review of Foster documents

The document review procedures employed by Nussbaum did not impede the Park Police's investigation of Vincent Foster's death. Nussbaum provided the law enforcement officials on July 22 with a general description of the documents. The law enforcement officials were able, on that date or shortly thereafter, to review and copy all documents in which they expressed an interest.

Witnesses agree that Nussbaum separated the documents in Foster's office into piles, although there are differing recollections as to how many piles and what the piles represented. Margolis and Adams recalled that one pile was material to be redistributed within the White House Counsel's Office, a second pile was personal material of Foster's to be provided to the Foster family's lawyer, and a third pile was personal material of President and Mrs. Clinton to be provided to their private lawyer.[230]

Nussbaum testified,

> As I went through the files in Vince Foster's office, the agents did * * * ask to see and read certain documents. I set those documents aside. Subsequently, after we reviewed them, every document the agents asked for was, within a matter of days, given to the law enforcement officials.[231]

Sloan explained that as Nussbaum provided a general description of the documents, the law enforcement officials identified particular items in which they were interested.[232] Neuwirth confirmed that "there was an opportunity during the review for the law enforcement officials to identify documents or categories of documents that they wanted to see."[233] In fact, Nussbaum specifically told Sloan to make the documents available to the Park Police.[234] Nussbaum allowed the Park Police to make copies of those documents.[235] Neuwirth and Sloan were both of the understanding that following the review, all of the documents that had been requested were made available to the law enforcement officials who had requested them.[236] In fact, Margolis recalled that Nussbaum gave some documents to the Park Police on the spot, including Foster's calendar and a map of the Washington area that had been in Foster's possession.[237]

Captain Hume testified that the Park Police reviewed the materials that Nussbaum removed from Foster's office and provided to Foster's attorney.[238] On July 30 he reviewed the documents remaining in the White House Counsel's office that the investigators had identified as of interest to them, including Foster's telephone logs. Captain Hume testified, "[f]rom those phone logs, we were

able to get the phone number for his doctor. * * * I was able to talk to his doctor and confirm that he was ill."[239] Captain Hume reviewed all the documents in which he had an interest.[240] Asked about White House Counsel's office attorneys attending Park Police interviews of the White House Counsel's office staff, Captain Hume testified, "the end result is all the questions that I asked got responses so there was no interference."[241]

When the document review was completed, none of the law enforcement officials present expressed any concern about the movement of the Clinton personal documents out of the White House Counsel's suite; they had not expressed any interest in reviewing any of those documents.[242] After Foster's note, which refers to the Travel Office matter, was turned over to the Park Police, no law enforcement officials asked for documents in Foster's office relating to the Travel Office matter.[243]

Whatever opinions can be formed regarding the way in which White House officials responded to the Park Police's request to examine Foster's office for a suicide note or other evidence of his state of mind, it is clear that the investigation of his death was not hindered. Major Hines told the Committee, "we had a thorough enough investigation to determine that it was a suicide."[244] Margolis testified quite clearly that the procedures determined by Nussbaum did not hinder the Park Police investigation of Foster's death. Instead, Margolis was concerned about the appearance created by those procedures, not about their impact on the investigation itself.

> Senator Shelby. Do you believe, Mr. Margolis, that the conduct of the White House Counsel in setting the ground rules of the so-called search, later dispersing papers and so forth, without the Justice Department having an opportunity to evaluate them, compromised or contaminated the investigation?
>
> Mr. Margolis. I can't say that Senator. What I would say—
>
> Senator Shelby. What would you say?
>
> Mr. Margolis. I would say, and I think Mr. Heymann said it perfectly—
>
> Senator Shelby. Okay.
>
> Mr. Margolis. —that the way this was done—and I don't think I can capture his exact words—
>
> Senator Shelby. Okay.
>
> Mr. Margolis. But the way this was done, it managed to cast substantial doubt on the bona fides of the investigation with no evidence that anything wrong was ever done.[245]

8. The torn note is found in Foster's briefcase

a. Nussbaum Overlooked the Note in Foster's Briefcase on July 22

In the course of reviewing the documents in Foster's office, Nussbaum removed files from Foster's briefcase, which was propped against a wall. Nussbaum testified he did not open the briefcase and look inside after he had removed the files.[246] He said, "I remember just simply pulling the files out, realizing, or feeling in ef-

fect, or looking, glancing, that the files were all out and then, as you can see, the briefcase apparently sort of shuts by itself."[247]

Bill Burton stood behind Nussbaum during the review of Foster's documents. When Nussbaum removed the files from Foster's briefcase, Burton was able to see inside.[248] He testified,

> I saw that * * * Mr. Nussbaum had taken all the files out of the briefcase and that the briefcase otherwise looked empty to me, like your briefcase might look empty or my briefcase might look empty after you've taken all the files out. There was litter in the bottom of the briefcase, paper clips, a Post-it note * * *[249]
>
> There was nothing in me that made me think at the time perhaps we should see if there's a note tucked away in that litter.[250]

Witnesses differed in their recollections as to whether Nussbaum looked in the empty briefcase. Margolis recalled he "was satisfied that [Mr. Nussbaum] had looked in the briefcase and had represented to us that there was nothing else in there."[251] Spafford did not recall whether Nussbaum looked inside the briefcase.[252] Agent Salter also did not see Nussbaum look inside the briefcase.[253] While Margolis "cannot absolutely swear that [he] remember[s] him looking in the briefcase," he believes Nussbaum did look in the briefcase.[254]

Detective Markland testified Nussbaum looked in the briefcase:

> When Mr. Nussbaum concluded the emptying of the briefcase, he looked in it, said that's it; it's empty. He again looked at it, actually picked it up and looked into the briefcase, set it down on the floor, and it was pushed to the wall behind him.[255]

Margolis testified, though, that based on where people were sitting in the office Detective Markland could not have seen whether Nussbaum looked in the briefcase: "I don't see how he [Markland] could have seen into the briefcase in those circumstances."[256]

Captain Hume testified in his deposition that Nussbaum

> never took that briefcase and spread it open and looked down at it like I would or you would now in retrospect if we thought something was in there. That never happened * * * I can tell you at no point do I remember him picking that briefcase up and pulling it out like I would, like I looked in it when I went back up there the following week or whatever, after we had gotten the call about the note.

Senator Sarbanes read Captain Hume's deposition to him at the Committee's hearing and asked him, "is that still your recollection today of what took place?"[257] Captain Hume replied, "That's correct, Senator, that's still my recollection."

Spafford testified that after the investigators had left Foster's office, Sloan noticed pieces of paper in the bottom of the briefcase. Spafford recalled that "Mr. Sloan had the briefcase in his hand * * * and he made the comment at that point in time that there appeared to be scraps in the bottom of the briefcase."[258] Spafford recalled that Nussbaum responded to the effect that other materials had to be reviewed as well and "we will look through that

later."[259] Spafford testified, "it was an off-the-cuff remark by Mr. Sloan to which I attached very little significance at the time, and it appeared that Nussbaum attached very little significance to it as well."[260] To Spafford, Nussbaum "looked very tired, exhausted."[261]

Sloan first learned of the pieces of paper on July 27; he believes that had the earlier incident occurred he would have recalled it when he learned of the note.[262] He said, "as far as I am concerned, it did not happen because I don't remember anything remotely like that, and I believe that I would have recalled it the following week."[263] Nussbaum also did not recall that conversation and believes it did not happen.[264]

On July 26 Deborah Gorham, Foster's secretary, "picked up" Foster's briefcase "at which time [she] moved it from the corner of his desk to the front of his bar . . ."[265] Inside the briefcase she "saw the top of the cut of a third cut folder and the color of yellow."[266] Gorham testified she saw "the color of yellow, not the form or shape or if there was writing on it or not."[267] At Foster's request, Gorham had from time to time placed yellow Post-It notes in his briefcase for his use.[268] Linda Tripp, Nussbaum's secretary, recalled Gorham said to her

> either 'it was empty' or 'there's nothing in there' followed by 'except for a bunch of little yellow sticky notes;' she may have said 'at the bottom.'[269]

Gorham did not recall this conversation.[270] However, she believes she may have associated "something yellow" with the yellow Post-It notes she placed in the briefcase.[271]

Even if the scraps of yellow paper were brought to Nussbaum's attention on July 22, none of the individuals who saw them concluded that they may have been evidence of Foster's state of mind; none of them suggested to Nussbaum that they might be a suicide note.[272]

