

**VOLUME I
OVERVIEW**

TABLE OF CONTENTS

	PAGE
PREFACE.....	i
I. INTRODUCTION	2
II. SCOPE OF REPORT.....	6
III. BACKGROUND TO APPOINTMENT OF THE STATUTORY INDEPENDENT COUNSEL	8
A. United States Attorney for the Eastern District of Arkansas in Little Rock and the FBI Little Rock Field Office (through November 5, 1993)	8
1. The Borod & Huggins Report and the Opening of a Federal Criminal Investigation	8
2. The Relationship between the McDougals and the Clintons Was Subjected to Media Scrutiny.....	10
3. RTC Criminal Referral No. C-0004.....	11
4. FBI Requested Search Warrant for CMS.....	11
5. The RTC Prepared Nine Additional Referrals Involving Madison Guaranty.....	13
B. Department of Justice Criminal Division Fraud Section (November 1993 to January 1994).....	15
C. Regulatory Independent Counsel Robert B. Fiske Jr. (January 20, 1994 to August 5, 1994).....	16
IV. SUMMARY OF THE INDEPENDENT COUNSEL'S INVESTIGATION, FINDINGS, ANALYSIS AND CONCLUSIONS	21
A. The Relationship of the Clintons and the McDougals to the Whitewater Real Estate Venture, and Certain Loans by Madison Guaranty.....	24
1. Findings.....	24

2.	Evidentiary Summary	26
a.	Origins of the Clinton-McDougal Relationship.....	27
b.	Whitewater Estates -- Initial Purchase and Incorporation.....	27
c.	The McDougals Bought the Bank of Kingston, Renaming it the Madison Bank & Trust.....	28
d.	Efforts to Market Whitewater.....	29
e.	The McDougals Bought a Savings and Loan, Renaming it Madison Guaranty Savings & Loan Association.....	29
f.	Regulators Criticized McDougal's Banking Practices at Madison Bank & Trust, Including Making Whitewater Loans.....	30
g.	Governor Clinton's Knowledge of McDougal's Conduct.....	30
h.	Whitewater in the 1980s	32
i.	The End of the Whitewater Partnership.....	33
B.	An Introduction to the Activities of Madison Guaranty and its Subsidiaries During the Time McDougal Controlled the Institution.....	34
1.	Findings.....	34
2.	Evidentiary Summary	35
a.	The McDougals Used Their Institutions for Land Deals	37
b.	Madison Guaranty's Regulatory Problems; 1984 Supervisory Agreement	38
c.	McDougal's Initial Efforts to Increase Madison Guaranty's Net Worth	38
C.	Castle Grande.....	39
1.	Findings.....	39
2.	Evidentiary Summary	41

a.	The Purchase of the IDC Property	42
i.	Initial Work on IDC Purchase.....	42
ii.	The Closing on the IDC Property	44
b.	Sales of Castle Grande Parcels to McDougal Associates	45
i.	Davis Fitzhugh	46
ii.	Jim Guy Tucker.....	46
iii.	Larry Kuca	47
iv.	Senator Fulbright	47
v.	Castle Sewer & Water.....	47
c.	The Cross-Loans, the Option, and the Regulators	48
d.	The FHLBB Examination's Aftermath	52
D.	The Legal Representation of Madison Guaranty by Hillary Clinton and Rose.....	54
1.	Findings.....	54
2.	Evidentiary Summary	54
a.	The Origin of the Representation of Madison Guaranty by Mrs. Clinton	55
i.	The Dispute as to the Origin of the Representation.....	56
ii.	Rose Representation of the Bank of Kingston/Madison Bank & Trust and the Unpaid Bill for Services.....	58
b.	Mrs. Clinton and Rose Lawyers Represented Madison Guaranty before the Arkansas Securities Department in the Issuing of Preferred Stock.....	61
c.	Rose Lawyers Represented Madison Guaranty in the Purchase of the IDC Property	62
d.	Rose Did Legal Work on Development of the IDC/Castle Grande Property	64

e.	Termination of the Representation.....	66
E.	Madison Guaranty and CMS	67
1.	Findings.....	67
2.	Evidentiary Summary	67
a.	The Dean Paul Loan.....	69
b.	Robert Palmer's Role	69
c.	CMS Loans to McDougal Nominees.....	70
i.	\$149,000 Loan to Larry Kuca.....	70
ii.	\$65,000 Loan to Stephen Smith.....	71
iii.	CMS Loan to Castle Sewer and Water	72
iv.	Susan McDougal's Master Marketing Loan.....	73
d.	Concealing the Loans' Fraudulent Nature.....	75
F.	Concealment of Rose's Work for Madison Guaranty -- Hubbell's Conflict of Interest	76
1.	Findings.....	76
2.	Evidentiary Summary	79
a.	The FDIC Hired Rose to Represent its Interests and Madison Guaranty in the <u>Frost</u> Litigation.....	80
b.	Initial Complaints about Rose's Conflicts of Interests -- Hubbell's Relationship with Ward	81
c.	Other Conflicts of Interest Concealed by Hubbell.....	82
i.	Rose Billing Records	82
ii.	The Borod & Huggins Report.....	83
iii.	Beverly Bassett Schaffer.....	84
d.	Hubbell Concealed His Conflicts When Subsequently Questioned by the FDIC and RTC	85

i.	Initial Statements to Breslaw and the FDIC Legal Division.....	86
ii.	The FDIC and RTC Offices of Inspector General Investigations	87
iii.	Reopening the Investigation -- Billing Records Discovered in the White House	89
G.	Other Evidence about the Knowledge of President Clinton, Mrs. Clinton, and Webb Hubbell	90
1.	Findings.....	90
2.	Evidentiary Summary	91
a.	Ward's Suit against Madison Guaranty.....	92
b.	Criminal Charges against McDougal.....	93
c.	The 1992 Campaign.....	94
i.	The Public Arena	94
ii.	Rose and Mrs. Clinton	95
H.	Removal of Documents from Foster's Office	100
1.	Findings.....	100
2.	Evidentiary Summary	101
a.	Sealing of Foster's Office.....	101
b.	Alleged Removal of Documents the Night of July 20.....	101
c.	Alleged Removal of Documents the Morning of July 21	102
d.	DOJ Access to Foster Documents.....	103
e.	Removal of Documents by Maggie Williams.....	104
f.	The Discovery of Foster's "Note"	105
I.	Department of Justice Handling of RTC Referrals.....	105
1.	Findings.....	105

2.	Evidentiary Summary	106
J.	White House Contacts with Department of Treasury	109
1.	Findings.....	109
2.	Evidentiary Summary	109
a.	Early Contacts -- Fall 1993	109
b.	Meeting on October 14	111
c.	Events Leading to a Meeting at the White House on February 2, 1994	111
i.	Statute of Limitations.....	112
ii.	Recusal	113
d.	A Second Meeting on February 3, 1994	114
e.	Congressional Testimony on February 24, 1994	114
f.	Altman's Testimony Was Reviewed	114
K.	Payments to Webster Hubbell.....	116
1.	Findings.....	116
2.	Evidentiary Summary	118
L.	Investigative Issues -- Delay of and Resistance to the Investigation.....	119
1.	The Rose Billing Records	120
a.	The Relation of the Billing Records to Investigations Examining Mrs. Clinton's and Rose's Legal Work for Madison Guaranty.....	120
i.	DOJ Investigation Sought Rose Firm Records	120
ii.	Regulatory Counsel Fiske Sought the Rose Records	121
iii.	The RTC through Pillsbury Madison Also Was Investigating Rose's Madison Guaranty Work	122

iv.	FDIC and RTC Inspector General Investigations	123
v.	Little Rock Federal Grand Jury Examinations of Rose's Madison Guaranty Work (November and December 1995).....	123
vi.	Pillsbury Madison Learned That Mrs. Clinton Created the Ward Option Agreement.....	127
vii.	Mrs. Clinton's Counsel Produced a Copy of the Billing Records -- January 5, 1996	129
b.	Findings.....	129
c.	Evidentiary Summary	132
i.	Gathering and Reviewing Records at Rose	133
ii.	Records Shipped to Washington, D.C.	135
	a) Records Sent from the Governor's Mansion to the White House.....	135
	b) Rose Records Shipped to the White House for Mrs. Clinton	135
	c) Vince Foster's Office Records Shipped to the White House	135
	d) Clinton Campaign Records.....	136
	e) Hubbell's Records Transferred to Washington, D.C.....	136
iii.	Searches of the Records	137
iv.	The Billing Records in the White House	137
	a) Renovation	138
	b) Mrs. Clinton	138
v.	Handling the Billing Records after Discovery	139
vi.	The Records in Foster's Attic.....	140

2.	Delays Due to Contumacious Conduct and Refusal to Testify or Produce Documents.....	141
a.	Susan McDougal.....	141
b.	Branscum and Hill	143
3.	Privilege Litigation	144
4.	Successor to a Regulatory Independent Counsel -- A Broad Mandate and Inherent Jurisdictional Questions.....	146
M.	Summary Analysis of the Conduct of President and Mrs. Clinton.....	149
1.	President Clinton.....	149
a.	\$27,600 Loan to Bill Clinton	149
b.	Knowledge of CMS Loan to Susan McDougal	150
c.	Retention of Rose.....	151
2.	Mrs. Clinton	152
a.	Retention of Rose.....	152
b.	Nature of Rose Work for Madison Guaranty.....	153
c.	Billing Records	154
V.	CONCLUSION.....	155
APPENDIX 1 -- HISTORICAL BACKGROUND FOR ELIMINATION OF THE DECLINATION CLAUSE		
APPENDIX 2 -- THE FAILURE OF MADISON GUARANTY AND THE SAVINGS & LOAN CRISIS OF THE 1980s AND 1990s		
APPENDIX 3 -- JURISDICTIONAL GRANTS AND REFERRALS		
A.	Investigation of Madison Guaranty under Regulatory Independent Counsel Robert Fiske.....	iii
B.	Continued Madison Guaranty Investigation under Statutory Independent Counsel Kenneth W. Starr.....	xi
1.	Original Jurisdiction.....	xi
2.	Investigations under Original Jurisdiction.....	xiii

3.	RTC Referrals Relating to Madison Guaranty Savings & Loan	xvi
a.	The Ten Original RTC Criminal Referrals to the U.S. Attorney for the Eastern District of Arkansas	xvi
i.	RTC Criminal Referral No. C-0004 (August 31, 1992)	xvii
ii.	RTC Criminal Referral No. 730CR0198 (August 4, 1993)	xvii
iii.	RTC Criminal Referral No. 730CR0190 (August 12, 1993)	xviii
iv.	RTC Criminal Referral No. 730CR0192 (August 13, 1993)	xix
v.	RTC Criminal Referral No. 730CR0195 (August 15, 1993)	xx
vi.	RTC Criminal Referral No. 730CR0196 (August 18, 1993)	xxi
vii.	RTC Criminal Referral No. 730CR0203 (August 30, 1993)	xxiv
viii.	RTC Criminal Referral No. 730CR0199 (August 30, 1993)	xxv
ix.	RTC Criminal Referral No. 730CR0210 (September 17, 1993).....	xxvi
x.	RTC Criminal Referral No. 730CR0211 (September 23, 1993).....	xxviii
b.	Additional RTC Referrals (July 1994).....	xxix
i.	RTC Investigative Memorandum about Maple Creek Sewer Improvement District (July 1, 1994)	xxix
ii.	RTC Investigative Memorandum about Castle Grande and Seth Ward (July 6, 1994).....	xxx
iii.	RTC Report of Apparent Crime RTC Log # 730 000 000 000 00072 (July 28, 1994)	xxxi

4.	Efforts to Impede the RTC's Investigation of Madison Guaranty, Whitewater Development, and CMS	xxxix
5.	Perry County Bank's Relations with the 1990 Clinton Gubernatorial Campaign.....	xxxix
6.	Landowners Management System, Inc. Bankruptcy Proceeding and William J. Marks Sr.	xxxix
7.	Herby Branscum Jr. and Robert M. Hill and the 1990 Clinton Gubernatorial and 1992 Presidential Campaigns.....	xxxix
8.	Purchase of Property in Lee County, Arkansas, by the Arkansas Development Finance Authority or Arkansas Department of Corrections.....	xxxviii
9.	Chris and Rosalee Wade Fraud and Bankruptcy	xi
10.	FDIC and RTC Referrals Relating to Rose Law Firm.....	xli
11.	Webster L. Hubbell's Rose Law Firm Billing and Expense Practices	xliv
12.	Matters Relating to Webster L. Hubbell's Income Received since January 1, 1994.....	xlvi

APPENDIX 4 -- CHRONOLOGY

APPENDIX 5 -- PROSECUTIONS

I.	PROSECUTION OF CONSPIRACY TO DEFRAUD THE SMALL BUSINESS ADMINISTRATION THROUGH CMS	i
A.	Introduction.....	i
B.	<u>United States v. David L. Hale, Charles Matthews, and Eugene Fitzhugh</u>	i
1.	Indictment and Superseding Indictment	i
2.	Hale's Guilty Plea and Cooperation Agreement	ii
3.	Matthews and Fitzhugh Pleaded Guilty	iii
II.	PROSECUTION OF CHRISTOPHER WADE FOR BANKRUPTCY FRAUD	v
A.	Introduction.....	v

B.	<u>United States v. Wade</u>	vii
III.	PROSECUTION OF FRAUDULENT SCHEME CONCERNING \$825,000 MADISON GUARANTY LOAN AND RELATED CMS LOANS	viii
A.	Factual Overview of the Fraudulent Scheme.....	viii
1.	Introduction.....	viii
2.	The \$825,000 Dean Paul Nominee Loan.....	xi
3.	James McDougal, CMS, and Larry Kuca	xv
4.	The Fraudulent CMS Loan to Steve Smith.....	xviii
5.	The Fraudulent CMS Loan to Castle Sewer & Water	xxiii
6.	The Fraudulent \$300,000 Loan to Susan McDougal	xxv
a.	The Loan	xxv
b.	Actual Use of the Master Marketing Loan	xxviii
c.	Susan McDougal's Misrepresentation after the Loan	xxix
d.	Evidence That Governor Clinton Had Knowledge of the Susan McDougal Loan.....	xxxi
B.	Prosecutions Related to the Scheme Involving the \$825,000 Fraudulent Loan.....	xxxv
1.	Fraudulent Appraisals by Robert Palmer.....	xxxv
a.	Facts	xxxv
b.	<u>United States v. Robert Palmer</u>	xxxvi
2.	<u>United States v. Larry Kuca</u>	xxxvii
3.	<u>United States v. Stephen A. Smith</u>	xxxvii
4.	<u>United States v. James B. McDougal, Jim Guy Tucker, and Susan H. McDougal</u>	xxxix
a.	Indictment	xxxix
b.	Pre-Trial Litigation	xli

	c.	Trial and Guilty Verdicts	xliv
	d.	Post-Trial Motions, Sentences, and Appeals	xlvi
IV.		WEBSTER HUBBELL'S ROSE LAW FIRM BILLING PRACTICES	xlvi
	A.	Introduction.....	xlvi
	B.	<u>United States v. Webster Hubbell</u>	xlv
V.		SCHEME TO CONCEAL ROSE LAW FIRM'S CONFLICTS OF INTEREST FROM FEDERAL AGENCIES	1
	A.	Introduction.....	1
	B.	The Cover-Up Alleged in the Indictment	li
	C.	Hubbell Pleaded Guilty.....	liii
VI.		TUCKER, MARKS, AND HALEY TAX CONSPIRACY	liv
	A.	Introduction.....	liv
	B.	<u>United States v. Jim Guy Tucker, John Haley & William Marks</u>	lv
	1.	Indictment, Dismissal, and Reversal on Appeal	lv
	2.	Marks's Guilty Plea and Sentence.....	lxvi
	3.	Haley's Guilty Plea and Sentence	lxvii
	4.	Tucker's Guilty Plea and Sentence.....	lxviii
	5.	Reversal on Appeal.....	lxix
VII.		PROSECUTIONS INVOLVING THE PERRY COUNTY BANK.....	lxx
	A.	Introduction.....	lxxi
	B.	Alleged Failure to File Currency Transaction Reports	lxxii
	1.	Multiple Checks Were Used Allegedly to Avoid the Reporting Requirements of 31 U.S. C. § 5324(a)(1) in May 1990.....	lxxii
	2.	PCB Failed to Report the November 1990 Currency Transaction.....	lxxiv
	3.	Ainley's Admissions and Prosecution.....	lxxvi

C.	Evidence That Individuals Made Contributions to the Clinton for Governor Campaign in Violation of Campaign Contribution Regulations	lxxix
1.	Branscum Gave Money to Others Who Then Made Campaign Contributions to Clinton's Campaigns.....	lxxix
2.	Hill Gave Money to Others Who Then Made Campaign Contributions to Clinton's Campaigns	lxxxix
3.	Evidence That Branscum, Hill, and Ainley Unlawfully Received Bank Funds to Reimburse Their Campaign Contributions to Clinton's Gubernatorial Campaign	lxxxiii
D.	Indictment and Trial of Branscum and Hill	lxxxvii
VIII.	PROSECUTION OF SUSAN McDOUGAL FOR CRIMINAL CONTEMPT OF COURT FOR REFUSAL TO ANSWER GRAND JURY QUESTIONS	lxxxix
A.	Introduction.....	lxxxix
B.	The Criminal Contempt and Obstruction of Justice Prosecution.....	xcii
1.	Pre-Trial Proceedings.....	xcii
2.	Trial.....	xcii
IX.	EXECUTIVE GRANTS OF CLEMENCY	xcv
	TABLE A -- INDICTMENTS, PROSECUTIONS, AND CONVICTIONS	cii
	TABLE B -- OTHER MATTERS NOT RESULTING IN CONVICTION.....	cvii
	TABLE C -- EXECUTIVE GRANTS OF CLEMENCY.....	cix
	MAPS	

PREFACE

"I believe we . . . endured what history will clearly record was a bogus investigation where there was nothing to Whitewater, nothing to those other charges. . . ."

-- President Clinton
January 26, 2000, Jim Lehrer Newshour

* * * * *

"[L]et me remind you . . . the Whitewater thing was bogus from day one; it had nothing to do with the official conduct of the administration anyway.

I keep waiting for somebody to say . . . that a whole bunch of this stuff was just garbage and that we had totally innocent people prosecuted because they wouldn't lie."

-- President Clinton
June 28, 2000, White House Press Conference

* * * * *

"All I know is Whitewater was a fraud. . . . The biggest bogus issue in modern American politics . . . put . . . in there [by] . . . that faction of the Republican party [that] control[s] those independent counsels."