Neuwirth testified that he found the scraps of paper on July 26:

> On Monday the 26th at Mr. Nussbaum's request I was preparing an inventory of the contents of Mr. Foster's office. One of the things that I did in connection with that inventory was to put into a box towards the latter part of my inventory process items that belonged to Mr. Foster personally, like photographs. And in the process of putting materials in that box I saw the briefbag leaning against the back wall of Mr. Foster's office. I understood it to be empty. I knew that it belonged to Mr. Foster. I picked it up and brought it to put into the box. I had laid two large—one or two or maybe even three large black and white photographs of Mr. Foster and his daughter with the President on the top of the box, and in an effort to avoid damaging those photographs, I turned the * * * briefbag to fit into the box, and in the process of turning it, scraps of paper fell out of the brief bag.[273]

Upon discovering what appeared to be Foster's handwriting on them, Neuwirth "looked in the bag to see if there were other scraps of paper because only a few had fallen out, and I saw that there were more scraps of paper at the bottom of the bag. I had to stick

my hand into the bag to scoop many of them out * * *"[274] Neuwirth brought the pieces of paper to the conference table in Nussbaum's office, where he assembled them into the note.[275]

b. The Note Was Given to the Department of Justice the Day after It Was Found

Upon hearing of the note, Nussbaum sought to inform McLarty; McLarty was with the President in Chicago. Nussbaum informed Burton, who called McLarty.[276] Nussbaum recalled

> I waited a day to turn the list over because I believed then and I believe now that it was common decency to allow Lisa Foster to see the writing before it was turned over, to see it before it could be leaked or before it could be on national TV in some fashion. Lisa saw it on the afternoon of July 27. I thought it also appropriate that the President, who was out of town that day, have a chance to see it, if he wished, before it was turned over. This one-day delay had no impact whatsoever on any investigation.[277]

Nussbaum called Mrs. Foster's attorney, James Hamilton, on July 26; Hamilton informed Mrs. Foster of the note that day or the next.[278]

David Gergen similarly recalled that the White House staff hoped to accomplish two items before turning the note over to law enforcement:

> one was to talk to the widow and to ensure that she felt comfortable * * * As I recall, she was on her way back that day from Arkansas and was not available until sometime in the afternoon.* * * And the other precondition was to talk to the President and to make sure that he was comfortable with it, which he—as I said at least in my first hearing, he wanted it turned over. Obviously, if those two preconditions had been met earlier * * * it would have been better, but under the circumstances, that was the earliest we could get it all done.[279]

Neuwirth told the Committee that his initial reaction upon finding Foster's writing was

> it was something that was appropriate to advise the investigators of immediately * * *"[280] He recalled, "Mr. McLarty was very concerned * * * about being respectful to Mrs. Foster. And I think in the conversation it pretty quickly came up that she was coming to Washington the next day, and an effort was being made to show her the note before it was turned over to any investigator so that, for example, she wouldn't read about it in the press before having seen it.[281]

Neuwirth recalled that in the course of discussion regarding what to do with the note, "Mr. Burton raised the question of whether the fact that Foster was talking about matters on which he had worked in a note that was undated and made no reference to suicide, whether the contents of the note might be covered by at-

torney-client privilege."[282] Burton recalled the discussion of whether any privilege attached to the note, but did not recall who raised the issue.[283]

Nussbaum also called Thomases to tell her that a note had been found in Foster's briefcase.[284] Thomases testified, "* * * I think he told me because he knew that I was very close to Vince, and I was very close to both the President and the First Lady."[285] Thomases does not recall discussing with Nussbaum whether and how the note should be turned over to law enforcement officials.[286] She also does not recall discussing the note with Mrs. Clinton.[287] Nussbaum does not recall discussing the note with Thomases on July 26.[288]

On July 27, 1993, Attorney General Reno and Deputy Attorney General Heymann were asked to come to the White House. They met with Nussbaum, McLarty, Burton, David Gergen, and Mark Gearan. Heymann recalled that Nussbaum told him and Attorney General Reno of the discovery of the torn-up note:

> he said yesterday we found these, we found a torn-up note.* * * He had written down what the note said and he read us the note. They wanted to know what we thought should be done with it. The Attorney General said turn it over to the Park Police immediately. She then asked why are we just getting it now if it was found I guess it's 30 hours—it was 30 hours before then.
>
> The White House people, I don't know whether it was Mr. Nussbaum or who, said that there was—they wanted first to show it to Mrs. Foster and they wanted to show it to the President who might, if he had wanted to, have asserted executive privilege, they said.[289]

The note was provided to the Park Police that night.

Margolis testified "the delay of 27 hours, I don't see what practical significance that made. What it did, once again, was it's the optics, you know, people then begin once again to question the bona fides."[290]

Heymann then directed the FBI to investigate the circumstances regarding the discovery of the note.[291] At the time, Heymann did not believe that misbehavior had occurred with respect to the discovery of the note; instead, he was concerned that the investigation appear to be impartial.[292] FBI Agent Salter testified regarding the investigation by the FBI of the circumstances surrounding the note. The FBI report concluded there was no evidence that the note was somewhere other than the bottom of Foster's briefcase on July 22, that there was no evidence to contradict Neuwirth's testimony that he discovered the note in the bottom of the briefcase on July 26, and that there was no evidence that any White House official attempted to conceal the note or its contents from the law enforcement personnel investigating Foster's death.[293]

After it was provided to the Park Police, the Park Police spoke with Mrs. Foster regarding the note. Captain Hume testified,

> She had stated to us that she had asked Mr. Foster to write down some of the things that were bothering him or troubling him and she believes he wrote that note about a week to a week and a half before his death.[294]

Mrs. Foster told the Park Police that when she looked at the note she was certain the note was in her husband's handwriting.[295]

The fact that the note was found on July 26th rather than July 20th or 22nd made no difference to the Park Police's investigation of Foster's death. The note does express Foster's concern regarding the Travel Office matter; however, this concern was known to the Park Police within hours of the discovery of Foster's body. On the car ride to the Foster home, David Watkins told Sergeant Braun and Detective Rolla that Foster had been upset about the Travel Office matter.[296]

9. Removing the Clintons' personal files from the White House counsel's office was appropriate

Following the review of documents in Foster's office, Nussbaum determined to provide the Clintons' personal files to their personal attorneys, Williams & Connolly:

> I knew that Vince had been assisting the First Family in completing financial disclosure statements, filing tax returns and creating a blind trust. * * * it is proper and indeed traditional for the White House Counsel's office to assist in that official function. Mr. Foster needed access to the Clinton personal files for these official purposes. * * * I knew that the work on the projects for which the personal files were needed had recently been completed. * * * Shortly after the search of Vince's office was completed, I asked Maggie Williams * * * to help me transfer these files to the Clintons and to their personal lawyers.[297]
>
> I had just transferred the Foster personal files to the Foster personal lawyers. I was anxious to get on with the work of my office. I had told the Department of Justice * * * that I was going to move the working files to other lawyers who would work on them. It seemed the most natural thing in the world for me, at that point, having just transferred the Foster personal files, to now transfer the Clinton personal files.[298]

Neither the Justice Department attorneys, Margolis and Adams, nor the Park Police investigators present during the document review objected to Nussbaum's intention to send the Clintons' personal files to their private attorneys; nor did they ask Nussbaum to prepare an index of those documents. Nussbaum testified,

> Mr. Adams * * * understood that the Foster personal files were going to the Foster family lawyers. Indeed, I handed those files to the Foster family lawyers right in front of the Justice Department. No one asked me to make a log. No asked me to make an index. They were right there * * * they knew what was happening.[299]

Margaret Williams recalled that Bernard Nussbaum indicated to her "that he was distributing the documents from Vince's office."[300] Nussbaum asked her to deliver certain personal documents of President and Mrs. Clinton from Foster's office to their personal attorney:

> * * * on the afternoon of Thursday, July 22, the day before Vince Foster's funeral in Little Rock, I received a call from Bernie Nussbaum asking me to come to Vince's office and to take care of having the personal files of the President and Mrs. Clinton delivered to their personal lawyer, who was Bob Barnett of Williams & Connolly at the time.[301]

Sometime shortly thereafter, Williams met Nussbaum in Foster's office.[302] He directed her "to either a stack of files * * * or * * * to a box in which there were files" that he had already identified as personal files of President and Mrs. Clinton.[303] She testified

> he asked me to take a look around—eyeball—the remaining files to see if there were any that should be included. * * * I did look because he asked me to, and I pulled out—I saw a file that said 'taxes' on it. * * * I picked it up and I put it on the table that had the other files that Nussbaum had directed me to take.[304]

Nussbaum did not indicate that the files contained documents related to Whitewater or to the White House Travel Office; the only file Williams recalled discussing with Nussbaum pertained to renovations of the White House residence.[305]

Nussbaum recalled that Williams

> glanced at particular file folders, the titles, just to make sure, and she glanced in the area in which the Clinton personal files were which was in the credenza or some of them may have been pulled out of the credenza, just to see if there was anything, any obvious personal file that I overlooked. She wasn't conducting a search or a review of any file * * *[306]

Williams testified that later that afternoon, having attended to other matters in the meantime, she decided not to deliver the files to Barnett that day:

> I took several calls in my own office in the West Wing. * * * I know I had several telephone calls back and forth * * * So the day started getting a little later. * * * I had finally made a determination that I was going to go to Vince's funeral the next day. And, quite frankly, I was tired. And when I thought about the time it would take * * * both to get a messenger, clear them in and actually have them get in and collect the box, I decided I could be at home in that time, and I decided that the sending and the waiting for someone to pick up the documents would have to wait until later.[307]

Rather than leave the files in Foster's office or in her own office, Williams decided to put them in the White House residence. She testified, "since Bernie Nussbaum had asked me to take care of the personal files, I felt as if I needed to place them somewhere."[308]

> I was looking for both a way to accommodate Bernie Nussbaum's asking me to take the files, the personal files, and put them away, and to accommodate my wanting to leave there. So I thought if I cannot get them to the per-

> sonal lawyer * * * because of my own selfish reasons * * * I thought where else could I put them that would safeguard them, perhaps giving Bernie peace of mind, gave me peace of mind and I thought they're personal files, I'll put them in the residence.[309]

Williams telephoned Mrs. Clinton and

> told her that there were personal files that weren't going to get to the lawyer because I was just tired, and I was going to put them in the White House, in the residence, and where did she want them.[310]

Mrs. Clinton told Williams to call Carolyn Huber for guidance on where to put the box; Mrs. Clinton did not give Williams any further instructions regarding the files.[311] Huber recalled that Williams called her "and said that Mr. Clinton had asked her to call me to take her—she had a box of records to store. She wanted me to take them to the residence on the third floor, where we have an office and we keep their personal records."[312]

Williams recalled asking Thomas Castleton, an assistant in the White House Counsel's Office, to carry the box of files to the White House residence.[313] Castleton recalled that he "volunteered to help carry the box."[314]

Castleton recalled that as they were walking to the White House residence, Williams told him the box "contained personal and financial records pertaining to the First Family and that we were moving the boxes to the residence for them to be reviewed."[315] Williams does not recall telling Castleton that the documents had to go to the residence so that President Clinton or Mrs. Clinton could review their contents.[316]

Neither Adams nor Margolis objected to Nussbaum's intention to send the Clintons' personal files to their personal attorneys following the document review.[317] As Adams testified, "there would be nothing impermissible with the President or Mrs. Clinton looking at the files pertaining to their own private affairs."[318]

A. Documents Were Transferred to Williams & Connolly on July 27

While recollections differ as to the exact sequence of events, it is certain that the personal files of President and Mrs. Clinton that had been in Vincent Foster's office were retrieved by the Clintons' personal lawyer on July 27, 1993.

Robert Barnett, a member of the Williams & Connolly law firm, was serving as President and Mrs. Clinton's personal lawyer in July 1993. He recalled that he went to the White House on July 27, 1993, having previously arranged with Margaret Williams to pick up personal documents of the Clintons.[319] Williams took him to a room on the third floor of the White House residence, where they removed the box of documents from a closet.[320] Barnett testified that he opened the box, reviewed the file labels, placed all the contents back in the box, and taped the box shut.[321] He estimated this process took no more than 10 minutes.[322] Barnett recalled that Williams arranged for an employee of Williams & Connolly to be cleared into the White House to pick up the box.[323] While Barnett does not recall seeing or speaking with Mrs. Clinton that day, he

testified he "cannot 2$^{1/2}$ years later rule out the possibility."[324] He was certain that Mrs. Clinton was not present while he reviewed the contents of the box.[325]

Like Barnett, Williams recalled that Barnett assumed custody of the Clintons' personal files on July 27. Her recollection differed from his regarding the sequence of events leading up to the transfer of documents that day. While she recalled speaking with Barnett about transferring the Clintons' files to him at some point, she did not recall arranging with Barnett that he pick up the documents that day.[326] She recalled encountering Barnett speaking with Mrs. Clinton on the second floor of the White House residence on July 27.[327] Williams does not recall accompanying Barnett to the third floor of the White House residence; she recalled accompanying the Williams & Connolly employee to the third floor.[328]

There is no evidence that any files were removed or tampered with before they were transferred to Williams & Connolly. Barnett testified,

> * * * neither the President nor the First Lady nor Margaret Williams nor Susan Thomases nor Socks the cat instructed me to do anything improper with those documents, and if they had, they would have received a response from me that neither they nor I would have forgotten.[329]
>
> * * * on no occasion, no occasion, did Mrs. Clinton suggest, instruct or any other way indicate that anything improper should be done with the files or anything involving the matters that the files deal with. And nothing was done.[330]

On July 26, 1993, Susan Thomases called Mrs. Clinton's scheduler; she does not recall what she discussed with the scheduler.[331] She does not recall having an appointment to see Mrs. Clinton on July 27.[332] Thomases traveled to Washington, DC on July 27, 1993. Although she does not remember it, White House records indicate she visited the residence that day.[333] Thomases did not remember seeing Mrs. Clinton on July 27.[334] Thomases testified that she did not know that a box of documents from Foster's office had been moved to the White House, and never saw the box.[335]

> "I can * * * tell you that I had no knowledge that a box of documents from Vince Foster's office ever went to the White House residence. I know no one even talked to me about it before it happened, and I certainly never saw or handled the box of documents."[336]

She does not remember discussing Foster's documents with Mrs. Clinton at that time:

> "I don't think that I ever discussed documents with Hillary Clinton in any time proximate to Vince Foster's death, and for at least more than a year after that."[337]

B. Introduction to Rose Law Firm Billing Records

The Special Committee devoted substantial attention to the discovery in January 1996 of Rose Law Firm billing records in the White House. The Committee attempted to ascertain who brought

the records into the White House and who handled them once they were there. Given the fallibility of individuals' recollections and the passage of time, it may not be possible to answer these questions fully. Based on an incomplete record, the Majority suggests the possibility of two improper acts: that the billing records may have been removed from Vincent Foster's office after his death, and that they were deliberately withheld from the Special Committee, the Independent Counsel, and the Federal agencies that were seeking them. Such deductions are not supported by the record. They also cannot obscure two salient points regarding the billing records: they were produced to the Committee, the Independent Counsel and others, and they do not contradict other statements by Mrs. Clinton and other partners of the Rose Law Firm regarding the representation of Madison Guaranty.

1. Billing Records Were Produced by the White House

Carolyn Huber has served as Special Assistant to the President for Personal Correspondence since February 1, 1993.[338] Huber opens and disburses all personal correspondence for President and Mrs. Clinton. She also prepares the Clintons' personal bills, maintains their personal financial records, and attends to the Clintons' house guests at the White House. Huber served as administrator of the Arkansas Governor's Mansion from 1979 to 1980 and as Administrator of the Rose Law Firm from 1981 to 1993.[339]

In January 1996, Huber had some furniture removed from her White House East Wing office. She used the occasion to review the contents of a box of photographs and other materials to be catalogued that had been under a table, and discovered the Rose Law Firm billing records:

> I had some new furniture built in my office. I have some new built-ins. And I had this big table in there. When I got my new built-ins I didn't need a table anymore because I have shelves and I can put all my things up. So I had called to have it moved that morning [January 4, 1996]. * * * So they took the table out. So then I decided I'd start trying to put my things up on the shelves, and I picked up this billing memo and opened it, and I was surprised.[340]
>
> I had a large table, about a 6-foot table by 3 feet. This table was beside my old desk over these records. On Thursday morning [January 4, 1996], the movers came over, moved out the table and it just exposed all the stuff on the floor. I thought I have to get this stuff up off the floor. I needed to have some kind of organization in my office. So, I went over to the box and picked up these records, opened it up.[341]