-- President Clinton
December 19, 2000, CBS 60 Minutes II Interview

* * * * *

President Clinton's sustained attack, during the last year of his Administration, on independent counsel investigations as "bogus" ignores the seriousness of the matters this Office has prosecuted, matters where juries have rendered guilty verdicts, and where judges have accepted numerous guilty pleas to serious federal crimes. This investigation was conducted pursuant to a statute the President supported as "a force for Government integrity and public

confidence" and then signed into law. It began only after Attorney General Janet Reno determined that the evidence warranted further investigation. But more importantly, the Madison Guaranty/Whitewater investigation was not "just garbage" and did not result in "innocent people [being] prosecuted because they wouldn't lie," as the President has further said.

Even before the reauthorization of the now lapsed independent counsel law, the Department of Justice was investigating matters commonly referred to as Whitewater. The Department of Justice's investigation obtained three guilty pleas under regulatory special counsel Robert B. Fiske Jr. before the August 1994 appointment of a statutory independent counsel. Our office, building on the Department of Justice's investigation, obtained guilty verdicts against then Governor Jim Guy Tucker of Arkansas and James B. McDougal and his wife Susan McDougal, as well as thirteen guilty pleas. Those guilty pleas included two separate felony pleas from former Associate Attorney General Webster L. Hubbell. In short, juries and courts did not consider these to be "bogus" prosecutions.

Although no one would dispute the President's right to defend his Administration, characterizing independent counsel investigations as "bogus" and "just garbage" simply is unwarranted. An independent counsel investigation and the prosecutions that result from that investigation are a legitimate product of the American legal system. By calling a duly authorized law enforcement investigation "bogus," the President impugns and undermines not just this Office, but also courts, judges and juries who together have validated this investigation and the prosecutions brought.

This four-volume Final Report represents the culmination of the Madison Guaranty/Whitewater investigation. That investigation began in September 1992, when criminal investigators from the Resolution Trust Corporation (RTC) forwarded to the United States

Attorney for the Eastern District of Arkansas and the Federal Bureau of Investigation a referral alleging that Jim and Susan McDougal had committed violations of federal criminal law in their operation of the Madison Guaranty Savings & Loan Association, including allegations relating to the operation of Whitewater Development Corporation -- a real estate venture jointly owned by the McDougals and the Clintons.

For approximately a year and a half, the FBI -- first in coordination with the United States Attorney's Office, then with the assistance of a career prosecutor from the Department of Justice and, finally, under the direction of regulatory counsel Fiske -- received nine additional referrals from the RTC naming the McDougals and Governor Tucker and one involving President and Mrs. Clinton. The Small Business Administration forwarded its own separate criminal referral documenting allegations against Little Rock Municipal Court Judge David Hale and Mr. and Mrs. McDougal. In addition, Mrs. Clinton's former colleagues at the Rose Law Firm told investigators that her former law partner, Webb Hubbell, had committed billing fraud, bilking Rose clients out of more than \$300,000.

After an investigation by the FBI and U.S. Attorney's Office, Hale was indicted. He subsequently pleaded guilty and provided evidence to Mr. Fiske which disclosed criminal activity by Governor Tucker and alleged criminal conduct by President Clinton. By early August 1994, Mr. Fiske's investigation stood poised to charge Hubbell for billing fraud and Governor Tucker for conspiracy and tax fraud.

Following the appointment of my predecessor, Independent Counsel Kenneth W. Starr, this Office exhaustively examined the original allegations of criminal conduct and many other subsequent allegations and referrals expressly within our jurisdiction. The criminal conduct uncovered by this Office (conduct which, ultimately, cost the American taxpayers in excess of

\$70 million when Madison Guaranty failed) was serious, substantial and, in the end, the legitimate subject of prosecution under the American legal system.

To many, this eight-year investigation has gone on too long. To others, the investigation was unnecessary because it did not result in criminal charges against either President or Mrs. Clinton and was largely a wasteful partisan extravagance. To still others, the investigation was not as fair as it was lengthy. While understandable, these sentiments are, I believe, largely misplaced and reveal a fundamental misunderstanding of the nature of the legal process and the role of the prosecutor. A determination to prosecute represents a professional judgment that the fundamental interests of society require the application of the criminal laws to a particular set of circumstances -- recognizing both that serious violations of federal law ought to be prosecuted and that prosecution entails profound consequences for the accused and, in this instance, for the Nation. No one charged with such a responsibility can fail to appreciate the magnitude of the task assigned. Yet the very nature of the task counsels in favor of a judicious approach in light of the far-reaching consequences involved.

The fact that, after fully reviewing the evidence, this Office determined not to present criminal charges in this matter against either President or Mrs. Clinton should be a source of comfort, not condemnation. It reflects the considered judgment of a dedicated group of professionals after a thorough investigation that prosecution was not warranted here. Indeed, the principal value of the independent counsel law was to ensure public acceptance of a decision not to prosecute.

This does not mean that the impetus for the investigation was "bogus" or that the allegations were a "fraud." Quite to the contrary, as the ample record reflected in this Final Report demonstrates, the allegations were credible, substantial and required a thorough

investigation to resolve them.

The public relations attack on the law enforcement and judicial processes engendered by this investigation was unfortunate and damaged the country's confidence that a duly constituted investigation could get it right. I hope that fair-minded readers will reflect on the facts detailed in this Final Report and come to accept the fairness of the investigation and the value of the process. That process is resilient and offers great hope, as it has throughout our country's history.

* * * * *

The work of this Office could not have been achieved without the contributions of a number of talented individuals. These past and present colleagues indeed worked long and hard under very difficult circumstances. I am most proud, however, of the decisions made that perhaps may not be long remembered or even acknowledged -- the small choices made on a daily basis, the professional demeanor and conduct of the investigation, and, ultimately, the determination to decline prosecution of matters where indictment was not warranted.

Hundreds of attorneys, agents, administrative and support staff have participated in the Madison Guaranty/Whitewater investigation. With so many individuals who have contributed to this endeavor, a mere list of names would not do justice to their public service. Nonetheless, three individuals deserve special recognition for their efforts.

Steve Irons was the FBI supervisor in charge of the law enforcement agents conducting this investigation. His diligence led to the Hale prosecution from which much of the work of this Office stems. His uncompromising standard of professionalism was exemplary.

W. Hickman Ewing Jr. was, for nearly all of this investigation, the Deputy Independent Counsel responsible for the Arkansas-related areas of our work. A former United States Attorney, he has devoted over 30 years of his life to public service -- first on a patrol boat in

Vietnam and then as a career professional federal prosecutor. Without his command of the details of the various aspects of this investigation, none of what this Office achieved would have been possible.

And, the extraordinary service to the country, at great personal sacrifice, provided by my predecessor, Kenneth W. Starr, will one day be recognized and fully appreciated. Those who were honored to serve with Judge Starr already know that no more decent individual graced this Office.

Finally, to those members of the public who served on the grand juries and petit juries that heard the matters presented by our Office, I thank them for their remarkable dedication, fairness, thoughtfulness and objectivity so that justice might prevail.

With great pride and thanks to the many people over the years who made this possible, I respectfully submit this Final Report concluding the Madison Guaranty/Whitewater investigation.

Robert W. Ray
Independent Counsel
Washington, D.C.
January 5, 2001

Under 28 U.S.C. § 594(h) (1) (B),¹ Independent Counsel Robert W. Ray² files this Final Report on In re: Madison Guaranty Savings & Loan Association, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Aug. 5, 1994), an investigation into whether any federal crimes, other than a class B or C misdemeanor, were committed relating to James B. McDougal's, President William J. Clinton's, or Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association ("Madison Guaranty"), Capital Management Services, Inc. ("CMS"), or Whitewater Development Corporation ("Whitewater Development" or "Whitewater"). This Report describes previously unreported work of the Independent Counsel involving the core jurisdiction in the Special Division's August 5, 1994 order.³

Volume I provides this summary introductory chapter. Accompanying this chapter are appendices reflecting the work of the Independent Counsel, including: a discussion of the legislative history of the Ethics in Government Act; a summary of the savings and loan ("S&L")

¹ On June 30, 1999, the Independent Counsel Reauthorization Act of 1994, 28 U.S.C. §§ 591 through 599 (1994), expired and was not extended by Congress. The Independent Counsel is authorized, under 28 U.S.C. § 599 (providing for continuation of pending matters), to issue this Final Report.

² On October 18, 1999, Robert W. Ray was appointed Independent Counsel, under 28 U.S.C. § 593(e), following the resignation of Independent Counsel Kenneth W. Starr.

³ This Report will address all previously unreported matters within the jurisdiction of the Independent Counsel, excluding matters arising from the Special Division's sealed jurisdictional Order dated December 21, 1994. See Order, In re: Madison Guaranty Savings & Loan Ass'n, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Dec. 21, 1994), and the Special Division's jurisdictional Order relating to Monica Lewinsky and others, Order, In re: Madison Guaranty Savings & Loan Ass'n, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998).

The Independent Counsel has previously filed four reports with the Special Division: Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n) In re: William David Watkins and In re: Hillary Rodham Clinton, (published Oct. 18, 2000) (reporting on matters commonly referred to as the "Travel Office" investigation); Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Ass'n) In re: Anthony Marceca, (July 28, 2000) (reporting on a matter commonly referred to as the "FBI Files" matter); Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n), and In re: Bernard Nussbaum, (July 28, 2000) (reporting on a matter related to the FBI Files matter);

crisis that places Madison Guaranty's failure into the larger context of the nationwide savings and loan institution failures; identification of all jurisdictional grants; a chronology of events; and summaries of all prosecutions.

The remaining three volumes provide evidentiary summaries and analyses of the Independent Counsel's work: Part A discusses Whitewater Development Corporation; Part B discusses Madison Guaranty Savings & Loan and the Rose Law Firm ("Rose"); and Parts C, D, E, and F discuss conduct occurring in Washington, D.C. following the election of President Clinton.

I. INTRODUCTION

On September 1, 1992, the Resolution Trust Corporation ("RTC") submitted Criminal Referral No. C-0004 to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office. The referral concerned criminal allegations involving Madison Guaranty -- a failed thrift that cost taxpayers an estimated \$73 million -- and other entities controlled by its principal shareholder, Jim McDougal. Among these entities was the Whitewater Development Company, Inc., a real estate venture Jim McDougal and his wife Susan McDougal owned as equal partners with Governor Bill Clinton and Hillary Clinton. The referral named Jim and Susan McDougal as suspects and Governor and Mrs. Clinton as witnesses.

Between June and September 1993, RTC agents prepared nine additional criminal referrals on Madison Guaranty. The Small Business Administration ("SBA") submitted a separate criminal referral alleging fraud at CMS, a federally licensed and regulated Small Business Investment Company ("SBIC") operated by David Hale, a Little Rock municipal judge.

Criminal investigations of Madison Guaranty and CMS were started in 1993 before the

Report on the Death of Vincent W. Foster Jr. (Oct. 10, 1997).

appointment of an independent counsel. These investigations were initially conducted by the Little Rock field office of the Federal Bureau of Investigation ("FBI") and the U.S. Attorney for the Eastern District of Arkansas. Because of potential connections between the RTC and SBA allegations and the conduct of Arkansas Governor Jim Guy Tucker, Stephen Smith, and Seth Ward, the U.S. Attorney for the Eastern District of Arkansas, Paula Casey, eventually recused herself and her office from all Madison Guaranty-related matters on November 5, 1993. On November 9, 1993, the Justice Department's Criminal Division took over prosecuting Hale and investigating Madison Guaranty and CMS, under the leadership of Donald B. Mackay, a veteran senior trial attorney in the Fraud Section and former U.S. Attorney for the Southern District of Illinois.

On January 12, 1994, President Clinton asked Attorney General Janet Reno to name a special counsel to continue the investigation into Madison Guaranty and related matters. The provisions of the Ethics in Government Act permitting the appointment of an independent counsel by a three-judge panel, 28 U.S.C. §§ 591-599, had expired. In lieu of a statutory appointment, the Attorney General appointed a regulatory independent counsel pursuant to Department of Justice regulations. On January 20, 1994, Attorney General Reno appointed Robert B. Fiske Jr., a former U.S. Attorney for the Southern District of New York, as regulatory Independent Counsel.

Mr. Fiske's broad jurisdictional mandate gave him authority to investigate "whether any individuals or entities have committed a violation of any federal criminal or civil laws relating in any way to President William Jefferson Clinton's or Hillary Rodham Clinton's relationships with 1) Madison Guaranty Savings and Loan Association, 2) Whitewater Development Corporation,

or 3) Capital Management Services."⁴ Mr. Fiske opened offices in Little Rock and Washington, D.C., eventually employing more than 120 FBI and IRS agents to continue the investigation.

On June 30, 1994, President Clinton signed the Independent Counsel Reauthorization Act of 1994 ("the Act") into law, with the following statement:

I am pleased to sign into law S. 24, the reauthorization of the Independent Counsel Act. This law, originally passed in 1978, is a foundation stone for the trust between the Government and our citizens. It ensures that no matter what party controls the Congress or the executive branch, an independent, nonpartisan process will be in place to guarantee the integrity of public officials and ensure that no one is above the law.

Regrettably, this statute was permitted to lapse when its reauthorization became mired in a partisan dispute in the Congress. Opponents called it a tool of partisan attack against Republican Presidents and a waste of taxpayer funds. It was neither. In fact, the independent counsel statute has been in the past and is today a force for Government integrity and public confidence.

This new statute enables the great work of Government to go forward -- the work of reforming the Nation's health care system, freeing our streets from the grip of crime, restoring investment in the people who make our economy more productive, and the hard work of guaranteeing this Nation's security -- with the trust of its citizens assured.

It is my hope that both political parties would stand behind those great objectives. This is a good bill that I sign into law today -- good for the American people and good for their confidence in our democracy.⁵

Under the Act, Attorney General Reno determined additional investigation on these matters was warranted and applied to the Special Division of the Court "for the appointment of an Independent Counsel to investigate whether any violations of federal criminal law were committed by James B. McDougal or any other individual or entity relating to Madison Guaranty

⁴ 28 C.F.R. § 603.1; Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 1-2 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal) [hereinafter "Fiske Report"].

⁵ Statement on Signing the Independent Counsel Reauthorization Act of 1994 (June 30, 1994), in Public Papers of the Presidents of the United States: William J. Clinton 1994 Book I (Jan. 1 to July 31, 1994) at 1168-69 (1995).

Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc."⁶

The Attorney General's application described the background of the Fiske investigation:

- The RTC had referred numerous criminal allegations to the U.S. Attorney for the Eastern District of Arkansas, arising out of an inquiry into the operation of Madison Guaranty, a failed savings and loan that was owned by Jim McDougal, a partner of President and Mrs. Clinton in Whitewater Development;
- The U.S. Attorney's Office in Little Rock had begun prosecuting David Hale who had ties to both the Clintons and McDougal;
- Hale had alleged that his associates, including McDougal and the Clintons, had also unlawfully obtained and used CMS funds;
- In November 1993, the Fraud Section of the Criminal Division of the Department of Justice took over Hale's prosecution and the inquiry into RTC allegations of misapplication of funds from Madison Guaranty (several of which were determined to be sufficiently specific and credible to provide grounds for a preliminary investigation under the statute); and
- On January 20, 1994, she had appointed Robert B. Fiske Jr. as regulatory independent counsel to take over all the investigations relating to Madison Guaranty.⁷

The Attorney General said although Mr. Fiske had not reported his investigative results or the direction of his investigation to the Department of Justice, he had reviewed her Application and affirmed there were reasonable grounds to believe that additional investigation was warranted under 28 U.S.C. § 592(c) (1) (A). The Attorney General concluded the circumstances warranted the appointment of a statutory independent counsel "because investigation by the Department of Justice of the allegations of violations of criminal law by McDougal and other individuals associated with President and Mrs. Clinton and Madison

⁶ Application To The Court Pursuant To 28 U.S.C. § 592(c) (1) For The Appointment Of An Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n (D.C. Cir. [Spec. Div.] July 1, 1994) [hereinafter "Application"].

⁷ Fiske Report, supra note 4, at 1.

Guaranty Savings & Loan, Whitewater Development Corporation, and Capital Management Systems would present a political conflict of interest."⁸ The Attorney General asked the Court to appoint Robert B. Fiske Jr. "so that he may continue his ongoing investigation without disruption[.]"⁹

On August 5, 1994, the Special Division appointed the Honorable Kenneth W. Starr, a former federal circuit court judge and Solicitor General, as Independent Counsel.¹⁰ The Special Division said Judge Starr's appointment was not "inten[ded] to impugn the integrity of the Attorney General's appointee [Fiske], but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict."¹¹ The Special Division gave Independent Counsel Starr jurisdiction to investigate "whether any individuals or entities have committed a violation of federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings and Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc."¹² On October 18, 1999, the Special Division appointed Robert W. Ray, a career federal prosecutor, Independent Counsel for all matters previously under the jurisdiction of Independent Counsel Starr.

II. SCOPE OF REPORT

The Independent Counsel reporting provision, 28 U.S.C. § 594(h) (1) (B) (1994), mandates that before the Office is terminated, it shall:

⁸ Application, supra note 6, at 3.

⁹ Id. at 4 n. 2.

¹⁰ Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Aug. 5, 1994).

¹¹ Id. at 4.

¹² Id. at 1.

file a final report . . . setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

This statutory language changed the pre-1994 law, which contained a so-called "declination clause" requiring a final report to include:

a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.¹³

The Independent Counsel Reauthorization Act of 1994 did not include an express declination clause.

The declination clause's omission did not reflect a congressional determination that an independent counsel could never articulate his reasoning about the conclusion of matters under investigation. The declination clause's deletion resulted from a compromise adopted in the House and Senate Conference Committee during reauthorization. The Independent Counsel gave careful consideration to the legislative history about the omission of the "declination clause,"¹⁴ and determined the analysis and findings contained in this Report are consistent with Congress's intention as reflected by the statute's language and legislative history.¹⁵ This Report has been prepared with that legislative history and the factors adduced by Congress in mind.

¹³ 28 U.S.C. § 594(h) (1) (B) (1993).

¹⁴ A more complete summary of the legislative history relating to the declination clause is contained in Vol. I, Appendix 1.

¹⁵ See also Final Report of the Independent Counsel In re: Eli J. Segal at 2 (D.C. Cir. [Spec. Div.] Dec. 19, 1997) (deciding "to include in the report sufficient detail to assure the Court, and any others authorized to read it, that our investigation was thorough, professional and competent; that the decision to decline prosecution was based on the merits and on the evidence adduced by the Independent Counsel; and that resources were used wisely and economically").