Huber believed that these records had been requested by investigating authorities, and immediately called David Kendall, the personal attorney for President and Mrs. Clinton.[342] When Kendall returned her call, she asked him to come to her office because she wanted to show him the documents she had found.[343] Kendall came to Huber's office approximately one hour later, looked at the documents, and left them with Huber.[344]

Later that afternoon, Kendall returned to Huber's office, accompanied by Special Counsel to the President Jane Sherburne and Huber's personal attorney, Henry Schuelke.[345] They proceeded to review the documents together. Kendall testified,

> We decided that we had to review the documents more carefully so we moved to an office just down the hall, which was a little bit bigger than Huber's office. Ms. Huber was able then to sit at a desk and review the documents with us page by page, as the three of us stood around her and could observe each page. * * * [They learned] that each of these pages did appear to in some way reflect law firm records of the billing for the Madison Guaranty representation in the 1985–86 period. There was a little work in '87. And the top document appeared to be a client billing and payment history which had a run date of February 12, 1992.[346]

At the end of this review, the lawyers concluded that the billing records were called for by various requests for documents from government agencies.[347] They decided to copy the documents, so that copies could be given to each of the entities that had requested it. Because the documents contained some colored handwriting and Post-it notes, they decided to make color photocopies. Kendall testified,

> * * * we had a discussion, both during the review and then after the review was completed, in which we had jointly decided that we needed to produce the documents as quickly as possible, we needed to keep a copy, and we should get this done as quickly as possible.
>
> * * * And Ms. Huber and Ms. Sherburne set out at the end of our review process to try and locate, in the White House, a color photocopier.[348]
>
> A color copier was located in the New Executive Office Building, and between about 7:00 and about 10:00 we were able to make two copies. It was a very slow, slow process.[349]

Kendall recalled that when he first looked at the documents with Huber, "I told Ms. Huber that I thought we would immediately produce the documents."[350] Indeed, the documents were copied on the night of January 4 and produced to the Independent Counsel, the Senate Special Committee, the House Banking Committee, and the FDIC the next day, January 5, 1996.[351]

a. Billing Records Do Not Contradict Mrs. Clinton's Statements Regarding Representation of Madison Guaranty

The documents found by Huber are copies of Rose Law Firm billing records for the firm's representation of Madison Guaranty in the mid-1980's. While these records provide more detail than was previously available, they do not contradict what Mrs. Clinton and Rose Law Firm lawyers have said about the representation of Madison Guaranty. The Rose Law Firm was not Madison Guaranty's regular outside counsel, and handled only certain discrete assignments for the institution. Within the firm, Mrs. Clinton's work

for Madison Guaranty was limited in time and scope. Work performed for Madison Guaranty comprised only a small fraction of the firm's total billings and of Mrs. Clinton's total billings.

The billing records reflect time billed by Rose Law Firm personnel to Madison Guaranty from April 1985 to March 1987. The firm billed Madison Guaranty $19,344.75 for 205.95 hours of work by 15 Rose Law Firm attorneys and paralegals during that time.* Rose Law Firm associate Rick Massey billed the most time, 80.5 hours. Work performed was divided among six individual "matters." These were General, Preferred Stock Offering, Limited Partnership, Bibler Golden, Industrial Development Corporation, and Babcock Loan. The Limited Partnership matter was billed the greatest number of hours, 60.5; the Preferred Stock Offering was billed the next greatest number of hours, 55.1.

The documents reflect that Hillary Rodham Clinton billed 59.8 hours to the representation of Madison Guaranty over a 15-month period, from April 1985 through July 1986.** The largest portion of her time, 24.45 hours, was billed to the Industrial Development Corporation matter. She also billed 13.6 hours to the Preferred Stock Offering matter, 10.4 hours to General, 8.8 hours to the Babcock Loan matter, and 5.8 hours to the Limited Partnership matter. Her work on the Preferred Stock Offering occurred from April 1985 to December 1985; her work on the Industrial Development Corporation matter occurred from December 1985 to April 1986. Ronald Clark, chief operating officer of the Rose Law Firm, verified for the Committee what is evident to even a casual observer: 60 hours of work over a 15-month period is not a significant amount of work for an attorney.[352]

The billing records do not contradict Mrs. Clinton's statements regarding her representation of Madison Guaranty. Mrs. Clinton was asked about the Preferred Stock Offering matter at a press conference on April 22, 1994. In particular, she was asked about a letter she sent to Arkansas Securities Commissioner Beverly Bassett on behalf of Madison Guaranty. Mrs. Clinton explained that Massey performed the legal work with respect to Madison Guaranty's application to issue preferred stock, and that she signed the letter in her capacity as billing partner on the matter:

> The young attorney, [Mr. Massey and] the young bank officer [Mr. Latham] did all the work, and the letter was sent. But because I was what you call the billing attorney, in other words I had to send the bill to get the payment made, my name was put at the bottom of the letter.

Mrs. Clinton provided additional detail regarding the Preferred Stock Offering matter in response to interrogatories by the Resolution Trust Corporation. She stated,

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* See (Doc. Nos.DKSN 028928–DKSN 29043, Rose Law Firm Billing Records.) The documents reflect time billed by Rose Law Firm personnel Becky Arnold, Les Baledge, Kevin Burns, Hillary Clinton, Rick Donovan, Watt Gregory III, Sharon Grimes, William Kennedy, David Knight, Rick Massey, Chet Roberts, Herb Rule, Gary Speed, R. Davis Thomas Jr., and Thomas Thrash.

** The documents show Mrs. Clinton billed an additional 3.7 hours to the Madison Guaranty General matter on March 16, 1987. By way of comparison, Jay Stephens billed 339.75 hours to Pillsbury, Madison & Sutro's investigation of Madison Guaranty for the Resolution Trust Corporation over a 12 month period at a cost of some $67,950 to the government. Mr. Stephens testified that *his* involvement was "minimal" after March 1994 during which he billed 193 hours over 10 months. (Stephens, 5/17/96 Hrg. pp. 42–44.)

> In April 1985, the Rose Law Firm communicated with the Arkansas Securities Department with regard to a proposal by Madison Guaranty to issue preferred stock in order to raise capital and thereby increase its regulatory net worth. As I understood it, the law firm had been retained by Madison Guaranty to accomplish two things: (1) to determine whether it was permissible under Arkansas law for a savings and loan association to issue preferred stock, and (2) if it was, to secure permission from the Securities Department to issue that stock through a wholly-owned brokerage firm. While I was the billing partner on this matter, the great bulk of the work was done by Richard Massey, who was then an associate at Rose and whose specialty was securities law. I was not involved in the day-to-day work on the project. My knowledge of the events concerning this representation * * * is largely second-hand since my contemporaneous involvement in the representation was minimal and since Mr. Massey primarily handled the matter.[353]

She stated that Massey

> kept me generally advised of what he was doing and may have sent me drafts of the documents he was preparing. I was not, however, an expert on securities law. I believe that Massey consulted with members of the firm's securities department.[354]

The billing records discovered by Huber do not contradict these statements. They show that Massey billed 26 hours to the Madison Guaranty Preferred Stock Offering matter (13.3 hours in April, May, June and July, 1985 and another 12.7 hours in November and December, 1985). Massey's time entries indicate he performed legal research regarding the proposed stock offering and drafted the offering materials. Mrs. Clinton billed roughly half as much time to this matter as Massey, namely 13.6 hours (7.1 hours in April, May and June, 1985 and 6.5 hours in November and December, 1985). Her time entries indicate that she reviewed documents; they do not indicate that she drafted any documents.

Responding to the RTC's interrogatories regarding this subject, Mrs. Clinton stated,

> I was not involved in any meetings with state regulators on these matters. I may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding an S&L matter. I do not remember to whom I spoke.[355]

The billing records indicate Mrs. Clinton had one telephone conversation, with Bassett on April 29, 1985.

Similarly, the billing records do not contradict Mrs. Clinton's statements regarding her work on the Industrial Development Corporation matter. The RTC by interrogatory asked Mrs. Clinton about her knowledge of a real estate project known as Castle Grande; Mrs. Clinton replied she did not believe she knew about this project prior to 1992.[356] Confusion arose because the RTC used the term "Castle Grande" to refer to an entire 1,050 acre tract of

property that IDC sold to Madison Financial and Seth Ward in 1985. In response to further interrogatories from the RTC, Mrs. Clinton explained that she understood Castle Grande to refer to just a portion of the property, a residential development that she was not aware of at that time:

> * * * "IDC" was the billing name for work involving that property at the Rose Law Firm. My knowledge about the IDC PROPERTY was limited, and I can recall knowing nothing about the Castle Grande Estates portion of it. * * * I believe that my work on the IDC matter was confined to discrete legal questions which arose after the acquisition of the IDC PROPERTY.[357]

Consistent with Mrs. Clinton's statement, the Rose Law Firm billing records refer to this matter strictly as "Industrial Development Corporation," and never as "Castle Grande." Rose Law Firm attorneys Massey, Clark, Fitzhugh, Thrash, Donovan and Dover also all testified that the firm's work was referred to as "IDC," not "Castle Grande."

The billing records indicate Mrs. Clinton billed 24.45 hours to the Industrial Development Corporation matter from December 1985 to April 1986. This time included telephone conversations with Seth Ward and review of a memorandum prepared by Rose Law Firm attorney Rick Donovan. Mrs. Clinton stated to the RTC,

> I remember almost nothing about this work, but after reviewing certain memoranda prepared by Rose Law Firm lawyer Rick Donovan and copies of the Rose Law Firm billing records * * * I believe that the work I did on this matter consisted primarily of supervising research concerning legal issues, such as whether it would be legal to open a tasting room for a proposed brewery, in light of the fact that the land was, arguably, located in what had once been a "dry" township, and other questions relating to the provision of water and sewer service by a utility which was located within the IDC PROPERTY. I believe that, based upon my time records, I conferred with Seth Ward on several occasions, and I believe that I would have discussed the legal research the firm was conducting, but I have no recollection of the content of these conversations. Also * * *. I believe that I had some limited involvement with an option agreement between Mr. Ward and Madison Financial (which appears to have been billed as a "General" rather than an "IDC" matter), although I have no recollection of that project.[358]

Mrs. Clinton billed 10.4 hours to the Madison Guaranty "General" matter over the period September 1985 to March 1987; 2.4 hours of that time billed in May and June 1986 includes time preparing the option agreement and a telephone conversation with Seth Ward regarding the option.

b. Chain of Custody of Billing Records Before Discovery in January 1996

The Special Committee sought to establish the chain of custody of the Rose Law Firm billing records prior to their discovery by Huber in January 1996. The Client Billing & Payment History bears a run date of February 12, 1992, suggesting that the document was generated during the 1992 Presidential campaign to collect available billing information then available; this suggestion is supported by testimony of Webster Hubbell and others. Huber testified that she first encountered the documents in the White House Residence in the summer of 1995. It is not possible on the existing record to ascertain when and by what means the billing records were brought into the White House, and in whose custody they remained once they were there. While the records seem to have been in Vincent Foster's possession during the 1992 campaign, it is not clear whether he brought them to the White House, or whether he provided them to someone else before his death. Through her attorney, Mrs. Clinton has stated that she was unaware that the billing records were in the White House. She stated publicly on January 26, 1996, "I do not know how the billing records came to be found where they were found, but I am pleased that they were found, because they confirm what I have been saying."

Huber testified before the Committee that she first encountered the billing records during the first or second week of August 1995.[359] She first saw them in the "Book Room," a room on the third floor of the White House residence used at that time to store gifts, photographs, newspaper and magazine articles, and other items to be catalogued.[360]

> I go up into that room periodically to pick up * * * the knickknacks to take down to my office, and that day I went up to get a bunch of magazines and newspaper clippings that we have kept over the years to take them over to my office in the East Wing so that I could get them catalogued. * * * And I had several boxes, and there was a particular box on top of the table that I had—had some of the knickknacks in, and over on the edge of the corner was these documents. And I saw them. I just—they were folded. I didn't open them. I just picked them up and plunked them down into the box. And I called the usher's office, if they could come help me tote all these boxes back to my office. So they came up with their little dollies. We carried them to my office. I put them on the floor and left them there.[361]

I thought it had been left there for me to take down and file it in the filing that I do.[362] Huber testified that the documents were not on the table in the Book Room when she last had occasion to be in that room, a week or two before.[363]

Huber retrieved four or five boxes of materials to be catalogued from the Book Room that day.[364] She testified that the documents remained undisturbed in a box on the floor of her office from August 1995 to January 4, 1996, when the table was removed from the office and Huber examined the contents of the box.[365]

Jane Sherburne testified that on January 4, 1996, Huber was unclear as to when she had first encountered the billing records and whether she had recognized them:

> I recall Ms. Huber as being—she said a number of different things that were inconsistent. She was flustered, she was upset, her hands were shaking. She said that she had brought the documents over from the residence at some earlier point. She said she thought it was maybe three months ago. A little while later in the conversation, she referred to bringing them over 10 months ago. She was very confused about the timing. She also said that—we asked her where she had found the records in the White House. She said they were in the third floor, and she identified the book room.[366]
>
> The chronology was that at some earlier point, what appeared to be in her mind somewhere between three and 10 months prior to January 4, she had been in the book room in the residence, which is on the third floor, and that she had identified these documents when she was putting a box together or a couple of boxes together of material that she was going to move to her East Wing office, and sort out later and decide what to do with.[367]
>
> * * * At one point I recall her indicating that when she had first seen the records, they appeared to her to be Rose Law Firm billing records. But then again at another point, I understood her to say she had first seen these documents and just considered them to be a sheaf of documents.[368]
>
> * * * I certainly thought she was confused that night. I heard her testimony as well when she testified before this Committee and recognized that her description of the events had become much more precise. That doesn't change the fact that on the night of the 4th of January when she was describing this, that she was very confused and that her recollections were very imprecise.[369]

Whether or not the billing records were in the Book Room in August 1995, it appears that the billing records were in the possession of Vincent Foster in February 1992. Webster Hubbell testified that during the Presidential campaign early in 1992, an issue arose regarding contacts Mrs. Clinton may have had with the Arkansas Securities Department on behalf of Madison Guaranty.[370] Either Hubbell or Foster requested that the billing records be printed by the Rose Law Firm accounting department.[371]

> I recall in 1992 that the issue regarding our representation of Madison and specifically our work before the Arkansas Securities Department was of interest to Mr. Gerth of The New York Times, and that our firm was being questioned by people within the campaign about her work in that regard. We did some work in trying to organize and pull up the files. And in connection with that, bills were pulled and reviewed by myself and Mr. Foster and Mr. Massey, I believe.[372]

Hubbell reviewed the billing records at the Rose Law Firm.[373] Hubbell believes he gave the records to Foster after reviewing them.[374] He identified Foster's handwriting on the records; he does not recall having seen Foster's handwriting on the records in 1992.*[375] Hubbell believes Foster wrote on the documents at the time he reviewed them in 1992.[376] He does not recall seeing the records again after reviewing them in February 1992, did not remove them from the law firm, and does not know if Foster removed them.[377] The billing records were not provided to Hubbell when he was assembling various files from the Rose Law Firm and the campaign regarding Madison Guaranty.[378] Hubbell did not know if the billing records were in Foster's office at the time of his death; Foster never discussed them.[379]

For a few weeks in 1992, Thomases helped the Clinton campaign prepare answers to press inquiries regarding Whitewater.[380] A reporter asked Thomases about legal work Mrs. Clinton had done for Madison Guaranty.[381] Thomases called Hubbell to ask him about the records of Mrs. Clinton's work at the Rose Law Firm.[382] Her notes of her telephone conversation with Hubbell indicate that he provided her information based on Mrs. Clinton's time records.[383] Thomases never saw the billing records prior to their discovery in January 1996.[384] Hubbell recalled discussing the billing records with Loretta Lynch, but did not recall discussing them with Thomases.[385]

Hubbell's and Thomases's testimony regarding the billing records are supported by Loretta Lynch, a Clinton campaign worker. Along with Hubbell and Thomases, Lynch became involved in February 1992 in responding to press inquiries regarding Whitewater.[386] She recalled that, in the course of that assignment, Hubbell indicated to her that he had reviewed the Rose Law Firm's billing records for Madison Guaranty.[387] He also told her that he had discussed the existence of such billing records with Vincent Foster.[388] Lynch also discussed this matter with Thomases at that time; Thomases did not indicate that she had reviewed the billing records.[389]

The fingerprint analysis of the documents performed by the Federal Bureau of Investigation for the Independent Counsel also supports Hubbell's and Thomases's testimony.[390] The FBI found fingerprints of Foster and Mrs. Clinton; these prints could have been made when the records were reviewed during the campaign, in February 1992, in keeping with Hubbell's testimony. The FBI also found fingerprints of three individuals who were employees of the Rose Law Firm in February 1992: Carolyn Huber, Mildred Alston and Sandra Hatch.* The FBI found no fingerprints of Susan Thomases; this supports her testimony that she never saw the documents. The FBI also found no fingerprints of Margaret Williams; this supports her testimony that she did not remove any documents from Vincent Foster's office the night of his death.