III. BACKGROUND TO APPOINTMENT OF THE STATUTORY INDEPENDENT COUNSEL

Before the appointment of Independent Counsel Kenneth W. Starr, three Department of Justice prosecutors examined the available evidence related to Madison Guaranty, Whitewater Development, and CMS. Each succeeding investigation built on its predecessor's work, exhausting investigative leads in the traditional manner of all Department of Justice investigations.¹⁶

A. United States Attorney for the Eastern District of Arkansas in Little Rock and the FBI Little Rock Field Office (through November 5, 1993).

1. The Borod & Huggins Report and the Opening of a Federal Criminal Investigation.

In the spring of 1986, the Federal Home Loan Bank Board ("FHLBB") examined the records and finances of Madison Guaranty. They discovered a savings and loan institution with insufficient assets, overextended liabilities, and unlawful banking and loan practices -- something quite common in the mid-1980s when many similar thrifts were failing.¹⁷

Because of the examination, in July 1986, the FHLBB ordered McDougal removed from the management of Madison Guaranty. Soon the board of directors of the thrift hired independent outside counsel, Borod & Huggins, to review the thrift and McDougal's conduct. In December 1986, the firm began an extensive examination of Madison Guaranty. In a report of

¹⁶ In addition to investigations by the U.S. Attorney for the Eastern District of Arkansas, the Department of Justice's Criminal Division, and regulatory Independent Counsel Fiske, other governmental entities started investigations before the appointment of a statutory independent counsel that related in whole or in part to President and Mrs. Clinton, Jim and Susan McDougal, Madison Guaranty, Whitewater Development, and CMS. The U.S. House of Representatives Banking Committee, U.S. Senate Banking Committee, the FDIC, the RTC Professional Liability Section ("RTC-PLS"), the FDIC Office of Inspector General ("FDIC-OIG"), the RTC Office of Inspector General ("RTC-OIG"), and Pillsbury, Madison, & Sutro (as a contractor for the RTC) all conducted investigations into matters that would later be referred to the Independent Counsel.

¹⁷ A larger discussion of the savings and loan crisis is set forth at Vol. I, Appendix 2.

its investigation, Borod & Huggins concluded, "[f]rom the time the McDougals acquired Madison Guaranty . . . they began to use it for their personal benefit and that of their friends. . . . The record is replete with various transactions to or for the benefit of the McDougals and their friends and relatives."¹⁸ The Report also said, "[I]t appears . . . that certain criminal referrals may be appropriate in connection with falsification of Association records, as well as potential misapplication of Association funds."¹⁹ Borod & Huggins concluded that "facts connected with the following transactions may give rise to conclusions of apparent criminal misconduct":

- Madison Guaranty's frequent payment of real estate commissions to Susan McDougal, Jim McDougal, Seth Ward, Davis Fitzhugh, and others, where no real estate brokerage or sales services were rendered.
- David Hale's sale of overvalued property to Dean Paul Ltd., financed by Madison Guaranty. The sale enabled David Hale's SBIC, CMS, to fund the down payment made by Castle Sewer & Water when it acquired a utility system located on property known as Castle Grande.
- During the March 1986 FHLBB examination, the minutes of Madison Guaranty's service affiliate, Madison Financial Corporation ("Madison Financial") were, apparently at the instruction of Madison Guaranty President John Latham, fraudulently created and presented to the FHLBB examiners as accurate.
- With the knowledge of Jim McDougal, Madison Financial and Madison Guaranty, Robert Palmer, an associate of McDougal's, routinely created inflated real estate appraisals that were used to justify loans made by Madison Guaranty.²⁰

On March 19, 1987, Madison Guaranty sent a criminal referral to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office, which had, two months before the receipt of the referral, opened an investigation into possible criminal activities at Madison Guaranty.

¹⁸ Borod & Huggins, Madison Guaranty Savings & Loan Association Special Counsel Investigative Report at 4 (Mar. 3, 1987) [hereinafter "Borod & Huggins Report"].

¹⁹ Id. at 7.

²⁰ Id. at 161-68.

During the months that followed, the federal criminal investigation of Madison Guaranty intensified. Jim McDougal and two of Susan McDougal's brothers -- James Henley and David Henley -- were indicted in November 1989 on federal criminal charges relating to Madison Guaranty and Madison Financial, the service corporation subsidiary. The president of Madison Guaranty, John Latham, pleaded guilty to a felony charge in February 1990. The trial took place in Little Rock in late May and early June 1990, and the proceedings focused on several financial and land transactions related to property previously owned by the Industrial Development Corporation ("IDC") and developed under the name "Castle Grande." On June 4, 1990, the judge dismissed the charges against David Henley. On June 7, 1990, a jury acquitted Jim McDougal and Jim Henley. Attorneys from the Rose Law Firm, which had represented Madison Guaranty, and were representing the RTC as conservator for Madison Guaranty, attended and monitored this trial.

2. The Relationship between the McDougals and the Clintons Was Subjected to Media Scrutiny.

On March 8, 1992, a New York Times article questioned the relationship between Governor and Mrs. Clinton, the McDougals, the Whitewater land venture, and Madison Guaranty.²¹ Questions were also raised before and after the article ran about Mrs. Clinton's work for Madison Guaranty while she was a lawyer with Rose, and about Governor Clinton's role in McDougal's decision to retain Mrs. Clinton. The Clinton campaign responded to the inquiries and the presidential campaign moved on to other issues.

²¹ Jeff Gerth, The 1992 Campaign: Personal Finances; Clintons Joined S. & L. Operator In an Ozark Real Estate Venture, N.Y. Times, Mar. 8, 1992 at A1.

3. RTC Criminal Referral No. C-0004.

The media allegations prompted the RTC to send investigators to Little Rock in the spring of 1992 to review Madison Guaranty records. In early September 1992, the RTC made a criminal referral to the FBI Little Rock field office and the U.S. Attorney for the Eastern District of Arkansas.²² RTC Criminal Referral No. C-0004 alleged Jim and Susan McDougal fraudulently misused bank accounts they controlled at Madison Guaranty, and fraudulently advanced funds from Madison Guaranty for their own and associated entities' benefit. The referral alleged that one of the entities the McDougals might have improperly advanced funds to -- and whose account the McDougals might have improperly used -- was Whitewater Development. Governor and Mrs. Clinton, as partners with the McDougals in Whitewater Development, were listed as witnesses.

Because Criminal Referral C-0004 arrived in Little Rock only two months before the presidential election, the U.S. Attorney for the Eastern District of Arkansas, Charles A. Banks, deferred investigation until after the election. The FBI concurred in that decision. After Governor Clinton was elected President, Banks recused himself and sent the referral to the Department of Justice in Washington, D.C., though no substantive investigation was conducted until the next year.

4. FBI Requested Search Warrant for CMS.

On Monday, July 19, 1993, the FBI Little Rock field office applied to a federal magistrate judge in Little Rock for a search warrant for the offices of CMS. As a Small Business Investment Corporation ("SBIC"), CMS was funded and regulated by the federal Small Business

²² A "criminal referral" is a means where a financial institution, or an agency charged with oversight of financial institutions, refers possible criminal charges to the FBI and the United States Attorney within whose jurisdiction the financial institution is located.

Administration ("SBA"). In May 1993, the SBA had sent a criminal referral to the FBI after an audit suggested David Hale was involved in fraudulent activity and that numerous loans made by CMS were not being repaid. Although the purpose of federal SBICs is to provide loans to socially and economically disadvantaged individuals, the FBI suspected Hale had used CMS to lend money to his associates and political allies. Two of the loans mentioned in the search warrant by the FBI were a \$300,000 loan to Susan McDougal d/b/a (doing business as) Master Marketing in April 1986, and a \$150,000 loan to Castle Sewer and Water, a corporation controlled by Jim Guy Tucker. The loan to Susan McDougal has never been repaid.

The FBI was aware of the sensitive nature of its CMS investigation. Hale was a municipal judge in Little Rock; he was also an associate of, and sometimes business partner with, various prominent politicians, including Jim Guy Tucker. The SBA, in its criminal referral, had specifically questioned a CMS loan to Castle Sewer and Water. FBI agents also found CMS's links to Madison Guaranty significant, particularly several loans made by CMS using \$825,000 Madison Guaranty had loaned to Dean Paul in February 1986. The FBI suspected this Madison Guaranty loan was made to Paul acting as "straw purchaser" -- a purchaser in name only -- to funnel Madison Guaranty funds to CMS. In addition, the FBI knew the RTC was preparing additional criminal referrals on possible crimes at Madison Guaranty. In late May and early June 1993, RTC investigators had returned to Little Rock to undertake a more thorough review of the activities at Madison Guaranty.

On July 19, 1993, FBI Supervisory Special Agent Steve Irons presented a search warrant affidavit to a magistrate judge in Little Rock. The next day, July 20, 1993, the magistrate judge signed the search warrant for Hale's CMS office, and the morning of July 21, the FBI searched Hale's CMS office. Among the loan files and other documents they seized were those about

Susan McDougal's \$300,000 Master Marketing loan. The FBI also found evidence of a fraudulent transaction from September 1988 involving Hale and two other Little Rock attorneys -- Charles Matthews and Eugene Fitzhugh.²³

On August 16, 1993, Paula Casey became the U.S. Attorney for the Eastern District of Arkansas, appointed by President Clinton. On September 23, 1993, a grand jury in Little Rock returned a four-count indictment against Hale, Matthews, and Fitzhugh, charging a conspiracy to defraud the United States, acting by and through the SBA.²⁴ That same day, Hale publicly alleged certain activities at CMS involved President Clinton, Governor Tucker, and the McDougals.

5. The RTC Prepared Nine Additional Referrals Involving Madison Guaranty.

When the initial investigation of Hale was nearing indictment, the RTC investigators were completing additional criminal referrals on Madison Guaranty. Nine new referrals were approved in Kansas City on September 24, 1993, and sent to Washington, D.C. -- deviating from the RTC's normal process of sending the referrals directly to the FBI and U.S. Attorney in the district where the subject financial institution was located.

²³ The statute of limitations on the offenses committed by Hale, Matthews and Fitzhugh was to expire in September 1993.

²⁴ The White House monitored the Hale investigation. Three days before Hale's indictment, on September 20, 1993, Jim Blair telephoned senior presidential advisor Bruce Lindsey. Among the entries in Lindsey's contemporaneous notes of his conversation with Blair were the following:

McDougal called Heuer [McDougal's attorney] to tell him that Hale had been to see him. McDougal told Heuer that Hale had tried to get him to fabricate a story about BC and JGT. Gerth tried to get Sam Heuer to tell him where McDougal was. Heuer wouldn't. Heuer asked Brent Bumpers [an Assistant United States Attorney], asked whether indictment against Hale, asked whether indictment
—against Hale, not McDougal.

J. McDougal 4/3/97 GJ at 57-59.

On September 29, 1993, Jean Hanson, General Counsel of the Treasury Department, which oversaw the RTC, told Bernard Nussbaum, Counsel to the President, that the RTC planned to issue more criminal referrals on Madison Guaranty, which would name the Clintons as witnesses and possible beneficiaries of wrongdoing. Hanson also told Mr. Nussbaum the referrals would name Governor Tucker as a criminal target. Mr. Nussbaum told presidential counselor Bruce Lindsey, who, on October 4 or 5, 1993 in turn told President Clinton.²⁵

On October 8, 1993, the RTC in Washington sent the nine additional criminal referrals on Madison Guaranty to the FBI and U.S. Attorney's office in Little Rock. All nine new referrals named McDougal a "suspect." The Clintons were listed as witnesses in one -- CR-0196 -- identifying potential crimes related to a fundraiser held at Madison Guaranty for Governor Clinton in April 1985 and discussing Mrs. Clinton's legal representation of Madison Guaranty that same month before the Arkansas Securities Department.

On September 24, 1993, Casey told Little Rock FBI agents she would have to recuse herself from the investigation of Madison Guaranty and the referrals. She cited her association with Governor Tucker, Stephen Smith, and Seth Ward (though not the Clintons) as the basis for her recusal.

Also around this time, the Department of Justice returned the original C-0004 referral to the U.S. Attorney's office. Earlier in 1993, an attorney in the Fraud Section of Justice's Criminal Division had prepared a memorandum concluding that the Department should not investigate the allegations in the C-0004 referral. On October 27, 1993, Casey formally declined additional investigation of the charges in the C-0004 referral, stating that she agreed with the memorandum's conclusion that it lacked prosecutive merit.

²⁵ On October 6, President Clinton met with Governor Tucker at the White House.

The RTC referrals became publicly known on November 1, 1993.²⁶ On November 5, 1993, at the urging of Justice officials in Washington, D.C., Casey formally recused herself and her office from all Madison Guaranty-related matters. Before Casey's recusal from Hale's prosecution and the Madison Guaranty investigation, the U.S. Attorney's office in Little Rock had issued fifty grand jury subpoenas.

B. Department of Justice Criminal Division Fraud Section (November 1993 to January 1994).

Responsibility for Hale's prosecution and all ten RTC Madison Guaranty criminal referrals was transferred to the Department of Justice's ("DOJ") Criminal Division. Donald Mackay, an experienced career prosecutor, took the lead on the prosecution of Hale and others and for the Madison Guaranty criminal investigation. Mackay determined that "the 1992 referral [#C-0004], which was declined by DOJ, suggest[ed] a pattern of small check kites often for McDougal's benefit or for the benefit of those close to him. Standing alone, these [were] not particularly significant but in the greater context they may be a part of McDougal's general pattern."²⁷ Mackay worked with Little Rock FBI agents, and quickly developed an investigative strategy. Among the steps included in his strategy memorandum of November 26, 1993 were:

- Reviewing and evaluating the complete referrals from the RTC.
- Tracing of all funds in the \$825,000 transaction with special attention to the \$300,000 loan to Susan McDougal, partially benefiting Whitewater, and issuing subpoenas for all Whitewater accounts.
- Obtaining information about whether, and to what extent, the "Mitchell" and "Rose" law firms of Little Rock performed any legal work on any of the transactions mentioned in

Both men later said they did not discuss the referrals at this meeting.

²⁶ See Susan Schmidt, U.S. Is Asked to Probe Failed S&L, Wash. Post, Nov. 1, 1993, at A1. Bruce Ingersoll and Paul Barrett, U.S. Investigating S&L Chief's '85 Check to Clinton, SBA-Backed Loan to Friends, Wall St. J., Nov. 1, 1993, at A3.

²⁷ Mackay typewritten notes (undated) (Doc. No. JJN 000153).

the referrals.²⁸

Mackay began a grand jury investigation, and issued subpoenas for various records, including the original Madison Guaranty records. On December 23, 1993, DOJ attorneys issued (on behalf of a Little Rock grand jury) a subpoena to David Kendall, personal counsel to President and Mrs. Clinton, calling for all documents in his or his law firm's possession related to Whitewater Development, Madison Guaranty, David Hale, and CMS.²⁹ A similar subpoena for documents was issued that day to Lisa Foster, widow of former Deputy Counsel to the President Vincent W. Foster Jr.³⁰

Between January 11 and 13, 1994, Mackay caused to be served approximately thirty grand jury subpoenas demanding documents throughout Arkansas, including to Governor Jim Guy Tucker, Seth Ward (Webb Hubbell's father-in-law and a former Madison Financial employee), Rose, and Rose attorney Richard Massey.

C. Regulatory Independent Counsel Robert B. Fiske Jr. (January 20, 1994 to August 5, 1994).

On January 12, 1994, President Clinton directed Attorney General Reno to appoint an independent counsel to investigate Whitewater and Madison Guaranty related allegations. The Attorney General announced she would comply with the President's request, and Mackay's grand jury subpoenas issued to Rose and Massey were withdrawn. Mackay ended his inquiry, having issued forty-five subpoenas during his two-month stewardship of the investigation. On January 20, 1994, Attorney General Reno appointed Robert B. Fiske Jr. as regulatory Independent

²⁸ Memo from Donald Mackay, Dwight Bostwick, and Jim Nixon, Trial Attorneys, to G. Allen Carver Jr., Principal Deputy Chief, Fraud Section, and John Arterberry, Deputy Chief, Fraud Section at 6-7 (Nov. 26, 1993) (Doc. Nos. GAC000368 through 374).

²⁹ Grand Jury Subpoena No. 55 (E.D. Ark. Dec. 23, 1993).

³⁰ Grand Jury Subpoena No. 55A (E.D. Ark. Dec. 23, 1993).

Counsel.

Independent Counsel Fiske took over the Hale, Matthews, and Fitzhugh prosecution, and the investigation of all matters relating to Madison Guaranty, including the ten criminal referrals and the \$825,000 Dean Paul loan. Fiske also established a Washington office to investigate all matters relating to Vincent W. Foster Jr.'s death, and to investigate possibly improper contacts that occurred between White House personnel, Department of Treasury officials, and RTC personnel about the Madison Guaranty investigation.

Fiske said his Little Rock investigation involved three separate areas. The first area involved President and Mrs. Clinton's relationships with Whitewater and Madison Guaranty, examining these questions:

- 1) Whether funds were diverted from Madison Guaranty for the benefit of Whitewater;
- 2) Whether funds were diverted from Madison Guaranty for the benefit of President Clinton's gubernatorial campaigns in the 1980s; and
- 3) Whether the Clintons were offered a fifty percent ownership interest in Whitewater by Jim McDougal without any, or only minimal, financial contribution in return for some quid pro quo and, if so, whether the quid pro quo was that then-Governor Clinton, directly or indirectly, allowed Madison Guaranty to remain open after it became insolvent.³¹

The second area of Fiske's Little Rock investigation involved allegations made by David Hale, CMS's former president, about the involvement in 1986 of Governor Clinton and Jim McDougal in a \$300,000 loan from CMS to Master Marketing, an entity owned and controlled by Susan McDougal. This aspect of Fiske's investigation examined whether some of the loan proceeds were improperly diverted to Whitewater, and whether Hale agreed to make that and other loans in return for the payment of \$502,000 to recapitalize CMS through an \$825,000 loan

³¹ Fiske Report, supra note 4, at 13-14.

from Madison Guaranty.

The third area was the ten RTC criminal referrals. By January 1994, FBI agents in Little Rock had started investigating these referrals, alleging a broad range of criminal conduct at Madison Guaranty by the McDougals and other Madison Guaranty insiders, including Arkansas Governor Jim Guy Tucker.

Independent Counsel Fiske obtained a superseding indictment of Hale, Matthews, and Fitzhugh on February 7, 1994. On March 22, 1994, David Hale pleaded guilty to two felony counts. As part of Hale's plea agreement, he agreed to provide information and truthful testimony.

As Fiske's Little Rock investigation progressed, other matters involving potential violations of federal criminal law were examined.³² Among the additional matters investigated by Fiske were:

- 1) Possible destruction of documents at Rose after Mackay's subpoena was served and withdrawn.
- 2) Whether Associate Attorney General Webster Hubbell engaged in fraudulent billing practices while a member of Rose. (These allegations subsequently led to Hubbell's resignation as Associate Attorney General in early April 1994).
- 3) Whether any violations of federal criminal law occurred during Governor Clinton's 1990 campaign for re-election, including whether campaign officials and others willfully structured transactions to avoid filing currency transaction reports, and whether President and Mrs. Clinton committed any federal tax violations with a \$35,000 campaign fund account placed in the name of Bill Clinton following the 1990 gubernatorial election.
- 4) Whether Seth Ward fraudulently agreed with McDougal and others at Madison Guaranty to hold certain real estate in his name for the purpose of misleading FHLBB examiners, and whether McDougal caused a Madison Guaranty subsidiary, Madison Financial, to compensate Ward

³² In Fiske's Report he listed twelve such matters. Id. at 15-18.

with inflated commission income in return.

In June 1994, Congress passed the Independent Counsel Reauthorization Act. The Act required that a Special Division of the federal judiciary appoint all independent counsel. President Clinton signed the bill into law on June 30, 1994. Attorney General Reno applied to the Special Division of the United States Court of Appeals for the District of Columbia Circuit to appoint a statutory independent counsel to investigate the matters within the prior mandate of regulatory Independent Counsel Fiske.

On June 30, 1994, the same day that President Clinton signed the Independent Counsel Reauthorization Act into law, Fiske issued a report outlining his findings in the Foster death investigation. Fiske concluded Foster had committed suicide in Fort Marcy Park in northern Virginia. Fiske also announced he had concluded that charges should not be brought relating to the contacts between White House and Treasury officials, and filed a report under seal with the Special Division.

Following his replacement by Independent Counsel Starr, Fiske filed another report under seal with the Special Division on the overall Madison Guaranty investigation, and the status of the various matters under active investigation. Fiske said that as of August 5, 1994, the Office had conducted over 700 interviews in and outside of the grand jury; over 1,200 boxes of documents, totaling at least five million pages and 300 rolls of microfilm, were produced in response to subpoenas and voluntary productions in Little Rock; and over 300 interviews in and outside the grand jury had occurred in Washington, D.C.³³

Fiske also summarized "completed matters" and "ongoing matters." Fiske reported he had completed the Foster death investigation, the White House-Treasury Contacts investigation,

³³ Id. at 11-12.

the Little Rock-based prosecution of Hale, Matthews, and Fitzhugh, and the Rose destruction of documents investigation. Among the myriad ongoing matters were:

- The investigation of whether documents were removed from Foster's office following his death;
- The Department of Justice's handling of the RTC referrals, including whether anyone tried to influence the referrals' timing and content, and whether any RTC official tried to improperly influence the RTC's investigation into possible civil claims on behalf of Madison Guaranty;
- President and Mrs. Clinton's relationships with Madison Guaranty and Whitewater, including whether the Clintons were aware that Whitewater had bought Lorange Heights from International Paper, and whether Governor Clinton had improperly caused state regulatory authorities to keep Madison Guaranty open while it was insolvent;
- Webb Hubbell's billing practices at Rose;
- President Clinton's relationship with CMS; the \$300,000 Master Marketing Loan and related transactions (including the \$825,000 loan to Dean Paul);
- Whether Governor Tucker had engaged in tax or bankruptcy fraud related to a Texas bankruptcy proceeding;
- RTC Criminal Referral 730CR0190, including allegations relating to a \$260,000 loan to Tucker, and the later sale of certain property known as Southloop;
- Whether violations of federal law occurred regarding Governor Clinton's 1990 campaign for reelection;
- Fraudulent appraisal practices at Madison Guaranty, including back-dating appraisals;
- Bank fraud allegations regarding Chris Wade;
- The sale of a property at 1308 Main Street three times in a twenty-three month period at artificially inflated prices;
- The remainder of the RTC referrals;
- The use of "straw purchasers" for Madison Financial and development projects;
- The diversion of funds for use to improve the McDougals' house at 4 Bettswood in Little Rock; and

- Possible criminal wrongdoing by Seth Ward.³⁴

On August 5, 1994, the Special Division named Kenneth W. Starr as Independent Counsel.³⁵ Judge Starr's investigation built on Fiske's work and examined each of the remaining open issues as well as other related matters that became apparent as the investigation progressed. To a large degree, the scope of the Independent Counsel's investigation was fixed from the outset. Because of the unique situation, where the statutory Independent Counsel succeeded a regulatory Independent Counsel with plenary jurisdiction, Independent Counsel Starr was tasked with concluding a number of matters (for example, Governor Tucker's tax fraud) that had already come to the Fiske investigation's attention. The breadth of the criminality already uncovered by the Fiske investigation in part contributed to the length of time necessary for the statutory Independent Counsel to complete his work.

IV. SUMMARY OF THE INDEPENDENT COUNSEL'S INVESTIGATION, FINDINGS, ANALYSIS AND CONCLUSIONS

The remainder of this introductory Chapter contains a summary of the evidence found during this investigation, and of the findings and conclusions reached by the Independent Counsel on each issue examined. The particular evidentiary detail supporting the Independent Counsel's general findings and conclusions are contained in separate Parts of this Report.

At the core of the jurisdiction of the Independent Counsel warranting his appointment was this question:

Did the President or Mrs. Clinton participate in or know about the crimes committed by Jim McDougal at Madison Guaranty, Whitewater Development, or CMS?

³⁴ *Id.* at 21-59. The overwhelming majority of criminal allegations reported here were well known before the Independent Counsel assumed office.

³⁵ Order, *In re: Madison Guaranty Sav. & Loan Ass'n*, (D.C. Cir. [Spec. Div.] Aug. 5, 1994). A complete list of jurisdictional grants and referrals relating to the Madison Guaranty investigation is set forth in Vol. I, Appendix 3.

Allegations about President and Mrs. Clinton's involvement arose from the McDougals' use of Madison Guaranty, Madison Financial, and Madison Bank & Trust ("Madison Bank") -- another financial entity they controlled -- to lend money to or for the benefit of Whitewater Development. Related to these core questions were supplemental questions about Mrs. Clinton's legal work for Madison Guaranty while a partner at Rose. In addition, the Office's jurisdiction encompassed the related question of the Clintons' and McDougals' subsequent actions -- did they provide false testimony or obstruct justice in an attempt to conceal their conduct?

To answer these questions, the Independent Counsel examined a voluminous documentary record (well in excess of 10 million pages), interviewed thousands of witnesses, issued in excess of 3,000 grand jury subpoenas in Little Rock and Washington, D.C., and reviewed all available reports of other agencies and entities about these matters.³⁶

The Independent Counsel's investigation revealed James B. McDougal and others committed numerous federal crimes related to Madison Guaranty, Whitewater Development, and CMS. As a consequence, McDougal, his wife Susan McDougal, and twelve other defendants (including former Associate Attorney General Webb Hubbell and Arkansas Governor Jim Guy Tucker) eventually pleaded guilty or were convicted by juries of federal criminal offenses.³⁷

Determining the facts and the roles of the Clintons in the various financial transactions and matters under consideration was made substantially more difficult by the age of the principal matters in question (most occurring between 1978 and 1986); by many percipient witness's claimed lack of memory; by a lack of cooperation through incomplete or non-production of records; by contumacious refusals to testify; and by unwarranted and novel privilege claims.

³⁶ A chronology of events is set forth in Vol. I, Appendix 4.

³⁷ A complete summary of all prosecutions brought by this Office under the relevant

The testimony of several key individuals likely to have substantial information about the events in question was unavailable to the Independent Counsel. Of seven central witnesses, three are now deceased -- Jim McDougal, Seth Ward, and Vincent Foster Jr.; one refused to cooperate with this investigation -- Susan McDougal; one did not provide the Office with substantial assistance -- Webb Hubbell; and two were the very people named in the jurisdictional mandate -- President and Mrs. Clinton.

The Independent Counsel concluded there was insufficient evidence to obtain and sustain a conviction on charges that either President or Mrs. Clinton knowingly participated in crimes related to Madison Guaranty, Whitewater Development, or CMS. Although there was sufficient evidence to establish that some of the statements given by both the President and the First Lady during official investigations were factually inaccurate, there was insufficient available evidence to establish beyond a reasonable doubt that President or Mrs. Clinton knowingly gave false statements, committed perjury, or otherwise obstructed investigations conducted by the Independent Counsel, or other investigative agencies and entities, from 1993 to the closure of the Independent Counsel's investigation.

The Independent Counsel inherited a wide-ranging investigation from regulatory Independent Counsel Fiske and his predecessors. As the investigation progressed, other credible allegations of potential criminal conduct emerged. The Office devoted substantial resources to investigating:

- The Clintons' and McDougals' investment in Whitewater Development;
- Jim McDougal's operation of Madison Guaranty, including his effort to increase its net worth through the issuance of preferred stock;
- The fraudulent land transaction known as IDC/Castle Grande involving McDougal and

jurisdiction is set forth at Vol. I, Appendix 5.

Seth Ward (Webb Hubbell's father-in-law);

- Mrs. Clinton's representation of Madison Guaranty, including how she came to be hired; her work before the Arkansas Securities Department on the preferred stock issue; and her work on the IDC/Castle Grande transaction;
- A fraudulent \$825,000 nominee loan by McDougal to Dean Paul that, with the help of David Hale, benefited Jim and Susan McDougal, Governor Jim Guy Tucker, and Whitewater Development;
- Webb Hubbell's concealment of the work Rose did for Madison Guaranty from federal regulatory agencies;
- Currency transaction violations at the Perry County Bank that related to Governor Clinton's 1990 reelection campaign;
- Governor Tucker's tax and bankruptcy fraud in the sale of a cable television system he acquired;
- Whether Whitewater-related documents were removed from the office of Deputy White House Counsel Vincent Foster Jr., on the evening following his suicide;
- Alleged efforts by White House officials to dissuade or delay the Resolution Trust Corporation ("RTC") in its examination of Madison Guaranty, and the related alleged effort by Department of Justice officials to delay the RTC investigation;
- How Rose billing records for Madison Guaranty came to be found in the White House's residence in January 1996; and
- Payments to Webster Hubbell by the President's supporters when Hubbell was under investigation by the Independent Counsel.

About each of the foregoing matters, the Independent Counsel reports the following findings and conclusions:

A. The Relationship of the Clintons and the McDougals to the Whitewater Real Estate Venture, and Certain Loans by Madison Guaranty.

1. Findings.

The Independent Counsel examined the Clintons' relationship with the McDougals; their fourteen-year partnership in Whitewater Development; and Whitewater Development's relationship to the McDougals' financial institutions, Madison Guaranty and Madison Bank.

The Independent Counsel reports the following findings about the purchase and sale of

Whitewater Development:

- The Clintons and McDougals bought the Whitewater property in 1978 as an equal partnership. They transferred the land to Whitewater Development in 1979.
- Whitewater Development was a failed venture, losing over \$80,000.
- The Clintons sold their interest in Whitewater Development to McDougal in 1992 for \$1,000.

About the Clintons' and McDougals' interaction, operation, and management of Whitewater Development:

- The Clintons contributed approximately \$36,862.33 to the Whitewater venture.
- The McDougals contributed approximately \$80,076.03 to the Whitewater venture.
- The McDougals exercised substantially all managerial and operational control over Whitewater Development from 1978 until roughly 1986.
- After 1986, Mrs. Clinton took a more active role in the management and operation of Whitewater Development.

About loans provided to or benefiting Whitewater:

- The principal mortgage acquisition loan in the amount of \$182,611.20 to purchase the Whitewater property from Citizens Bank & Trust was sometimes in arrears. Payments on the loan were erratic and irregular. The Clintons and McDougals had potential personal liability on this loan from 1978 until it was paid off in 1992.
- On several occasions, Jim McDougal, the Clintons and McDougals together, and Whitewater Development, took out loans for use in paying obligations of Whitewater Development:
 - Mrs. Clinton took out a loan from Madison Bank in the amount of \$30,000 for the construction of a model home on Whitewater Estates. The Clintons and McDougals considered this a corporate obligation.
 - Governor Clinton took out a loan to retire Mrs. Clinton's construction loan. This action was necessary because bank regulators had asserted that Mrs. Clinton's loan violated banking regulations.
 - A loan from Madison Guaranty was taken out in Governor Clinton's name to

retire another loan taken out in the name of Whitewater Development at Madison Bank. This action was necessary because bank regulators had also asserted that the Whitewater Development loan violated banking regulations.

About criminal conduct that occurred involving Whitewater Development:

- Jim McDougal engaged in numerous financial transactions for the benefit of Whitewater Development involving Madison Guaranty and other corporate entities. Many of these transactions were fraudulent. Jim McDougal was convicted of felonies in May 1996 arising from a series of fraudulent transactions he committed involving Madison Guaranty and CMS. Susan McDougal was convicted of felonies in May 1996 involving the fraudulent loan she received from CMS.
- Chris Wade, a real estate developer in Flippin, Arkansas, committed bankruptcy fraud in his purchase of Lot 7 of Whitewater Estates. Wade pleaded guilty in March 1995.

About the culpability of President and Mrs. Clinton:

- Insufficient evidence exists to establish beyond a reasonable doubt that either Governor or Mrs. Clinton knowingly participated in the criminal financial transactions used by McDougal to benefit Whitewater Development.
- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton knowingly gave false testimony in denying that he had ever received a loan from Madison Guaranty. Insufficient evidence also exists to prove beyond a reasonable doubt that Governor Clinton knew of or approved the fraudulent \$300,000 CMS loan to Susan McDougal, or of the Lorange Heights acquisition.

2. Evidentiary Summary.

The Clintons' involvement with Whitewater began in 1978. Arkansas Attorney General Bill Clinton, Hillary Clinton, Jim McDougal, and Susan McDougal purchased 230.24 acres of undeveloped property in Marion County, Arkansas. In 1979, McDougal formed Whitewater Development and transferred the property to the new corporation.

The Clintons and McDougals agreed to share equally in Whitewater's profits and liabilities as equal partners. The Clintons and the McDougals were jointly and personally liable for a Whitewater Development debt held by a bank in Flippin, Arkansas, from 1978 until 1992, when the loan was repaid in full. The Clintons remained shareholders in Whitewater

Development until December 1992, when they sold their shares to Jim McDougal for \$1,000.

a. Origins of the Clinton-McDougal Relationship.

Jim McDougal and Bill Clinton first met in 1968, when they both worked for Senator J. William Fulbright during his reelection campaign. McDougal and Clinton became friends. In the 1970s, McDougal engaged in land development. In the decade's booming land market, most of McDougal's deals were profitable. Generally Jim McDougal would purchase land at a low price and then sell the lots on installment, taking notes from the purchasers. To finance these projects, Jim McDougal borrowed from various banks. Jim McDougal developed business and lending relationships that would carry into the future. One person he worked with was Harry Don Denton, who worked for Union National Bank. Their relationship continued for years, and Denton eventually came to work for Madison Guaranty.

Bill Clinton was elected Attorney General of Arkansas in November 1976 for a two-year term. He and Mrs. Clinton moved to Little Rock where she joined Rose, one of Arkansas's largest firms. While at Rose, Mrs. Clinton worked closely with two other lawyers in the litigation section: Webster L. Hubbell and Vincent W. Foster Jr.

b. Whitewater Estates -- Initial Purchase and Incorporation.

Bill Clinton participated in his first land deal with McDougal in 1977, a few months after he was sworn in as Arkansas Attorney General. Clinton bought about twenty acres of the Saltillo Heights development, located between the towns of Conway and Mayflower, about twenty miles from Little Rock. Attorney General Clinton invested no cash up front, and by mid-1978, he had earned a respectable profit.

Because the Saltillo Heights land deal proved profitable, Attorney General Clinton agreed to invest in another land deal with McDougal in 1978. Attorney General Clinton was running for

Governor. McDougal planned to purchase and develop 230 acres of raw land on the White River in Marion County, in north-central Arkansas adjacent to the Missouri border, and then sell lots for vacation homes.

McDougal, for himself and Attorney General Clinton, signed a contract to purchase the property for \$880 per acre. It was intended, from the outset, that Susan McDougal and Mrs. Clinton would also be partners in the venture. The understanding -- informal and apparently unrecorded -- was that the partners would share equally in repaying the loans, in financing improvements on the land, and in reaping the hoped-for profits from lot sales. The \$20,000 down payment came from a loan issued by Union National to McDougal and Clinton. On August 2, 1978, the four partners borrowed \$182,611.20 from Citizens Bank of Flippin, Arkansas to finance their remainder of the purchase of the Whitewater parcel. The bank took a mortgage on the property and all four partners personally guaranteed the loan's entire amount.

On June 18, 1979, while McDougal was serving in Governor Clinton's administration, the Clintons and McDougals incorporated the Whitewater Development Company, Inc. ("Whitewater Development"). On September 30, 1979, the four Whitewater partners deeded the Marion County property to the newly formed corporation. They remained personally liable as guarantors on the mortgage notes. The partners also remained joint guarantors on the original loan from Flippin bank until it was paid off early in 1992.

c. The McDougals Bought the Bank of Kingston, Renaming it the Madison Bank & Trust.

In October 1980, the McDougals, Steve Smith, Jim Guy Tucker, and several others acquired the Bank of Kingston in Madison County, Arkansas. The McDougals and Steve Smith moved to Kingston to manage the bank. McDougal was chairman of the board, and Steve Smith was president. They changed the bank's name to Madison Bank & Trust ("Madison Bank").

d. Efforts to Market Whitewater.

In late 1980, to spur lot sales the Whitewater partners put a model home on Lot 13. Whitewater Development had substantial cash flow problems. Banking regulations prohibited the Kingston bank from loaning any more money to the McDougals, or any entity they owned. A loan intended for the corporation was taken out in Hillary Clinton's name. The Bank of Kingston loaned Mrs. Clinton \$30,000 on December 16, 1980. The proceeds of this loan were put in the Whitewater Development bank account at the Bank of Kingston. The loan documents said the loan was secured by Lot 13, which Mrs. Clinton did not own. On December 28, 1980, a warranty deed transferred title to Lot 13 from Whitewater Development to Mrs. Clinton.