The testimony and the fingerprint analysis leave open the possibility that Foster brought the billing records to the White House. If so, they may have passed out of his possession before his death.

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*Ms. Huber also identified Vincent Foster's handwriting on the documents in red ink. (Huber, 1/18/96 Hrg. p.25.)

*The only other fingerprints the FBI identified on the documents were those of Marc Rolfe, an employee of Mr. Kendall's law firm, Williams & Connolly.

Linda Tripp, a secretary in the White House Counsel's office testified that Huber brought files into and out of Foster's office "fairly often."[391] It is possible that the billing records were moved into or within the Book Room inadvertently. There was construction in and around the Book Room in the summer of 1995, in connection with repairs to the White House heating, ventilation and air conditioning system.[392] Although the construction workers were instructed not to move anything without permission, items were moved in order to expedite the construction.[393]

Other suppositions are no doubt possible as well, given the incomplete state of the record. There is no evidence in the record at all, however, of any concerted effort to suppress the billing records. Given that the billing records do not contradict other statements regarding the Rose Law Firm's representation of Madison Guaranty, a motivation to suppress the records is not readily apparent. The record is clear that Mrs. Clinton was not part of the chain of custody of these documents: on January 5, 1996, Kendall issued a statement saying, "the First Lady was not aware until today that these records were located in the White House." On January 26, 1996, Mrs. Clinton herself told the press, "I do not know how the billing records came to be found where they were found, but I am pleased that they were found, because they confirm what I have been saying."

ENDNOTES

[1] Watkins, 7/25/95 Hrg. pp.16-17.
[2] Watkins, 7/25/95 Hrg. p.17.
[3] Watkins, 7/25/95 Hrg. pp.39-40.
[4] Watkins, 7/25/95 Hrg. p.41.
[5] Watkins, 7/25/95 Hrg. p.18.
[6] Watkins, 7/25/95 Hrg. pp.139, 41.
[7] Watkins, 7/25/95 Hrg. p.158.
[8] Watkins, 7/25/95 Hrg. p.42.
[9] Thomasson, 7/25/95 Hrg. pp.192-93.
[10] Watkins, 7/25/95 Hrg. pp.177, 118, 158.
[11] Thomasson, 7/25/95 Hrg. p.234.
[12] Thomasson, 7/25/95 Hrg. pp.264-65.
[13] Thomasson, 7/25/95 Hrg. pp.194, 204.
[14] Thomasson, 7/25/95 Hrg. p.194.
[15] Thomasson, 7/25/95 Hrg. p.206.
[16] Thomasson, 7/25/95 Hrg. p.207.
[17] Thomasson, 7/25/95 Hrg. pp.194-95.
[18] Thomasson, 7/25/95 Hrg. p.268.
[19] Thomasson, 7/25/95 Hrg. p.208.
[20] Thomasson, 7/25/95 Hrg. p.217.
[21] Thomasson, 7/25/95 Hrg. p.195.
[22] Thomasson, 7/25/95 Hrg. p.26.
[23] Nussbaum, 8/9/95 Hrg. pp.76-77.
[24] Nussbaum, 8/9/95 Hrg. pp.11-12.
[25] Thomasson, 7/25/95 Hrg. pp.194, 205, 231, 234.
[26] Nussbaum, 8/9/95 Hrg. pp.233, 235.
[27] Williams, 7/26/95 Hrg. p.188.
[28] Williams, 7/26/95 Hrg. pp.216-17.
[29] Williams, 11/2/95 Hrg. p.79.
[30] Williams, 7/26/95 Hrg. p.189.
[31] Lieberman, 7/26/95 Hrg. p.190.
[32] Lieberman, 7/26/95 Hrg. p.191.
[33] Lieberman, 7/26/95, Hrg. p.192.
[34] Williams, 7/26/95 Hrg. p. 194-96.
[35] Williams, 7/26/95 Hrg. pp.153-54.
[36] Williams, 7/26/95 Hrg. p.154.
[37] Williams, 7/26/95 Hrg. p.198.
[38] Williams, 7/26/95 Hrg. p.154.
[39] Williams, 7/26/95 Hrg. pp.198-99.
[40] Williams, 7/26/95 Hrg. p.162.
[41] Williams, 7/26/95 Hrg. pp.217-18.

[42] O'Neill, 7/26/95 Hrg. p.11.
[43] O'Neill, 7/26/95 Hrg. p.12.
[44] O'Neill, 7/26 Hrg. p.49.
[45] O'Neill, 7/26/95 Hrg. p.48.
[46] O'Neill, 7/26/95 Hrg. pp.15-16.
[47] O'Neill, 7/26/95 Hrg. p.16.
[48] O'Neill, 7/26/95 Hrg. p.17.
[49] O'Neill, 7/26/95 Hrg. pp.18-19.
[50] O'Neill, 7/26/95 Hrg. p.20.
[51] O'Neill, 7/26/95 Hrg. pp.21-22.
[52] O'Neill, 7/26/95 Hrg. p.24; Doc. No. Z598 White House Entrance/Exit Log for Mr. Foster's Office.
[53] O'Neill, 7/26/95 Hrg. p.61.
[54] O'Neill, 6/23/95 Dep. p.81.
[55] O'Neill, 6/23/95 Dep. pp.175-76.
[56] O'Neill, 7/26/95 Hrg. p.104.
[57] O'Neill, 7/26/95 Hrg. p.49.
[58] O'Neill, 6/23/95 Dep. pp.24, 147-48.
[59] O'Neill, 7/26/95 Hrg. pp.14, 27.
[60] O'Neill, 7/26/95 Hrg. p.30.
[61] O'Neill, 6/23/95 Dep. p.106.
[62] O'Neill, 7/26/95 Hrg. pp.84, 121.
[63] Williams, 7/26/95 Hrg. p.155.
[64] Williams, 7/26/95 Hrg. pp.199-200.
[65] Anderson, 7/26/95 Hrg. p.204.
[66] Anderson, 7/26/95 Hrg. p.205.
[67] See July 11, 1995 and July 18, 1995 Letters to Judge Starr from Mr. Chertoff and Mr. Ben-Veniste [Document not numbered].
[68] O'Neill, 7/26/95 Hrg. pp.35-36.
[69] See July 19, 1995 and August 3, 1995 Letters to Chairman D'Amato and Senator Sarbanes from Judge Starr [Document not Numbered].
[70] Lieberman, 7/26/95 Hrg. p.275.
[71] Nussbaum, 8/9/95 Hrg. p.79.
[72] Thomasson, 7/25/95 Hrg. pp.218, 262.
[73] Thomasson, 7/25/95 Hrg. p.221.
[74] Thomasson, 7/25/95 Hrg. p.222.
[75] Braun, Rolla, Hines, 7/20/95 Hrg. p.59; Markland, 8/1/95 Hrg. p.263.
[76] Nussbaum, 8/9/95 Hrg. p.12.
[77] Markland, 8/1/95 Hrg. p.263.
[78] Watkins, 7/25/95 Hrg. p.17.
[79] Braun, 7/20/95 Hrg. p.20.
[80] Braun, 7/20/95 Hrg. pp.145, 20.
[81] Braun, 7/20/95 Hrg. p.31.
[82] Braun, 7/20/95 Hrg. p.87.
[83] Braun, 7/20/95 Hrg. p.137.
[84] Braun, 7/20/95 Hrg. p.20.
[85] Braun, 7/20/95 Hrg. p.57.
[86] Braun, 7/20/95 Hrg. p.104.
[87] Braun, 7/20/95 Hrg. pp.103-04.
[88] Watkins, 7/25/95 Hrg. pp.36, 43-44.
[89] Watkins, 7/25/95 Hrg. p.62.
[90] Rolla, 7/20/95 Hrg. p.80.
[91] Watkins, 7/25/95 Hrg. pp.39, 72.
[92] Hume, 8/1/95 Hrg. p.163.
[93] Hume, 8/1/95 Hrg. p.201.
[94] Hume, 8/1/95 Hrg. p.163.
[95] Hines, 7/20/95 Hrg. p.24.
[96] Hines, 7/20/95 Hrg. p.25.
[97] Mathews, 7/25/95 Hrg. pp.29-30.
[98] Mathews, 7/25/95 Hrg. p.74.
[99] O'Neill, 6/23/95 Dep. pp.91-92.
[100] Mathews, 7/25/95 Hrg. pp.47-48.
[101] Mathews, 7/25/95 Hrg. p.116.
[102] Mathews, 7/25/95 Hrg. pp.49-51.
[103] Mathews, 7/25/95 Hrg. pp.47-48.
[104] Hines, 7/20/95 Hrg. p.63.
[105] Markland, 8/1/95 Hrg. p.192.
[106] Hume, 8/1/95 Hrg. p.192.
[107] Heymann, 8/2/95 Hrg. p.65.
[108] Heymann, 8/2/95 Hrg. p.65.
[109] Heymann, 8/2/95 Hrg. p.69.
[110] Braun, 7/20/95 Hrg. pp.15-16.
[111] Rolla, 7/20/95 Hrg. p.51.
[112] Braun, 7/20/95 Hrg. p.19.
[113] Hines, 7/20/95 Hrg. pp.127, 26.
[114] Markland, 8/1/95 Hrg. p.159.
[115] Markland, 8/1/95 Hrg. p.206.
[116] Braun, Rolla, Hines, 7/20/95 Hrg. p.70.