In August 1981, Madison Bank & Trust made a second loan of approximately \$30,000 to Whitewater Development in the corporation's name. This loan was later retired by a loan taken out under Governor Clinton's name.

e. The McDougals Bought a Savings and Loan, Renaming it Madison Guaranty Savings & Loan Association.

McDougal became dissatisfied with Madison Bank because it did not allow him to invest in real estate. Under state law, savings and loans -- unlike banks -- could open branches outside their home counties, an option that appealed to McDougal. A thrift also could create a wholly owned subsidiary, called a service corporation, to buy real estate for itself.

On January 25, 1982, the McDougals acquired a controlling interest of a savings and loan located in Woodruff County in Augusta, Arkansas. The institution, Woodruff County Savings & Loan Association ("Woodruff"), was essentially insolvent, and regulators from the FHLBB, the federal agency that regulated savings and loans, were closing it down when McDougal and several other investors, including Stephen Smith, proposed buying the institution and investing additional capital.

The McDougals also formed a service corporation for the thrift, incorporating Madison Financial Corporation ("Madison Financial"). The new owners changed the name of Woodruff to Madison Guaranty Savings and Loan Association ("Madison Guaranty") to parallel the Madison Bank's name, and opened branches in Bradford and downtown Little Rock, where the thrift moved its principal office.

f. Regulators Criticized McDougal's Banking Practices at Madison Bank & Trust, Including Making Whitewater Loans.

In October 1982, an examination of Madison Bank by the Federal Deposit Insurance Corporation ("FDIC") criticized various aspects of the McDougals' operation, including the \$30,000 loan to Whitewater Development. The FDIC said the loan arose from an improper conflict of interest. On October 17, 1982, Jim McDougal told the Madison Bank board: "another \$30,000 is owed by a corporation, owned by Bill Clinton, his wife, Susan, and myself. It will be moved within 30 days."³⁸ The questioned loan was paid off within thirty days by cashier's check, dated November 15, 1982, issued by Madison Guaranty and payable to "Bill Clinton" in the amount of \$27,600.³⁹

Jim McDougal said the \$27,600 was a loan to Governor Clinton to pay off the Whitewater loan at Madison Bank. Jim McDougal said he later discussed this \$27,600 loan, and its use, with Governor Clinton.

g. Governor Clinton's Knowledge of McDougal's Conduct.

There is some evidence that Governor Clinton knew or should have known that Jim McDougal was not conducting Madison Guaranty's affairs as required by banking rules and

³⁸ Madison Bank & Trust Minutes (Oct. 17, 1982) (Doc. No. 79-00005668).

³⁹ See Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for \$27,600 (Nov. 15, 1982) (Doc. Nos. MD-00000001 through 03). Coincidentally, this was just days after Clinton's election to a second term as

regulations. In April 1983, Governor Clinton appointed Marlin Jackson as the Arkansas Bank Commissioner. Jackson was told there were problems at the Madison Bank. In the fall of 1983, the FDIC and the Arkansas Bank Department jointly issued a cease and desist order to the Madison Bank. The bank was told to discontinue certain practices, including the inordinately high percentage of out of territory loans. One of the criticized loans was the loan to Mrs. Clinton for construction on Lot 13.

Jackson said shortly after the cease and desist order was issued he ran into Governor Clinton at the state Capitol and told the Governor about the order issued to McDougal's bank. Jackson said the Governor told him to do whatever was necessary to do a good job as bank commissioner and not to worry about the politics.⁴⁰

Jackson said he also told Governor Clinton to disassociate himself with the Madison Bank due to the FDIC order.⁴¹ Jackson testified that either in that conversation or one within the next ten or fifteen days Governor Clinton raised a question about either Hillary's or his and Hillary's loan at the bank. Jackson told the Governor that when it came due he had no choice but to move the loan to a different bank. He said to the Governor, "I just think it makes good sense for you [Clinton] to put some distance between yourself and a problem financial institution."⁴²

The Madison Bank loan to Mrs. Clinton for construction on Lot 13 was repaid by a \$20,800 unsecured loan, dated September 20, 1983, to Governor Clinton from Security Bank of Paragould, which had once been partly owned by then Arkansas Bank Commissioner Marlin Jackson. Jim McDougal said the thrift examiners considered the loan to Hillary Clinton to be an

Governor.

⁴⁰ M. Jackson 9/18/96 GJ at 38-41; M. Jackson 11/9/94 Int. at 3-4.

⁴¹ M. Jackson 11/7/94 Int. at 4.

⁴² M. Jackson 9/18/96 GJ at 40-41.

out of territory loan. McDougal said Marlin Jackson, the Bank Commissioner, called him and said, "Since they've criticized that as being out of territory, we'd better move that loan over to the Bank of Paragould."⁴³ McDougal said he received a call from Governor Clinton, who said, "Marlin Jackson said they criticized these loans and that I should move my loan over to his bank."⁴⁴

h. Whitewater in the 1980s.

The Whitewater venture was financially unsuccessful. Despite marketing efforts including media promotions, the market for vacation homes in the 1980s was weakened by rising interest rates, a change in the tax code, and a recession. Efforts to develop the properties to make them more attractive -- including the model home on Mrs. Clinton's Lot 13 -- failed to attract buyers. As a result, revenues from Whitewater lot sales could not cover the required loan payments, development costs, and other expenses.

McDougal used several methods to keep the Whitewater loans current. In addition to the loans made either to the corporation directly, or in the names of Hillary Rodham Clinton or Bill Clinton, McDougal caused the corporation's financial obligations to be paid with checks drawn on the Whitewater corporate bank account at Madison Guaranty. On a number of occasions, checks were written when there were not sufficient funds in the account to cover the amounts. McDougal caused Madison Guaranty to honor the checks, and generally, within 7-10 days, he would cause checks to be written on other accounts he controlled at Madison Guaranty to replenish the Whitewater account and pay the overdrafts.

Allegations about this activity were included in the initial RTC Criminal Referral C-0004. Early in his investigation in late November 1993, Justice Department prosecutor

⁴³ J. McDougal 4/2/97 GJ at 20-21.

Mackay observed that the activities described in the referral suggested a pattern of small check "kites" often for McDougal's benefit or for the benefit of those close to him. Though not of particular significance alone, in context Mackay believed it suggested the possibility of a pattern of irregular activity. As detailed in Part A of this Report, Mackay was correct.

i. The End of the Whitewater Partnership.

Sometime in 1986, Mrs. Clinton took over management of the then-quiescent Whitewater Development. In late 1986, Bill Henley delivered certain Whitewater records to the Governor's Mansion at the request of Susan McDougal. On September 5, 1989, Chris Wade wrote Mrs. Clinton and said Whitewater Development needed a president and a secretary to sign a deed to go into the escrow file.⁴⁵ Neither Governor nor Mrs. Clinton was then an officer or director.⁴⁶ On October 28 and on November 28, 1988, Mrs. Clinton wrote and asked Jim and Susan McDougal for power of attorney on Whitewater.⁴⁷ Mrs. Clinton received no response from either McDougal.⁴⁸ She continued to manage Whitewater Development, to the limited extent such management was required, until the corporation was dissolved in 1992.

After the 1992 election, the Clintons and transition team members initiated the Clintons' divestment from Whitewater. James Blair, a friend of the Clintons who had helped with the presidential campaign, negotiated the Clintons' sale of their remaining interest. When Blair could not attend the closing, Vince Foster took his place. On December 22, 1992, the Clintons formally severed all economic ties with the Whitewater corporation. McDougal did not have the

⁴⁴ Id. at 21-22.

⁴⁵ Letter from Chris V. Wade to Hillary Clinton (Sept. 5, 1989) (Doc. No. DKRT700148).

⁴⁶ H. Clinton 5/24/95 RTC Interrog. Resp. at 60-63, 69, 70.

⁴⁷ Id. at 61-62. See Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters, Final Report, S. Rep. No. 280, 104th Cong., 2d Sess. 307 (1996).

necessary \$1,000 funds to purchase the stock, so Blair provided the money by writing a check to the trust account of McDougal's attorney, Sam Heuer, who disbursed a check to the Clintons. McDougal did not know that Blair had provided the money, and consequently never repaid Blair, or anyone else.

B. An Introduction to the Activities of Madison Guaranty and its Subsidiaries During the Time McDougal Controlled the Institution.

1. Findings.

The Independent Counsel's investigation of the relationship between McDougal and Madison Guaranty included a general examination of how McDougal operated the institution.

It bears emphasis that McDougal's extensive criminal activity posed significant investigative problems for the successful resolution of the Independent Counsel's investigation. It was evident that McDougal's conduct lay at the core of the criminal activity at Madison Guaranty. It was equally clear, as a matter of investigative practice, that a comprehensive examination of the conduct of President and Mrs. Clinton could not occur without McDougal's full and complete cooperation. The Office's investigation started with a complete examination of the scope and nature of McDougal's conduct, so that the Office could assess that conduct; appropriately seek criminal sanctions commensurate with that conduct; and secure McDougal's cooperation in the Independent Counsel's investigation.⁴⁹

⁴⁸ H. Clinton 5/24/95 RTC Interrog. Resp. at 62.

⁴⁹ It was not until after the McDougals' conviction that the Independent Counsel was able to seek their cooperation in the ongoing investigation. Jim and Susan McDougal were in a position to shed light on the involvement or non-involvement of both the President and Mrs. Clinton in the conduct under investigation. Prior to Jim McDougal's cooperation, the Independent Counsel had invested extensive time in the examination of documents and other witnesses and sources to try to answer the core questions about the Clintons. Only the McDougals appeared to possess knowledge of some of the events. They were fifty-fifty partners with the Clintons from 1978 to 1992 in the Whitewater Development venture. They had owned in part and controlled two federally insured financial institutions -- Madison Bank & Trust, and

About the investigation of the management of Madison Guaranty, the Independent

Counsel reports the following findings:

- The FHLBB concluded that Madison Guaranty was insolvent and that Jim McDougal had directed funds to himself and other insiders.
- Madison Guaranty's outside counsel, Borod & Huggins, concluded in March 1987 that the McDougals used Madison Guaranty to benefit themselves and other insiders.
- McDougal used Madison Guaranty and Madison Financial in a manner contrary to federal law and banking regulations as a means of furthering various real estate transactions.
- In 1984, Madison Guaranty was made subject to a supervisory agreement limiting its activity. One ground for those limitations was that Madison Guaranty did not have a sufficiently large net worth.⁵⁰
- To increase its net worth and comply with the supervisory agreement, Madison Guaranty wanted permission to issue preferred stock.
- Initially, the Arkansas Securities Department denied Madison Guaranty permission to issue preferred stock. After Madison Guaranty retained Rose and Hillary Clinton, the Commissioner of the Department authorized the issuance of preferred stock if Madison Guaranty met certain conditions.

2. Evidentiary Summary.

The McDougals bought a controlling interest in Madison Guaranty in 1982. They were ordered removed from the institution's management in July 1986. During the four years that the McDougals controlled Madison Guaranty, the savings and loan suffered from substantial net worth problems, often operated in violation of various banking statutes and regulations, and was

Madison Guaranty Savings & Loan Association -- both of which made loans to or for the benefit of the Whitewater Development Company. Statements already provided to the Clinton campaign, the media, and to others, made clear that the McDougals disagreed with the Clintons on several issues. In early August 1996, Jim McDougal entered into a cooperation agreement with the Independent Counsel, alleging that some of the President's testimony during the McDougals' trial "was at odds with the truth."

⁵⁰ A chart detailing Madison Guaranty's net worth history is contained in Vol. I, Appendix 2.

used to benefit the McDougals, their family members, and their friends. McDougal quickly "grew" the institution, investing in high risk assets such as acquisitions, development, and construction loans. From January 1982 to December 1983, the institution assets grew from approximately \$3.9 million to \$16.9 million. By the end of December 1984, Madison Guaranty's assets were reported as \$48.6 million, and by the end of March 1985 they were at \$67.1 million.

Federal regulations governing the conduct of savings and loans in effect when the McDougals controlled Madison Guaranty required each thrift to maintain a three percent net worth, meaning that assets were required to exceed liabilities by three percent. Because deposits held by savings and loans are insured by the federal government, the failure of any financial institution would be borne by U.S. taxpayers. This regulation was intended to provide a margin of safety for deposits held by savings and loans.

Savings and loans, like all financial institutions, dealt in interest owed and interest owing. Deposits, although money in hand, were considered liabilities: with the promise of interest payments, deposits represented obligations to borrowers to pay more than was received from the depositor. Loans, while payments from the institution to its borrowers, were counted as assets: with the agreement of borrowers to pay interest, loans represented obligations by borrowers to pay more than received from the institution. Also counted as assets were investments in the institution by shareholders and profits that Madison Guaranty's subsidiary service corporation, Madison Financial, would generate by selling real estate for more than it had paid to purchase it.

In 1985, Madison Guaranty's net worth was below the three percent requirement by approximately \$3 million. Jim McDougal decided to try and issue a class of preferred stock for \$3 million to correct this net worth deficiency.

a. The McDougals Used Their Institutions for Land Deals.

Throughout his management of Madison Guaranty, McDougal's principal interest was real estate development, and he used both of his financial institutions to benefit his projects. The bank and the savings and loan loaned money to underwrite the up-front investments necessary for surveying, road-building, laying water lines, and making other improvements on the McDougals' real estate projects. Lots sold by Madison Financial were ordinarily sold on credit with the purchasers receiving loans from Madison Guaranty.

Madison Guaranty gave McDougal direct access to a large pool of investment funds. By law, a thrift could allocate or invest up to six percent of its assets to its subsidiary service corporation, which could buy and develop land for residential housing. Under McDougal's control, Madison Guaranty frequently exceeded the six percent limit for its investment in Madison Financial. McDougal also evaded the limit indirectly by permitting Madison Financial to run a continuing overdraft in its Madison Guaranty checking account, an overdraft that at times exceeded \$2 million. In effect, these overdrafts were interest-free loans from Madison Guaranty to Madison Financial.

After acquiring Madison Guaranty, McDougal began a number of real estate developments through Madison Financial. One project, known as Maple Creek Farms, was a residential development about ten miles south of Little Rock developed in late 1983. Susan McDougal earned her real estate license and formed Madison Real Estate. This entity then sold the Maple Creek Farms lots. Susan McDougal's brother, Bill Henley, and Pat Harris, an employee of Madison Financial, were salesmen who received substantial commissions for lot sales at Maple Creek.

In the fall of 1983, Madison Financial and Chris Wade (also the broker for Whitewater

Development) formed a limited partnership called Campobello Development Company. It bought 3,900 acres on Campobello Island in New Brunswick Province, Canada, financed entirely by Madison Guaranty. Wade was replaced as the Campobello project's manager by Little Rock attorney Larry Kuca.

b. Madison Guaranty's Regulatory Problems; 1984 Supervisory Agreement.

By 1984, many of McDougal's real estate ventures had proved unsuccessful. As a result, Madison Guaranty faced significant financial problems. In an examination begun on January 20, 1984, the FHLBB concluded Madison Guaranty had a negative net worth.

In a report to Madison Guaranty's directors dated June 1, 1984, the FHLBB warned "[t]he viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects."⁵¹ Failure to comply with the minimum net worth requirement was a very serious matter. Federal regulations provided the FHLBB could issue a supervisory directive upon such a failure. On July 19, 1984, Madison Guaranty's board consented to a supervisory agreement with the FHLBB, pledging to increase Madison Guaranty's net worth to the three percent regulatory net worth requirement, and to take other remedial steps. McDougal, who thought the examiners failed to comprehend his investment strategy, made little effort to comply with the agreement.

c. McDougal's Initial Efforts to Increase Madison Guaranty's Net Worth.

Because McDougal feared another adverse FHLBB examination, he understood that it was critical to boost Madison Guaranty's (apparent) net worth to fend off regulatory restrictions

⁵¹ FHLBB Office of Examinations and Supervision, Report of Special Limited Examination (as of Jan. 20, 1984) (Doc. Nos. 99000270 through 71); see also Pillsbury Madison Guaranty & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development

that would effectively remove the McDougals from control of Madison Guaranty and expose their abuses. The first means contemplated by McDougal to increase Madison Guaranty's net worth was to sell preferred stock. Madison Guaranty proposed to sell approximately \$3 million worth of such stock to various individuals.

Initially, Madison Guaranty discussed the issuance of stock with its regular counsel, John Selig of the Mitchell Williams law firm. After Madison Guaranty employee Davis Fitzhugh was told by Charles Handley of the Arkansas Securities Department that Madison Guaranty could not issue the stock, McDougal hired Hillary Clinton and Rose to handle the matter.

In April 1985, Mrs. Clinton and Rose began representing Madison Guaranty before the state regulators. Mrs. Clinton and Rose convinced Arkansas Securities Commissioner Beverly Bassett (appointed to that position months earlier by Governor Clinton) that Arkansas law permitted the class of stock to be issued. Mrs. Clinton prevailed. The state thrift regulators, however, required certain net worth requirements on Madison Guaranty before the stock could be issued and gave Madison Guaranty only until the end of 1985 to meet the requirements. Because of these restrictions, the stock offering could not be used to meet the net worth requirement and Jim McDougal eventually decided not to issue the stock. A new real estate opportunity came up and Madison Guaranty abandoned the stock plan entirely to try to improve its net worth through a project that came to be known as Castle Grande.

C. Castle Grande.

1. Findings.

The Independent Counsel examined the Castle Grande real estate transaction, its subsequent resale to insiders at inflated prices, and Mrs. Clinton's role relative to this property.

Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 8 (Apr. 24, 1995).

The Independent Counsel reports the following findings about the Castle Grande real estate transaction:

- The FHLBB concluded that Castle Grande land transactions involved fraudulent "land flips" that rendered Madison Guaranty insolvent.
- Borod & Huggins concluded that several individuals, including Seth Ward, may have engaged in criminal violations.
- Seth Ward and Jim McDougal engaged in a fraud designed to purchase property from the Industrial Development Corporation ("IDC") while evading regulatory limitations.
- Ward acted as a straw purchaser of a portion of the IDC property. Although title was in Ward's name and a loan was taken out in Ward's name, he had no other indicia of ownership: Ward was not personally liable for the loan's payment. His compensation for his role in the purchase was to be paid certain "commissions" on future subdivisions of lot sales -- whether he had a hand in the sales or not -- rather than being compensated for the capital gains on the land.
- Webb Hubbell did legal work for Ward on Ward's purchase and subsequent disposition of the Castle Grande property.
- Between the property's date of purchase (October 4, 1985) and the date it was sold (February 28, 1986), Mrs. Clinton billed Madison Guaranty for fourteen conferences with Seth Ward.
- Portions of the property were resold to insiders -- Jim Guy Tucker, Larry Kuca, and Davis Fitzhugh -- at inflated prices. The purchases were financed by loans from Madison Guaranty.
- Rose also performed legal work related to proposed uses of Castle Grande requiring approval from state agencies: 1) an examination of whether a brewery could be constructed at the property, involving the Arkansas Alcohol Beverage Commission; and 2) an examination of whether the utility on the property could sell services outside of Castle Grande, involving the Arkansas Public Service Commission, the Arkansas Pollution Control Commission, and the Arkansas Board of Health.
- Beginning in early March 1986, Madison Guaranty was subject to an extensive examination by federal thrift examiners from the Federal Home Loan Bank Board, which oversaw thrifts.
- To conceal the compensation Ward was paid for his role as strawman, Madison Guaranty created a fictitious record of two "cross loans."
- When federal examiners questioned the propriety and relationship of the two cross loans,

Madison Guaranty falsely told examiners the two cross loans were unrelated.

- To conceal the relationship between the two cross loans, Ward and Madison Financial used an option agreement. Mrs. Clinton was involved in drafting the option agreement for Madison Financial and Ward.
- The evidence is insufficient to prove beyond a reasonable doubt that Mrs. Clinton knew Madison Guaranty and Seth Ward intended to use the option agreement to deceive regulators when it was drafted.

2. Evidentiary Summary.

Instead of issuing the class of preferred stock, McDougal and others engaged in a series of fraudulent real estate transactions that created the appearance that Madison Guaranty had increased its net worth by approximately \$3 million. The transactions involved the purchase of property south of Little Rock, developed under the name Castle Grande, from IDC for \$1.75 million. The property came to McDougal's attention after Maple Creek appeared to be a successful project and McDougal wanted to purchase more property north of Maple Creek owned by International Paper.

McDougal eventually bought the IDC property, using Seth Ward as a nominee or "straw purchaser" for a portion of it. This deception enabled Madison Guaranty to avoid state regulations limiting the amount a savings and loan could loan to or invest in a service corporation subsidiary (the maximum amount was 6 percent of assets). As a straw purchaser, Ward was recorded as the owner but had no true ownership interest in his portion of Castle Grande. Ward was compensated with more than \$300,000, but Madison Guaranty financed 100 percent of Ward's purchase.

Within five months of Castle Grande's purchase, most of the property, buildings, and utilities were sold at inflated prices, based on inflated appraisals, to Madison Guaranty insiders and affiliates of the McDougals for approximately \$4.75 million. Most or all of the price of all

the purchases was financed by Madison Guaranty loans. These loans increased the assets reflected on the books of Madison Guaranty by approximately \$3 million, the amount necessary to meet the net worth requirements.

A number of these insider sales were completed shortly before a scheduled FHLBB examination of the bank. When the examination started, the FHLBB focused on transactions involving insiders, and particularly on Ward's purchase of IDC. Concurrently, Ward demanded payment of his money the parties had disguised in the paperwork as "commissions" for his role in the IDC purchase. To both make the payment to Ward and to conceal Ward's role in the IDC purchase, Ward, Madison Guaranty, and Madison Financial executed the \$400,000 "cross loans," paying Ward his commissions while making it look like a loan.

When the thrift examiners went a step further and examined the cross loans, Madison Guaranty falsely told the examiners that the cross loans were unrelated. To prove this, Ward produced a fraudulent option purchase agreement that Mrs. Clinton had assisted him in drafting.

a. The Purchase of the IDC Property.

i. Initial Work on IDC Purchase.

In April 1985, McDougal hired Harry Don Denton, a former Union National Bank official, to be Madison Guaranty's Chief Loan Officer. In mid-1985, one of Denton's close friends and former customers at Union National, Seth Ward, also came to work for McDougal. Ward, a prominent Little Rock businessman, was well known in the business community, and also had a real estate broker's license. Madison Financial employed Ward at an annual salary of \$25,000 plus commissions on land sales.

Soon after Ward began work at Madison Financial, McDougal told him that he was interested in purchasing certain property south of Little Rock from the International Paper

Company (the property would be known as Lorance Heights and a portion of the property was, for a time, owned by Whitewater Development), which was inaccessible. McDougal wanted Ward to help him acquire an access easement to the property before he actually bought it. Ward approached IDC -- the company that owned the adjacent property north of the property McDougal wanted -- and asked whether Madison Financial could acquire an easement. IDC declined to grant an easement, but said it would sell the entire 1,050 acre IDC parcel. The parcel was, for the most part, raw, undeveloped land zoned for industrial use. One unique feature of the land was that it had its own sewer and water utilities that would be included in the sale.

After some negotiations, in July 1985 IDC reduced its asking price to \$1.75 million -- essentially the balance due on IDC's mortgage. Ward told McDougal, who agreed Madison Financial would purchase the IDC property at that price. Madison Financial could not cover the entire \$1.75 million purchase price. Nor could it secure additional funds from Madison Guaranty -- a state regulation limited the funds that Madison Guaranty could provide to its service corporation to no more than six percent of its assets, and Madison Guaranty was already close to the six percent ceiling.

To evade the six percent limitation, McDougal and Ward agreed Ward would take title to all of the IDC property north of 145th Street and the sewer and water utility. Although the six percent limitation restricted the amount Madison Guaranty could lend its affiliate Madison Financial, there was no limit on the amount Madison Guaranty could lend a private party such as Ward.

A modification in the original agreement to purchase the IDC property, enabled Madison Financial to assign its rights to over half the property covered by the purchase agreement to Ward. Madison Financial did this on September 13, 1985, assigning to Ward all land north of

145th Street as well as the sewer and water utilities. Ward and his accountant, Michael Schaufele, met with McDougal in late August 1985 to discuss the terms. They eventually agreed Madison Guaranty would loan Ward the entire purchase price on a nonrecourse basis; \$400,000 of Ward's purchase was allocated to the purchase of the utilities. Madison Guaranty could not look to Ward personally to pay the loan, the loan was secured only by the property it was used to purchase. Ward would have no personal liability for a deficiency if proceeds from selling the land fell short of the loan.

Ward agreed to grant Madison Financial an option for at least 270 days to purchase the IDC property from him for the amount of the nonrecourse loan plus all accrued interest. In this way, Madison Financial could purchase portions of Ward's property as it needed to sell them to third parties. Madison Financial agreed to reimburse Seth Ward for any additional taxes he may have to pay by virtue of his holding the property. Madison Financial handled all administrative duties associated with the property such as collecting rents. In return for "warehousing" the property for Madison Financial, Ward was to receive commissions on the subsequent sales of the property to third parties -- even if he had nothing to do with arranging the sales.⁵² The parties executed a letter memorializing this agreement on September 24, 1985.⁵³

ii. The Closing on the IDC Property.

The sale of the IDC property, "probably the largest purchase that Madison Guaranty ever

⁵² Denton 8/20/96 GJ at 33-34; Hubbell 8/22/96 GJ at 82. It is these terms -- under which Ward received significant compensation, but assumed no risk or responsibility -- that have led to Ward being characterized as a "straw" or "nominee" purchaser.

⁵³ Letter from Seth Ward, Madison Guaranty employee, to Jim McDougal, president Madison Guaranty (Sept. 24, 1985) (Doc. Nos. 396-00000698 through 99). Ward and McDougal later executed a second, backdated agreement dated September 24, 1985, which had some materially different terms.

made,"⁵⁴ closed October 4, 1985. Ward paid a total of \$1.15 million for the portion of the property assigned to his name, all of which came from Madison Guaranty on a nonrecourse basis.

b. Sales of Castle Grande Parcels to McDougal Associates.

Following the October 4, 1985 purchase of the IDC property, McDougal sold portions of the property, and began developing plans for the sale of the remaining property. He made a series of quick sales of parcels to Madison Guaranty insiders including the property north of 145th Street, as well as the utility company. Within Madison Guaranty, the property was referred to by some as the "145th Street" property, and by others as "Castle Grande."

In October and November 1985, Madison Financial sold several parcels of property to employees or other Madison Guaranty-related parties. The effect of these insider sales was to inflate falsely the profits of Madison Financial, and thereby help solve Madison Guaranty's net worth problems. Madison Guaranty usually fully financed the sales of the Castle Grande property. Sometimes down payments came from the proceeds of loans or commissions paid by Madison Financial. Because arbitrarily low cost allocations were used in calculating the cost of sales, these transactions generated \$1,451,000 of inflated profits that were reported by Madison Financial on its books.

William K. Black, a former FHLBB official, said the acquisition and subsequent resale at inflated values of real estate was a common deception among savings and loans around the country. These purchases, through "straw" borrowers, were:

[a] means to inflate their net worth once the regulators began to identify them as troubled institutions. The most common means was nominee (also called "straw") loans. A confederate would agree to purchase property . . . at an excessive price. This would allow the S&L to book a substantial profit (which would increase net

⁵⁴ Denton 8/20/96 GJ at 35.

worth). The S&L insider would frequently benefit personally from such sham sales by having a hidden interest in the loan or receiving various commissions from the transactions. The straws were willing to pay an excessive purchase price because they did not, in economic substance, really pay. The S&L or borrower would find an appraiser who would provide a grossly excessive "market" value for the real estate that would serve as collateral for the loan. The S&L would provide the financing to the straw to make the purchase (providing an additional "profit" to the S&L) and the straw would have no personal recourse on the note The result is that the straw would have nothing to lose from agreeing to pay an excessive purchase price. These straw transactions, and the resultant accounting entries and reports to the Bank Board were all fraudulent. . . . Castle Grande involved straw transactions.⁵⁵

i. Davis Fitzhugh.

On October 25, 1985, Madison Financial employee Davis Fitzhugh bought the Levi Strauss warehouse building on 145th Street. Madison Financial's accounts said the purchase price for this building was \$525,000. Fitzhugh was a salesman for Madison Financial and, in that role, earned a ten percent commission on his sales. He was credited as the salesman on this sale -- to himself -- and paid \$50,000 in commissions. To make his "down payment" Fitzhugh signed over his commission check. Madison Guaranty loaned Fitzhugh the remainder of the purchase price on a nonrecourse basis. On Madison Financial's books, the sale to Mr. Fitzhugh resulted in a \$439,000 profit. The loan file contained an appraisal for this property valuing it at \$1,004,010; Fitzhugh, in an interview in 1986, described this appraisal as "a joke."⁵⁶

ii. Jim Guy Tucker.

Also on October 25, 1985, Jim Guy Tucker bought a thirty-four acre parcel of undeveloped land west of Highway 65 from Madison Financial for \$125,000. Only 18.8 acres of this land was usable because the remainder lay in a flood plain. Susan McDougal signed the purchase agreement for Madison Financial, and she was paid \$12,500 in commissions for this

⁵⁵ William K. Black, Report to the Independent Counsel on Crimes Arising From the Castle Grande Transactions at 2 (Sept. 4, 1998) [hereinafter "Black Report"].

sale.⁵⁷ Tucker said he never dealt with Susan McDougal on this transaction.

On October 25, Madison Guaranty loaned Tucker \$260,000 to purchase this property. The loan was disbursed in two checks that were issued: one to Tucker in the amount of \$135,000 and the other to Madison Financial in the amount of \$125,000. Madison Guaranty documents claimed the \$135,000 loan was to be used for property improvements. Tucker actually used the loan's proceeds to repay a loan for Irene Garner, on which he was guarantor. Madison Financial recognized a paper profit on this sale of \$93,620.

iii. Larry Kuca.

On November 20, 1985, Larry Kuca (who worked for McDougal at the Campobello development) bought an undeveloped parcel from Madison Financial for \$120,000. Madison Guaranty loaned Kuca \$108,000, via a check to Madison Financial. Kuca provided a \$12,000 down payment from a \$15,000 bonus received from Campobello Properties Ventures. Madison Financial recognized a paper profit of \$99,000 on the sale.

iv. Senator Fulbright.

On January 22, 1986, Senator Fulbright bought a large parcel of the Castle Grande property north of 145th Street for \$777,600, using a \$700,000 loan from Madison Guaranty. Susan McDougal was paid commissions for this sale of \$77,760. Madison Financial booked a profit of \$16,840 on this sale. This loan was eventually paid in full.

v. Castle Sewer & Water.

Federal regulations prohibited a savings and loan or its subsidiary service corporation from owning a utility. To evade this regulation, the ISC sewer and water utility on the IDC property was bought by Seth Ward as a "straw man." Tucker formed a corporation, called Castle

⁵⁶ Borod & Huggins Report, supra note 18, at 31.

Sewer & Water ("CSW"), which bought the utility from Madison Financial. Madison Guaranty financed the bulk of the purchase.

On February 28, 1986, the last business day before an FHLBB exam began, Madison Guaranty loaned CSW \$1.05 million of the \$1.2 million purchase price to buy the sewer and water utility from Madison Financial. The remainder was provided by David Hale through Capital Management Services, Inc. Shortly before this loan, Seth Ward "transferred" his ownership in the sewer and water system to Madison Financial. On February 28, 1986, the ASD approved the transfer of ISC's stock from Seth Ward to Castle Sewer & Water.

Susan McDougal was paid a commission of \$85,000 for the utility's sale, although she had nothing to do with the transaction, and McDougal was paid a substantial bonus because of the sale. Susan McDougal later claimed she was actually owed a ten-percent commission, and thus the \$85,000 was merely a down payment. She said the remaining \$35,000 was "held back" at the request of John Latham to conserve cash.⁵⁸ Ward also later claimed a ten percent commission of \$120,000 for this sale.

c. The Cross-Loans, the Option, and the Regulators.

In early March 1986, federal examiners from the Federal Home Loan Bank Board ("FHLBB") began examining Madison Guaranty. They immediately focused on sales to insiders. They requested Madison Guaranty to produce copies of all compensation agreements it had with insiders. One of the first aspects of Castle Grande that the examiners looked at was the \$1.15 million loan Madison Guaranty provided to Seth Ward for his portion of the purchase price from IDC.

Shortly after the federal examiners arrived at Madison Guaranty, Ward asked to be paid

⁵⁷ Id. at 32.

his sales commissions for his participation in the Castle Grande acquisition, threatening to sue if he did not receive the promised compensation. Under Ward's agreement with McDougal, Madison Financial owed Ward commissions for the sales of Ward's Castle Grande property, amounting to approximately \$300,000. Madison Financial did not have the funds to pay Ward. Madison Guaranty had the available funds, but Madison Financial was the entity that owed Ward the "commissions." With the FHLBB examiners at the institution, Madison Guaranty could not lend the money to Madison Financial -- the loan would violate the six percent limitation on investments by Madison Guaranty in its service corporation.

Ward's threat of suit hit Madison Guaranty officials at the same time they were trying to fend off examiners. Madison Guaranty decided to advance Ward his "commissions" by having Madison Guaranty "loan" him money until Madison Financial could pay him. On March 31, 1986 (the same day an FHLBB examiner asked to see the Seth Ward loan file), Madison Guaranty officials created two loan notes that related to Seth Ward and Madison Financial. The intent was to get cash into Ward's hands and document Madison Financial's obligation to Ward, while concealing Ward's nominee role from the federal examiners.

The first note, dated March 31, 1986, documented a \$400,000 loan from Madison Guaranty to Ward. Madison Guaranty funded the loan by issuing on March 31 and April 1, 1986, two checks in the amounts of \$300,000 and \$100,000 respectively, both made payable to Seth Ward. The bulk of the \$400,000 loan -- \$300,000 -- was to be Ward's Castle Grande commission. The note was secured by Holman Acres (part of Ward's Castle Grande property), even though under Ward's agreement with McDougal, Madison Guaranty already had an option to purchase Seth Ward's remaining Castle Grande property -- by then only Holman Acres -- for

⁵⁸ Id. at 38.

the remaining balance of the loan, which was then \$70,000.

The second note, also dated March 31, 1986, purported to document a \$400,000 loan from Seth Ward to Madison Financial. This loan was never funded by Ward actually providing that amount to Madison Financial, because the purpose was merely to document Madison Financial's obligation to pay Ward commissions. The loan was never listed as a liability or as accrued commissions on Madison Financial's books. If the loan had been recorded on Madison Financial's books, it would have been of interest to the examiners. The note's purpose was to reassure Ward by documenting Madison Financial's obligation to pay him his Castle Grande "commissions." Because the obligation of Madison Financial to Ward was intended to offset exactly the loan Ward received from Madison Guaranty, these two loans were commonly referred to as "cross loans."

On April 7, 1986, the March 31, 1986 cross loans were replaced with new notes. The \$400,000 loan note from Ward to Madison Financial was replaced with two separate notes: one for \$300,000 and one for \$70,943.47. The \$300,000 corresponded to the amount of Ward's commissions and the \$70,943.47 corresponded to the amount that remained outstanding from Ward's initial purchase of IDC properties plus interest accrued up to April 7, 1986.

Sometime in April 1986, FHLBB examiners discovered a copy of the September 24, 1985 agreement between Ward and McDougal. This agreement had not been produced to the examiners even though it was responsive to their earlier request for all compensation agreements with insiders. The examiners knew about the cross loans to Ward and wanted to determine whether the loans were related to commission payments to Ward. If the \$400,000 Ward loan from Madison Guaranty related to commission payments Madison Financial owed to Ward, it would violate the six percent direct investment limitation. In addition, the peculiar

documentation for this payment of commissions would violate federal regulations that required that Madison Guaranty's records reflect the true nature of its transactions.

FHLBB examiners asked Denton, Madison Guaranty's principal loan officer, about the cross loans. Denton told the FHLBB examiners that the transactions were unrelated; he claimed the \$400,000 unfunded promissory note was meant to take the place of an option agreement allowing Madison Financial to purchase from Ward certain real estate for \$400,000. Denton told FHLBB examiners that because Ward's attorney was out of town, the option agreement had not yet been completed.

Hillary Clinton assisted Ward in preparing the option agreement that Ward and Denton used to deceive the FHLBB examiners. Mrs. Clinton billed Madison Guaranty for "draft[ing] option agreement" as well as for consulting with Ward and Ward's accountant. The newly drafted option agreement was presented to the FHLBB examiners who later testified the option agreement deceived them as to the true nature of Ward's payments. Although they remained suspicious, they discontinued their investigation.

The promissory note documenting the loan from Madison Guaranty to Ward was eventually destroyed, but Ward kept the promissory note purporting to represent a \$400,000 obligation from Madison Financial. After the McDougals were removed from control of Madison Guaranty, and the new management tried to collect other loans from Ward, Ward used the unfunded promissory note as the basis for a suit against Madison Guaranty and Madison Financial.