[117] Nussbaum, 8/9/95 Hrg. p.16.
[118] Heymann, 8/2/95 Hrg. p.37.
[119] Heymann, 8/2/95 Hrg. pp.153-55.
[120] Heymann, 8/2/95 Hrg. p.126.
[121] Heymann, 8/2/95 Hrg. p.92.
[122] Heymann, 8/2/95 Hrg. pp.42-43.
[123] Heymann, 8/2/95 Hrg. p.42.
[124] Heymann, 8/2/95 Hrg. p.59.
[125] Heymann, 8/2/95 Hrg. p.101.
[126] Margolis, 8/10/95 Hrg. p.178.
[127] Margolis, 8/10/95 Hrg. p.178.
[128] Margolis, 8/10/95 Hrg. p.179.
[129] Margolis, 8/10/95 Hrg. p.179.
[130] Adams, 7/27/95 Hrg. p.94.
[131] Adams, 7/27/95 Hrg. p.154.
[132] Margolis, 8/10/95 Hrg. p.179.
[133] Adams, 7/27/95 Hrg. p.95.
[134] Nussbaum, 8/9/95 Hrg. p.21.
[135] Nussbaum, 8/9/95 Hrg. pp.110-11.
[136] Nussbaum, 8/9/95 Hrg. pp.113-14.
[137] Neuwirth, 8/3/95 Hrg. p.117.
[138] Neuwirth, 8/3/95 Hrg. p.118.
[139] Neuwirth, 8/3/95 Hrg. pp.132-33.
[140] Neuwirth, 8/3/95 Hrg. p.193.
[141] Sloan, 8/3/95 Hrg. p.118; Quinn, 8/7/95 Hrg. p.30.
[142] Nussbaum, 8/9/95 Hrg. pp.108-09.
[143] Nussbaum, 8/9/95 Hrg. p.109.
[144] Neuwirth, 8/3/95 Hrg. p.87.
[145] Nussbaum, 8/9/95 Hrg. p.6.
[146] Nussbaum, 8/9/95 Hrg. p.21.
[147] Adams, 7/27/95 Hrg. pp.96-97; Margolis, 8/10/95 Hrg. pp.182-83.
[148] Adams, 7/27/95 Hrg. p.97; 8/10/95 Hrg. p.185.
[149] Adams, 7/27/95 Hrg. pp.120-21.
[150] Margolis, 8/10/95 Hrg. p.206.
[151] Margolis, 8/10/95 Hrg. p.184.
[152] Heymann, 8/2/95 Hrg. p.30.
[153] Heymann, 8/2/95 Hrg. p.33.
[154] Heymann, 8/2/95 Hrg. p.136.
[155] Heymann, 8/2/95 Hrg. p.70.
[156] Heymann, 8/2/95 Hrg. p.74.
[157] Heymann, 8/2/95 Hrg. pp.46-47.
[158] Heymann, 8/2/95 Hrg. p.47.
[159] Heymann, 8/2/95 Hrg. p.48.
[160] Nussbaum, 8/9/95 Hrg. pp.116-17.
[161] Nussbaum, 8/9/95 Hrg. p.119; Nussbaum, 8/10/95 Hrg. p.42.
[162] Margolis, 8/10/95 Hrg. p.186.
[163] Adams, 7/27/95 Hrg. p.100.
[164] Nussbaum, 8/9/95 Hrg. p.17.
[165] Lindsey, 8/8/95 Hrg. p.72.
[166] Lindsey, 8/8/95 Hrg. p.72.
[167] Lindsey, 8/8/95 Hrg. pp.86-87.
[168] Lindsey, 8/8/95 Hrg. p.87.
[169] Spafford, 7/27/95 Hrg. p.44.
[170] Spafford, 7/27/95 Hrg. pp.81-82.
[171] Nussbaum, 8/10/95 Hrg. p.74.
[172] Nussbaum, 8/9/95 Hrg. pp.18-19.
[173] Nussbaum, 8/10/95 Hrg. pp.27-28.
[174] Sloan, 8/3/95 Hrg. p.80.
[175] Nussbaum, 8/9/95 Hrg. p.92.
[176] Nussbaum, 8/10/95 Hrg. pp.141-42.
[177] Nussbaum, 8/9/95 Hrg. p.26.
[178] Adams, 7/27/95 Hrg. p.118.
[179] Adams, 7/27/95 Hrg. pp.122-23.
[180] Adams, 7/27/95 Hrg. pp.189-90.
[181] Margolis, 8/10/95 Hrg. p.196.
[182] Margolis, 8/10/95 Hrg. p.201.
[183] Margolis, 8/10/95 Hrg. p.235.
[184] Heymann, 8/2/95 Hrg. p.89.
[185] Heymann, 8/2/95 Hrg. p.89.
[186] Thomases, 8/8/95 Hrg. p.73.
[187] Thomases, 8/8/95 Hrg. p.74.
[188] Thomases, 8/8/95 Hrg. p.75.
[189] Thomases, 8/8/95 Hrg. p.75.
[190] Thomases, 8/8/95 Hrg. p.74.
[191] Thomases, 11/2/95 Hrg. pp.40-41.
[192] Williams, Dep. p.57; Williams, 7/26/95 Hrg. p.234; Williams, 11/2/95 Hrg. p.34.
[193] Williams, 11/2/95 Hrg. p.20.
[194] Williams, 11/2/95 Hrg. p.63.