William Black summarized:

Subsequent to Ward's purchase, a series of straw "sales" of Castle Grande parcels at grossly excessive prices (financed by Madison Guaranty/Financial) occurred. (Bank Board Report of Examination as of 3/4/86 at 2.5) Each of these straw sales was undertaken for the purpose of fraud, to inflate the reported net worth of

Madison Guaranty. Collectively, the straw sales resulted [in] well over a million dollars of inflated "profits," which Madison Guaranty falsely recorded in its books and records, falsely reported to the Bank Board in its periodic quarterly filings, and falsely represented to the Bank Board examiners during the 1986 examination. (The fraudulent Castle Grande "sales" represented the great bulk of Madison Guaranty's purported "profits" during 1985-86 and its entire reported net worth. Bank Board Report of Examination as of 3/4/86 at 2.7-2.8). Each of these straw sales involved violations by the straws, the Madison Guaranty/Financial officials involved in the transactions and reporting (including Ward), and any other individuals (i.e., the appraisers and attorneys involved in the straw sales and the accountants who booked the transactions) who had sufficient knowledge of the transactions to meet the requirements for aiding and abetting the underlying felonies.⁵⁹

d. The FHLBB Examination's Aftermath.

Because of Castle Grande and other transactions, federal examiners determined Madison Guaranty had substantially violated the supervisory agreement and Madison Guaranty insiders had apparently committed numerous improper and potentially criminal acts. By June 1986, it was obvious that McDougal and John Latham, the CEO of Madison Guaranty, had to be removed. On June 19, the FHLBB sent a letter to the Madison Guaranty board of directors. This letter demanded that Madison Guaranty cease and desist from having any transactions with certain named entities, including Castle Sewer & Water, and imposed other interim conditions. This demand led to a meeting of the Madison board of directors with the regulators in Dallas on July 11, 1986.

Prior to the meeting, Beverly Bassett, the Arkansas Savings and Loan Supervisor, sent a memo to Sam Bratton in the Governor's office attaching a copy of the FHLBB letter. Bassett's note said:

Madison Guaranty is in pretty serious trouble. Because of Bill's relationship w/McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986 and the FHLBB has asked me to be at the meeting.

⁵⁹ Black Report, supra note 55, at 4.

Please note that while all of the FHLBB restrictions in the letter are serious, #5 & 6 effectively put Madison Guaranty out of business. "Thank you for your support." ⁶⁰

Betsey Wright, the Governor's Chief of Staff, said this issue was discussed with Governor Clinton. ⁶¹

A few days before the meeting with the regulators, the McDougals and Latham met with attorneys from the Mitchell Williams law firm, representing Madison Guaranty in the FHLBB examination. Among other things discussed at this meeting were the excessive commissions paid to Susan McDougal and her brothers. Jim Guy Tucker, who not only was a Madison Guaranty and CMS borrower, but also a member of the Mitchell Williams firm, noted: "[S]ome practices of the service corporation are simply indefensible, especially affiliate transactions. The affiliate transactions will color the regulator's views of the entire situation. It looks like pillage by the family. Ownership and operation by the Association is at risk." ⁶² At the July 11, 1986 meeting, the FHLBB directed the Madison Guaranty board to immediately remove McDougal and Latham.

The next working day, Monday, July 14, 1986, Betsey Wright wrote the Governor a memo expressing concern about the Governor's relationship with McDougal:

"White Water stock
(McDougal's company)

Do you still have? (Pursuant
to Jim's current problems

⁶⁰ Memo from Beverly Bassett, Arkansas Securities Department Commissioner, to Sam Bratton, Liaison, Governor's Office (July 2, 1986) (Doc. No. DEK218777).

⁶¹ Wright 2/29/96 GJ at 39-40.

⁶² Notes of Conference attended by John Latham, Jim McDougal, Susan McDougal, James B. Speed, Jim Guy Tucker, and John Selig (July 9, 1986) (Doc. Nos. 155-00033554 through 62).

If so, I'm worried about it⁶³

Governor Clinton wrote on the bottom of Wright's memo:

NO -- Don't
have any
more B

On August 15, 1986, the federal examiner's audit culminated in a cease and desist order.

D. The Legal Representation of Madison Guaranty by Hillary Clinton and Rose.

1. Findings.

The Independent Counsel closely examined the nature of Mrs. Clinton's legal work for Madison Guaranty. About Rose's representation of Madison Guaranty the Independent Counsel reports the following findings:

- Madison Guaranty's principal law firm was Mitchell, Williams, Selig, Jackson & Tucker.
- Rose first did work for McDougal when it represented the Bank of Kingston/Madison Bank in the early 1980s. Rose's final bill for services rendered remained unpaid for two years.
- In October 1984, Madison Bank & Trust paid Rose's outstanding bill.
- From 1985 to 1986, Rose performed legal services for Madison Guaranty on regulatory matters before Arkansas state agencies. These included: 1) seeking authorization to issue preferred stock; and 2) seeking to open a limited partnership/broker-dealer.
- Madison Guaranty wanted to issue preferred stock to increase its net worth and satisfy regulators about the institution's financial status.
- Mrs. Clinton was the Rose billing partner on Madison Guaranty matters. She performed work on the matters involving state agencies, and her name appeared in some of the correspondence between Rose and the agencies.

2. Evidentiary Summary.

Mrs. Clinton was hired by Jim McDougal in April 1985. She and Rose represented

⁶³ Memo from Betsy Wright to Governor Clinton (July 14, 1986) (Doc. No. 1221-

Madison Guaranty from April 1985 to July 1986 -- the final fifteen months of the McDougals' management. For all but two of the fifteen months -- through July 1, 1986 -- Madison Guaranty sent Rose a monthly \$2,000 retainer check. Mrs. Clinton was the "responsible partner" and the "billing partner." As billing attorney, almost all of Madison Guaranty's retainer checks were addressed to Mrs. Clinton. Much of the legal work Mrs. Clinton did for Madison Guaranty related to matters involving State of Arkansas departments and commissions.

On July 14, 1986, the first business day after the regulators removed Jim McDougal from Madison Guaranty, Mrs. Clinton wrote to McDougal and Latham at Madison Guaranty returning the latest retainer check and fees already advanced but not earned. During the fifteen month period that Rose was on retainer, a number of crimes were committed at Madison Guaranty by McDougal, Ward, and others.

a. The Origin of the Representation of Madison Guaranty by Mrs. Clinton.

The central question this investigation -- and the investigations undertaken by the DOJ Fraud Section and regulatory Independent Counsel Fiske -- had to resolve was whether any violations of the law occurred during the relationship of the President and the First Lady with Madison Guaranty. At some point, Mrs. Clinton and Rose began representing Madison. The question of how that representation came about was an essential component of determining the legality of Mrs. Clinton's conduct. If the representation had, for example, arisen from a favor that McDougal did for the Clintons, that might cast subsequent actions taken by Governor or Mrs. Clinton to help McDougal in a different light.

The OIC's initial investigation of the representation was made much more difficult

00000901).

because virtually all of Rose records about the representation were "missing."⁶⁴ Only after the production of the Rose/Madison Guaranty billing records by private counsel for the Clintons on January 5, 1996, an extensive hand search of old Bank of Kingston/Madison Bank & Trust records, and the discovery of key documents in Vince Foster's attic in July 1997, was the Independent Counsel able to make a number of determinations.

i. The Dispute as to the Origin of the Representation.

There are conflicting accounts about how Rose came to represent Madison Guaranty in 1985. The explanations of the two principals are in marked conflict:

- Mrs. Clinton said she was the billing partner for the Madison Guaranty matters somewhat by happenstance. She said the business was brought in by a young associate at Rose, Rick Massey, who knew Madison Guaranty's CEO, John Latham. She said Massey asked her to talk to McDougal to arrange the representation and obtain a retainer. Mrs. Clinton said some Rose partners told Massey that he could not do any additional work for McDougal until a bill McDougal owed for previous work was paid.⁶⁵
- In contrast, McDougal said he gave legal business to Rose as a favor to the Clintons. He testified that Governor Clinton came jogging by Madison Guaranty one day in August or September 1984 (shortly after Madison Guaranty had entered a supervisory agreement with the FHLBB), and during a conversation with the Governor, McDougal agreed that he would give some of Madison Guaranty's legal work to Mrs. Clinton. McDougal also said he was interested in having Mrs. Clinton represent Madison Guaranty in its dealings with the state regulatory agencies because he believed that, as the Governor's wife, she would have influence with the state regulators.⁶⁶

Jim McDougal was interviewed at his attorney's office on March 11, 1992, by Clinton campaign staffer Loretta Lynch and Clinton adviser Jim Blair. Blair's contemporaneous notes of

⁶⁴ As discussed more fully in this Report, Mrs. Clinton had ordered a portion of the records destroyed in the late 1980s. In 1992, still more records about Rose's representation of Madison Guaranty were removed from Rose by Webb Hubbell and Vince Foster Jr. and perhaps others. A portion of those records was found, in July 1997, in Vince Foster's attic. Another portion was found in the White House residence in January 1996.

⁶⁵ Mrs. Clinton's typewritten statement (prepared in 1992) (Doc. No. DEK1180-00000012).

⁶⁶ J. McDougal GJ 4/2/97 at 97-99.

that meeting reflect that McDougal gave the following account of how the Madison Guaranty legal business was given to Mrs. Clinton:

He said he remembered explicitly that in 1984 he had a new leather contour chair. Bill C[linton] came jogging by and came in and laid down in the chair and his sweaty body left a permanent stain. He claimed that Bill said they needed money that McD[ougal] needed to give Hillary some legal work -- he said he thought one lawyer could screw up deals as good as another but admitted he was thinking of deeds -- contracts, etc. He said it wasn't two hours later that Hillary came by to set up [a] retainer. He said he and Susan McD[ougal] joked about giving Hillary legal business.⁶⁷

On March 18, 1992 Clinton campaign attorney Loretta Lynch, who went with Blair to Jim McDougal's interview, wrote in a memo to Bill Clinton, Hillary Clinton, Bruce Lindsey, and Jim Lyons:

Both Jim McD (in Sam Heuer's office to Jim Blair and myself) and Susan McD (in the Post)^{68]} have recounted that BC came into Jim's office in the summer of 1984; told him the Cs needed \$ and asked him to hire HRC. The same day HRC allegedly came by r: a retainer. HRC was then hired in the summer of 1984. Supposedly there were other witnesses. Note that we have heard generally that "people" are talking about this story to a variety of press.⁶⁹

When President Clinton was first questioned about Jim McDougal's account on April 22, 1995, he was asked about the pertinent parts of the Blair memo of the interview of McDougal. When asked if events had happened as McDougal related it, the President replied he did not remember it. When asked what motive McDougal would have for making up a story such as this or if he thought McDougal was lying, President Clinton replied: "[I] am not accusing him [McDougal] of not telling the truth. I do not -- I simply do not remember the conversation he

⁶⁷ Blair handwritten notes at 3-4 (Mar. 11, 1992) (Doc. Nos. DEK004883 through 87).

⁶⁸ In March 1992 Susan McDougal was quoted in the Washington Post about the hiring of Hillary Clinton. Her public statements corroborated Jim McDougal's account. Because of Susan McDougal's contemptuous refusal to testify before a federal grand jury, she has never repeated these corroborating statements under oath.

⁶⁹ Memo from Loretta Lynch to B[ill] C[linton], H[illary] R[odham] C[linton], Lindsey and Lyons (Mar. 18, 1992) (Doc. No. DEK200967).

says occurred."⁷⁰ The President later testified during the trial of the McDougals and Governor Tucker that he did not remember the meeting with McDougal at Madison Guaranty when it was agreed McDougal would direct some of Madison's legal business to Mrs. Clinton.⁷¹

During the 1992 presidential campaign, the media asked about Mrs. Clinton's work for Madison Guaranty, and how that representation came about. During the campaign, and later under oath, the First Lady claimed the representation of Madison Guaranty by Rose came about because of an associate named Rick Massey. She stated consistently that she was asked to become involved as "the billing partner" because of her relationship with McDougal, and because McDougal's other institution had never paid the past due bill from Rose, outstanding for prior Rose work for the Madison Bank & Trust. She has testified that "in April 1985" she talked with McDougal because the previous bill was still due and owing.⁷²

ii. Rose Representation of the Bank of Kingston/Madison Bank & Trust and the Unpaid Bill for Services.

On August 21, 1980, McDougal signed an agreement to purchase the Bank of Kingston for himself and others. The agreement had a non-compete clause that, for ten years, prohibited McDougal from moving the bank's main office, or opening a branch in Huntsville, Arkansas or within ten miles of Huntsville.

In April 1981, the Madison Bank board voted to amend its charter and petition the Arkansas Bank Department to permit it to move its headquarters to Huntsville in Madison County.⁷³ This violated the purchase agreement's non-compete clause. Two First National

⁷⁰ W. Clinton 4/22/95 Depo. at 82-83.

⁷¹ W. Clinton 4/28/96 Depo. at 118-22, United States v. McDougal, et al., No- LR-CR-95-173 (E.D. Ark.).

⁷² H. Clinton 4/22/95 Depo. at 8-9, 21.

⁷³ Madison Bank and Trust v. First Nat'l Bank of Huntsville, 276 Ark. 405, 410, 625

shareholders sued Madison Bank. McDougal asked Rose to handle the litigation. Foster, who was then a Rose partner, represented the bank in the lawsuit. The Chancery Court ruled against Madison Bank. Rose billed Madison Bank approximately \$14,000 in December 1981 for the work they had performed for the bank. Rose records showed "Hillary Rodham" was allocated \$21.20 in fees for work for the bank.

McDougal spoke with Rose about a possible appeal and was told that it would cost approximately \$5,000 plus expenses.⁷⁴ Madison Bank appealed its loss to the Arkansas Supreme Court. On June 28, 1982, the Arkansas Supreme Court issued an opinion affirming the Chancery Court's ruling.

On July 30, 1982, the firm sent Madison Bank a bill for the appeal of \$5,893.63 -- the \$5,000 agreed upon fee, plus \$893.63 in expenses. McDougal was dissatisfied with the outcome and refused to pay. He wrote on the envelope "don't pay."

About fourteen months later, on October 10, 1983, Joe Girior, a senior member of Rose, wrote McDougal about the unpaid legal bill from Rose to Madison Bank & Trust. His letter said:

Pursuant to your discussion with Hillary Rodham Clinton, I am enclosing herewith a copy of our firm statement, dated December 23, 1981, covering services rendered in connection with the matter of the First National Bank of Huntsville v. Madison Bank and Trust.⁷⁵

Again, the bill was not paid.

On September 25, 1984 the board of directors of Madison Bank met. The minutes of that

S.W.2d 268, 271 (1982).

⁷⁴ J. McDougal 4/2/97 GJ at 77; Letter from Vince Foster to James McDougal (Nov. 16, 1981).

⁷⁵ Letter from Joe Girior to J. McDougal (Oct. 10, 1983) (Doc. No.174-00033092). He actually enclosed the outstanding bill dated July 30, 1982.

meeting reflect: "We owe \$5,000 for Huntsville move appeal, according to firm. Board discussed the fact that new lawyer sent to argue case. Vaughn moved, McDougal seconded that Bunch [Gary Bunch, bank president] negotiate settlement with Rose. Approved unanimously."⁷⁶

On October 9, 1984, Foster wrote to Bunch, as a follow up to a telephone conversation with Bunch the week before. Foster first said the \$5,000 fee limit for the appeal was arranged between McDougal and Giroir, and was to the bank's benefit because the actual fees for the time spent on the matter would have been higher. Foster then responded to some prior criticism of the work done and leveled a threat to file suit:

You mentioned something about a "girl" lawyer doing the work on appeal. I was assisted on the appeal briefs and abstracting of the record by Carol Arnold, then a 40-year-old trial lawyer, who had already done some of the basic legal research for trial. According to our records, approximately 75% of the attorney time on the appeal was spent by me.

We are totally baffled by the continued delay in the payment of this statement, but are willing to allow you an extension until October 22 in which to satisfy this statement. Otherwise, I am directed by the Firm to file suit.⁷⁷

Madison Bank & Trust paid Rose by check in the amount of \$5,000 on October 22, 1984. Bunch said this ended the matter. The minutes of the November 27, 1984 meeting of Madison Bank & Trust's board of directors indicate recognition of a reduction in earnings attributed in part to "a payment of legal fees from 1983 [sic] lawsuit."⁷⁸

When the Clintons' attorney produced Rose billing records on January 5, 1996, all but one page of the documents produced related to Rose's work for Madison Guaranty between 1985 and 1987. This one page was a copy of the first bill from Rose to Madison Bank & Trust in December 1981 in the amount of \$13,997.70. On this copy of the bill was the notation "paid

⁷⁶ GJ Exh. 1634; Bunch 1/20/98 GJ at 14-16.

⁷⁷ GJ Exh. 1587; Bunch 1/20/98 GJ at 24-26.

⁷⁸ GJ Exh. 1635; Bunch 1/20/98 GJ at 17.

12/31/81."⁷⁹ A handwritten note on this copy from Vince Foster said, "HRC, I think there was a subsequent bill."⁸⁰ Neither Rose, nor Mrs. Clinton produced a copy of the second bill indicating if and when it was paid.

In late July 1997, Foster's widow produced the contents of a briefcase found in the attic of their Little Rock residence. The only other set of Rose billing records ever found or produced in this investigation was located in the briefcase. The set of billing records produced from the briefcase in Mr. Foster's attic was identical to that earlier produced by Mrs. Clinton with the sole exception of one additional document -- a copy of the second bill, dated July 30, 1982, marked "paid 10/23/84." Foster's briefcase also contained a "Chronology" drafted on Foster's Rose computer. The chronology included, among other entries, the following:

1983 Bank of Kingston final bill written off

10/23/84 \$5,000 paid on Bank of Kingston bill.⁸¹

b. Mrs. Clinton and Rose Lawyers Represented Madison Guaranty before the Arkansas Securities Department in the Issuing of Preferred Stock.

Once retained by McDougal, Rose represented Madison Guaranty in its then on-going efforts to issue preferred stock. McDougal hoped that by issuing the preferred stock, the increase in capital would raise Madison Guaranty's net worth to satisfy federal examiners.

Mrs. Clinton supervised preparation of a Rose opinion letter that concluded state law did permit state-chartered savings and loans to issue preferred stock. On April 29, 1985, before the letter was sent, Mrs. Clinton billed Madison Guaranty one hour for two telephone conferences:

⁷⁹ Rose Law Firm Billing Record (Dec. 21, 1981) (Doc. No. DEK014941).

⁸⁰ Id.