[195] Thomases, 11/2/95 Hrg. p.57.
[196] Thomases, 11/2/95 Hrg. p.62.
[197] Thomases, 11/2/95 Hrg. p.90.
[198] Thomases, 11/2/95 Hrg. pp.89, 93.
[199] Thomases, 11/2/95 Hrg. p.95.
[200] McLarty, 8/7/95 Hrg. p.26.
[201] Burton, 8/7/95 Hrg. pp.27-28.
[202] Thomases, 8/8/95 Hrg. p.64.
[203] Thomases, 8/8/95 Hrg. p.109.
[204] Thomases, 8/8/95 Hrg. p.67.
[205] Nussbaum, 8/9/95 Hrg. p.57.
[206] Nussbaum, 8/9/95 Hrg. p.17.
[207] Nussbaum, 8/9/95 Hrg. p.58.
[208] Nussbaum, 8/10/95 Hrg. p.30.
[209] Neuwirth, 8/3/95 Hrg. p.71.
[210] Neuwirth, 8/3/95 Hrg. p.71.
[211] Neuwirth, 8/3/95 Hrg. pp.71–72.
[212] Nussbaum, 8/9/95 Hrg. p.60.
[213] Thomases, 11/2/95 Hrg. p.60.
[214] Thomases, 8/8/95 Hrg. p.107.
[215] Thomases, 11/2/95 Hrg. p.52.
[216] Thomases, 11/2/95 Hrg. p.43.
[217] Nussbaum, 8/9/95 Hrg. p.179.
[218] Thomases, 8/8/95 Hrg. p.76.
[219] Thomases, 8/8/95 Hrg. p.76.
[220] Williams, 7/26/95 Hrg. p.234.
[221] Williams, 7/26/95 Hrg. pp.234–35.
[222] Thomases, 8/8/95 Hrg. p.97.
[223] Thomases, 8/8/95 Hrg. pp.110, 108.
[224] Thomases, 8/8/95 Hrg. p.108.
[225] Thomases, 8/8/95 Hrg. p.184.
[226] Thomases, 8/8/95 Hrg. pp.12–13; Thomases, 11/2/95 Hrg. p.35.
[227] Thomases, 8/8/95 Hrg. pp.68–69.
[228] Thomases, 8/8/95 Hrg. p.180.
[229] Thomases, 8/8/95 Hrg. p.151.
[230] Margolis, 8/10/95 Hrg. pp.194–95; Adams, 7/27/95 Hrg. p.102.
[231] Nussbaum, 8/9/95 Hrg. pp.19–20, 80–81.
[232] Sloan, 8/3/95 Hrg. p.164.
[233] Neuwirth, 8/3/95 Hrg. p.149.
[234] Sloan, 8/3/95 Hrg. p.258.
[235] Sloan, 8/3/95 Hrg. p.260.
[236] Neuwirth and Sloan, 8/3/95 Hrg. pp.149, 165.
[237] Margolis, 8/10/95 Hrg. pp.190–91, 213, 215.
[238] Hume, 8/1/95 Hrg. p.275.
[239] Hume, 8/1/95 Hrg. p.222.
[240] Hume, 8/1/95 Hrg. p.275.
[241] Hume, 8/1/95 Hrg. p.265.
[242] Nussbaum, 8/10/95 Hrg. p.139.
[243] Nussbaum, 8/10/95 Hrg. p.158.
[244] Hines, 7/20/95 Hrg. p.160.
[245] Margolis, 8/10/95 Hrg. p.234.
[246] Nussbaum, 8/9/95 Hrg. p.163.
[247] Nussbaum, 8/10/95 Hrg. p.80.
[248] Burton, 8/7/95 Hrg. p.33.
[249] Burton, 8/7/95 Hrg. p.33.
[250] Burton, 8/7/95 Hrg. p.82.
[251] Margolis, 8/10/95 Hrg. p.193.
[252] Spafford, 7/27/95 Hrg. p.17.
[253] Salter, 7/27/95 Hrg. p.130.
[254] Margolis, 8/10/95 Hrg. p.193.
[255] Markland, 8/1/95 Hrg. p.172.
[256] Markland, 8/10/95 Hrg. p.223.
[257] Hume, 8/1/95 Hrg. p.262.
[258] Spafford, 7/27/95 Hrg. p.19.
[259] Spafford, 7/27/95 Hrg. p.20.
[260] Spafford, 7/27/95 Hrg. pp.20–21.
[261] Spafford, 7/27/95 Hrg. p.36.
[262] Sloan, 8/3/95 Hrg. pp.107–08.
[263] Sloan, 8/3/95 Hrg. p.188.
[264] Nussbaum, 8/10/95 Hrg. pp.65, 83.
[265] Gorham, 8/1/95 Hrg. p.99.
[266] Gorham, 8/1/95 Hrg. p.99.
[267] Gorham, 8/1/95 Hrg. p.120.
[268] Gorham, 8/1/95 Hrg. p.146.
[269] Tripp, 8/1/95 Hrg. p.26.
[270] Gorham, 8/1/95 Hrg. p.26.
[271] Gorham, 8/1/95 Hrg. p.146.
[272] Nussbaum, 8/10/95 Hrg. pp. 94–95.

[273] Neuwirth, 8/3/95 Hrg. pp. 121–22.
[274] Neuwirth, 8/3/95 Hrg. pp. 122–23.
[275] Neuwirth, 8/3/95 Hrg. p. 123.
[276] McLarty, 8/7/95 Hrg. p. 10.
[277] Nussbaum, 8/9/95 Hrg. pp. 27–28.
[278] Nussbaum, 8/10/95 Hrg. p. 22.
[279] Gergen, 8/7/95 Hrg. pp. 116–17.
[280] Neuwirth, 8/3/95 Hrg. p. 289.
[281] Neuwirth, 8/3/95 Hrg. p. 289.
[282] Neuwirth, 8/3/95 Hrg. p. 137.
[283] Burton, 8/7/95 Hrg. p. 50.
[284] Thomases, 11/2/95 Hrg. p. 115.
[285] Thomases, 11/2/95 Hrg. p. 118.
[286] Thomases, 11/2/95 Hrg. p. 121.
[287] Thomases, 12/18/95 Hrg. p. 80.
[288] Nussbaum, 8/10/95 Hrg. p. 19.
[289] Heymann, 8/2/95 Hrg. pp. 53–54.
[290] Margolis, 8/10/95 Hrg. p. 277.
[291] Heymann, 8/2/95 Hrg. p. 56.
[292] Heymann, 8/2/95 Hrg. p. 88.
[293] Salter, 7/27/95 Hrg. p. 134.
[294] Hume, 8/1/95 Hrg. p. 249.
[295] Langston, Markland, Hume, 8/1/95 Hrg. p. 278.
[296] Watkins, 7/25/95 Hrg. p. 66.
[297] Nussbaum, 8/9/95 Hrg. pp. 24–25.
[298] Nussbaum, 8/9/95 Hrg. p. 149.
[299] Nussbaum, 8/9/95 Hrg. p. 170.
[300] Williams, 7/26/95 Hrg. p. 167.
[301] Williams, 7/26/95 Hrg. p. 155.
[302] Williams, 7/26/95 Hrg. p. 170.
[303] Williams, 7/26/95 Hrg. p. 171.
[304] Williams, 7/26/95 Hrg. pp. 172–174.
[305] Williams, 7/26/95 Hrg. p. 220.
[306] Nussbaum, 8/10/95 Hrg. pp. 100–101.
[307] Williams, 7/26/95 Hrg. p. 181.
[308] Williams, 7/26/95 Hrg. p. 185.
[309] Williams, 7/26/95 Hrg. p. 273.
[310] Williams, 7/26/95 Hrg. p. 182.
[311] Williams, 7/26/95 Hrg. pp. 314, 221–222.
[312] Huber, 8/3/95 Hrg. p. 55.
[313] Williams, 7/26/95 Hrg. p. 178.
[314] Castleton, 8/3/95 Hrg. p. 7.
[315] Castleton, 8/3/95 Hrg. p. 21.
[316] Williams, 7/26 Hrg. pp. 306, 308.
[317] Adams, 7/27/95 Hrg. pp. 126, 156.
[318] Adams, 7/27/95 Hrg., p. 125.
[319] Barnett, 12/11/95 Hrg. pp. 11, 77.
[320] Barnett, 12/11 Hrg. pp. 13–14.
[321] Barnett, 12/11/95 Hrg. p. 15.
[322] Barnett, 12/11/95 Hrg. p. 16.
[323] Barnett, 12/11/95 Hrg. pp. 20–21.
[324] Barnett, 12/11/95 Hrg. pp. 12, 49.
[325] Barnett, 12/11/95 Hrg. p. 49.
[326] Williams, 12/11/95 Hrg. pp. 12, 37.
[327] Williams, 12/11/95 Hrg. pp. 7–8, 24.
[328] Williams, 12/11/95 Hrg. p. 26.
[329] Barnett, 12/11/95 Hrg. p. 68.
[330] Barnett, 12/11/95 Hrg. pp. 102–103.
[331] Thomases, 12/18/95 Hrg. p. 29.
[332] Thomases, 12/18/95 Hrg. p. 34.
[333] Thomases, 12/18/95 Hrg. p. 41.
[334] Thomases, 12/18/95 Hrg. p. 39.
[335] Thomases, 12/18/95 Hrg. p. 4.
[336] Thomases, 12/18/95 Hrg. p. 4.
[337] Thomases, 12/18/95 Hrg. p. 62.
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PAUL S. SARBANES.
CHRISTOPHER J. DODD.
JOHN F. KERRY.
RICHARD H. BRYAN.
BARBARA BOXER.
CAROL MOSELEY-BRAUN.
PATTY MURRAY.
PAUL SIMON.

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