⁸¹ Timeline Re: Madison Guaranty Representation (undated) (Doc. Nos. 1180-00000236 through 40).

one with Rose attorney Richard Massey, an associate who worked on Madison Guaranty matters with Mrs. Clinton, and one with "B. Bassett, Securities Commissioner." "B. Bassett" was Beverly Bassett, whom Governor Clinton had appointed as head of the Arkansas Securities Department ("ASD") less than four months earlier. Mrs. Clinton has testified she called the ASD to find out (for associate Rick Massey) who handled savings and loan matters, and that she cannot remember to whom she spoke or any details of the conversation.⁸²

The Rose opinion letter was sent the following day, April 30. It was addressed to Mr. Handley and copied to Bassett. The letter was apparently prepared by Massey, whose initials appear at the bottom of it, although it is "signed" "Rose Law Firm." The letter closed by directing Mr. Handley to contact either Mrs. Clinton or Mr. Massey if he needed further information.

On May 14, 1985, Bassett responded by writing a letter addressed "Dear Hillary," and referred to "your" April 30 letter.⁸³ Bassett concurred with Rose's conclusion that issuing the preferred stock was "not inconsistent with Arkansas law." Mrs. Clinton then transmitted a copy of this letter to Jim McDougal at Madison Guaranty.

c. Rose Lawyers Represented Madison Guaranty in the Purchase of the IDC Property.

Mrs. Clinton also handled matters related to another effort to boost Madison Guaranty's net worth: the Madison Guaranty development along 145th Street south of Little Rock bought from IDC. Rose's representation of Madison Guaranty in the IDC transaction began in early August 1985; initially the responsible partner was Webb Hubbell, not Mrs. Clinton.

The 1,050 acres were bought by Madison Financial and Seth Ward from the Industrial

⁸² H. Clinton 4/22/95 Depo. at 24-25.

⁸³ Letter from Beverly Bassett to Hillary Rodham Clinton (May 14, 1985) (Doc. No.

Development Corporation ("IDC") on October 4, 1985. Ward, who acted as nominee purchaser for McDougal, was the father-in-law of Hubbell, one of Mrs. Clinton's partners at Rose. As discussed above and more fully in this Final Report, aspects of the initial purchase of the property and many of the subsequent sales and transactions were fraudulent and violated federal and state law.

The first Rose billings to the IDC file occurred on August 6, 1985, when Rose attorney Tom Thrash billed the IDC matter for "Review contract for sale." Over the next several weeks, Thrash and another Rose attorney, R. Davis Thomas, billed the IDC matter for numerous telephone conferences with Seth Ward and Darrell Dover (the attorney who represented IDC), as well as drafting documents and attending meetings. The parties exchanged numerous drafts of a purchase agreement, and eventually signed the purchase agreement on September 13, 1985.

One change to the purchase agreement requested by Rose attorneys was to the definition of "Madison Financial Corporation." The original draft prepared by Dover defined the purchasing entity, Madison Financial, as including "any of its affiliates to whom Madison Guaranty [Financial] might elect to assign its rights hereunder."⁸⁴ The Rose attorneys, for Madison Financial, requested and received a modification to this language such that Madison Financial under the purchase agreement included "any entity or individual to whom Madison Guaranty [Financial] might elect to assign its rights hereunder," permitting Ward's purchase of a portion of the property.⁸⁵

105-00009361).

⁸⁴ Draft Purchase Agreement By And Between Madison Financial and IDC at 1 (undated) (Doc. Nos. 2035-00000071-77).

⁸⁵ Draft Purchase Agreement Between Madison Financial and Industrial Development Corp. (Aug. 19, 1985); Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong.

d. Rose Did Legal Work on Development of the IDC/Castle Grande Property.

McDougal generated a number of ideas for compatible commercial development on the IDC/Castle Grande property. Two of the proposals, to open a brewery and to expand the customer base of the sewer and water utilities, raised issues that required legal analysis by Mrs. Clinton and Rose.

Before selling the water and sewer system, McDougal was interested in expanding the system to serve additional customers, including a business outside Castle Grande, and to residents of his nearby Maple Creek development. McDougal asked Mrs. Clinton to research whether the system could become a public utility. McDougal said he wanted Mrs. Clinton's services because he believed the Governor's wife would have an advantage in dealing with state agencies. In examining the question another Rose attorney, whom Mrs. Clinton supervised, consulted various state agencies.

Rose also examined the legal issues arising from McDougal's plan to place a microbrewery on a two-acre site within the Castle Grande property. Bill Lyon, an acquaintance of McDougal, owned a microbrewery in Little Rock. McDougal hoped to convince Lyon to move his brewery to Castle Grande. Placing a brewery on the site would require the approval of the State Alcohol Beverage Control Board. McDougal's November 20, 1985 memo to Seth Ward said:

Subject to approval by the ABC, Bill will place his brewery in the shell building, along with a tasting room. I have spoken with the Governor on this matter, and expect it will be approved. We must be very careful to not mention that there will [be] a "tavern" in the location, as word is already out to that effect and it is causing us problems in the area. Bill's operation must be sold both to the state

259-61 (Jan. 31, 1996) (testimony of T. Thrash) [hereinafter "Senate Whitewater Comm. Hearing"].

regulators and to the public as a tourist attraction.⁸⁶

McDougal said he hired Mrs. Clinton because he believed she would have influence with state agencies. Mrs. Clinton and other Rose attorneys billed Madison Guaranty for work on this matter. On November 14, 1985, Mrs. Clinton billed Madison Guaranty .5 hour for "Conference with Seth Ward regarding purchase from Brick Lile."⁸⁷ On November 20, 1985, Mrs. Clinton billed the IDC matter for one hour for "Conference with Seth Ward; conference with W. Hubbell."⁸⁸

Following the November 20, 1985, memorandum from McDougal to Ward, problems arose with the proposed brewery. The proposed site was located in a "dry" township. McDougal called Mrs. Clinton to research the issue, and -- if the site was located in a "dry" township -- to determine how to petition to make it a "wet" township. McDougal remembered calling Mrs. Clinton to handle this matter because he did not know Hubbell personally and he wanted Mrs. Clinton to work on it because it involved a state agency, believing she would have more influence because she was the Governor's wife.

When the billing records were produced in January 1996, they disclosed Mrs. Clinton had billed Madison Guaranty for conferences, some by telephone, with Seth Ward on fourteen different occasions during the time frame of the IDC/Castle Grande transactions. For example,

⁸⁶ Memo from Jim McDougal, President Madison Guaranty to Seth Ward, Madison Guaranty employee (Nov. 20, 1985) (Doc. No. 105-00050190) (emphasis added).

⁸⁷ This entry was actually billed to the "General" matter number, but the reference to the "purchase from Brick Lile" clearly refers to the IDC matter. Rose Billing Records (Jan. 1986) (Doc. Nos. DEK015014 and DEK015016). Brick Lile headed a group of investors who had developed and owned IDC, and it was Lile who had signed on IDC's behalf regarding the purchase.

⁸⁸ Rose Billing Records (Jan. 1986) (DEK015014). Around this same time, Ward spoke with McDougal about Ward's efforts to sell an airplane McDougal acquired from Chris Wade in the sale of the remaining Whitewater Development Corporation property. Madison Guaranty phone message logs (Doc. No. 56-00114334); Ward 11/29/94 GJ at 7-29.

on February 28, 1986 -- the day the fraudulent \$825,000 loan to Dean Paul closed and the day that Castle Sewer & Water bought the sewer and water system that Seth Ward had "owned" -- Mrs. Clinton billed Madison: "Seth Ward -- 0.8 hour."⁸⁹

During the examination of Madison Guaranty by federal regulators an "option agreement" for the purchase of Holman Acres was given to the examiners as a purported explanation for some questioned transactions between Seth Ward and Madison. When the billing records were finally produced in January 1996, it was learned for the first time that Mrs. Clinton had prepared this agreement. On May 1, 1986, Mrs. Clinton billed 2.0 hours for speaking with Seth Ward and drafting the option agreement.⁹⁰

The FHLBB examiners who examined Madison Guaranty said the option drafted by Mrs. Clinton, and the backdated agreement, quitclaim deed, and fictitious loan papers created with Hubbell's help, deceived them by concealing the true nature of the relationship between Ward and Madison Guaranty, which violated state and federal regulations.

e. Termination of the Representation.

On July 14, 1986 (the same day that Governor Clinton was told about McDougal's problems by his chief of staff), Mrs. Clinton sent a hand-delivered letter to McDougal and Latham at Madison Guaranty returning the unused portion of Rose retainer. Mrs. Clinton testified later that her letter to McDougal and Latham was unrelated to McDougal having been ousted from the institution on July 11. She also said she did not remember any discussions about Madison Guaranty's serious financial difficulties at that point.

⁸⁹ Rose Law Firm Billing Records (Doc. No. 1180-00000337).

⁹⁰ Id.

E. Madison Guaranty and CMS.

1. Findings.

The Independent Counsel investigated a fraudulent transaction involving a nominee loan to Dean Paul from Madison Guaranty. That loan enabled David Hale and CMS to make a fraudulent loan to Susan McDougal, who used a portion of the loan proceeds to benefit Whitewater Development. The Independent Counsel reports the following findings about Jim McDougal's relationship with CMS and related transactions:

- Jim McDougal, Jim Guy Tucker, and David Hale engaged in a fraudulent scheme to induce the Small Business Administration to provide additional federal funds to Capital Management Services for their own benefit.
- As part of the scheme, Madison Guaranty loaned money to a straw purchaser, Dean Paul. Paul purchased three parcels of property from David Hale at prices based on falsely inflated appraisals. Hale used the profits from these fraudulent sales to provide capital to CMS. The increase in capital was matched three-for-one by the federal government.
- For its part, CMS made nominee loans to Tucker's corporation, Susan McDougal, Stephen Smith, and Larry Kuca. These loans were not used for the purposes specified in the loan application documents.
- Some of Mrs. McDougal's loan proceeds went to benefit the Whitewater Development Company; the McDougals and Clintons then being equal owners of Whitewater Development.
- There was some evidence that Governor Clinton may have known about the loan to Mrs. McDougal. There was insufficient evidence to prove beyond a reasonable doubt that Governor Clinton knew the loan was illegally obtained.

2. Evidentiary Summary.

Jim McDougal, Jim Guy Tucker, and David Hale fraudulently induced the Small Business Administration ("SBA") to provide federal funds to CMS, and then were involved in fraudulently obtained loans from CMS. The scheme was accomplished by Madison Guaranty making an \$825,000 loan to a nominee purchaser, Dean Paul. Paul bought three parcels of property from David Hale at prices based on falsely inflated appraisals. Hale used the profits

from these fraudulent sales to provide capital to CMS. The increase in capital was matched three-for-one by the federal government.

In September 1993, Hale was indicted on felony conspiracy and false statements charges by a federal grand jury in the Eastern District of Arkansas. That same day Hale publicly alleged that President Clinton, Governor Tucker, and others may have benefited from fraudulent loans made by him through CMS and by Jim McDougal through Madison Guaranty. Hale pleaded guilty in March 1994 and agreed to cooperate with the Independent Counsel's ongoing investigation.

CMS made loans in 1986 to individuals or entities designated by Jim McDougal, including Tucker's corporation, Susan McDougal, Stephen Smith, and Larry Kuca. The proceeds from these loans were not used for the purposes specified in the loan application documents. Both Smith and Kuca pleaded guilty to related misdemeanor charges. Some proceeds of the loan to Susan McDougal were used by Whitewater Development as a down payment for property known as Lorance Heights, while another portion was indirectly used to cover an overdraft in the Whitewater Development account at Madison Guaranty.

In May 1996, Jim McDougal, Susan McDougal, and Jim Guy Tucker, then the Governor of Arkansas, were convicted in federal court in Arkansas of various crimes involving Madison Guaranty, and CMS. President Clinton testified as a defense witness by videotaped deposition during the trial. Jim McDougal cooperated with the Independent Counsel following his conviction and provided information contradicting some of President Clinton's trial testimony. Susan McDougal refused to testify before the grand jury, defying a U.S. District Court judge's order. She later was found in civil contempt of court, and incarcerated for eighteen months. Even after a second grant of immunity under 18 U.S.C. § 6002, Susan McDougal refused to

answer questions before the grand jury. She was indicted on two counts of criminal contempt (18 U.S.C. § 402) and one count of obstruction of justice (18 U.S.C. § 1503). The jury deadlocked on the two criminal contempt counts and acquitted on the one obstruction of justice count; the judge declared a mistrial, and the Independent Counsel declined to retry the case.

a. The Dean Paul Loan.

The centerpiece of the fraud scheme was a loan on February 28, 1986 of \$825,000 from Madison Guaranty to nominee purchaser, Dean Paul Ltd. Paul, a business associate of David Hale, borrowed the \$825,000 to purchase three pieces of property from Hale. The property's value was inflated through fraudulent appraisals provided to Hale by Robert Palmer. Hale realized a \$502,000 "profit" from these sales and invested this profit in CMS. By federal law, this new investment was matched three-for-one with federal funds, substantially increasing the amount of funds available for lending and raising the maximum size of the individual loans CMS could make.

b. Robert Palmer's Role.

Robert Palmer played an integral role in the \$825,000 loan scheme. Without the inflated appraisals he provided, the real estate transactions would not have justified the full amount of the loan provided. Palmer was chosen to do the appraisals by William Watt, a Little Rock attorney, who assisted Hale.⁹¹ Watt told Palmer what values were needed and that he should appraise them accordingly. Palmer appraised the first property at \$755,000 although he believed the real value to be between \$300,000 and \$400,000. He appraised the second property at \$282,000, its legitimate value. He initially appraised the third property at \$275,000, also its legitimate value, but soon appraised it at \$720,000 when Watt told him that the value of this property also needed

⁹¹ Like Hale, Watt also served as a Municipal Judge. Watt was given immunity and

to be inflated.

c. CMS Loans to McDougal Nominees.

In return for the profits realized from the nominee Madison Guaranty loan to Paul, Hale agreed CMS would make four loans to McDougal's designees. Each of the four loans made by CMS were in violation of the law. In essence, the loan documentation said the loans were intended for a certain purpose, but the proceeds were used for other purposes -- a scheme prohibited by SBA regulations and federal law. The four loans are summarized as follows:

- On January 10, 1986, at McDougal's behest, Hale caused CMS to lend \$149,000 to Little Rock attorney and real estate developer Larry Kuca to benefit the silent partnership of McDougal and Kuca. This transaction was fraudulent, and Kuca eventually pleaded guilty for his part in it. Kuca used the loan to repay an advance that he had used to purchase land for himself and McDougal.
- On February 21, 1986, Hale caused CMS to lend \$65,000 to Stephen Smith, d/b/a The Communications Company. The funds were used to payoff a loan that Smith, Tucker, and McDougal had used to finance the purchase of land.
- On February 28, 1986, Hale caused CMS to lend \$150,000 to Castle Sewer & Water, the corporation controlled by Tucker, which it used as the down payment to purchase the sewer and water system at Castle Grande.
- On April 3, 1986, CMS made a \$300,000 loan to Susan McDougal d/b/a/ Master Marketing. Proceeds from this loan were for the McDougals' personal use and the benefit of Whitewater Development.

i. \$149,000 Loan to Larry Kuca.

Kuca was a business partner of McDougal. In the fall of 1984, Chris Wade had hired Kuca to work on the Campobello project because of Kuca's expertise in the application and analysis of the Interstate Land Sales Act. Kuca moved to Campobello and became the real estate broker for the project. Kuca learned an adjacent piece of property was for sale. McDougal suggested he and Kuca purchase the property, known as "Seaview," and they agreed McDougal

testified as a government witness at the trial of Tucker and the McDougals.

would remain a silent partner in the transaction.

Kuca negotiated a purchase price of \$150,000 for the Seaview property. McDougal agreed to provide the financing, but he was strapped for cash. Because of regulatory limitations Madison Financial could not provide any additional funds for the Campobello development, and McDougal, because of regulations governing insider lending, could not borrow \$150,000 directly from Madison Guaranty. Nor could Madison Guaranty legally finance an individual's purchase of real estate outside the United States.

To evade these regulatory limitations, McDougal gave Kuca a \$150,000 "advance on commissions" to purchase the property. Kuca was owed no more than \$80,000 in commissions. Kuca used the "advance" to purchase the Seaview property in his own name. Kuca had several discussions with McDougal about repaying the \$150,000 advance. McDougal introduced Kuca to Hale, and Hale agreed to lend Kuca, d/b/a Campobello Realty, enough money for Kuca to pay off the advance on commissions.

On January 10, 1986, Kuca submitted a false loan proposal to CMS. The proposal did not refer to McDougal and Kuca's purchase of the Seaview property. Nor did it disclose that the loan would be used to pay back the advance on commissions. Kuca and McDougal closed the loan at Hale's office and Kuca received a check for \$143,000 made payable to Larry E. Kuca d/b/a/ Campobello Realty Company. That same day Kuca used the \$143,000 to pay back the "commissions" he was advanced. Kuca received an additional \$6,000 in loan proceeds on July 22, 1986. He used that money to pay personal expenses.

ii. \$65,000 Loan to Stephen Smith.

Stephen A. Smith served with McDougal on Governor Clinton's staff in 1979 and part of 1980. In 1980, Smith became business partners in various ventures with McDougal and Tucker,

including the purchase of the Bank of Kingston. In 1980, Smith also invested in a partnership called Kings River Land Company with his father and McDougal and Tucker.

In 1981, Kings River borrowed \$165,000 from the Worthen National Bank in Little Rock to purchase thirty-three acres of land in Huntsville, Arkansas. The four investors intended to pay down the note as land was sold and to renew the note until it could be paid off from the sale's proceeds.

By the fall of 1985, the principal owed on the note was reduced to \$55,000, but Worthen said it might not renew the note when it came due in January 1986. Because none of the partners had the cash to pay off the note, they wanted to make a suitable refinancing arrangement. To achieve this, McDougal introduced Smith to Hale, and Smith took a loan from CMS. The loan was used to pay off the Kings River note.

McDougal told Smith how to structure the loan application. Smith requested a \$65,000 loan for his business, The Communications Company. Smith's loan application was fraudulent in that Smith did not intend to apply the proceeds to the company's operation, as stated in the application. On February 21, 1986, Smith closed the loan at Hale's office, accompanied by McDougal. Both Smith and McDougal each signed a personal guarantee on the loan from CMS. Hale gave Smith a check for \$65,000 payable to Smith d/b/a The Communications Company. Smith and McDougal then went to Madison Guaranty and bought a \$65,000 cashier's check payable to Worthen Bank, which they used to pay off the remaining principal and interest on the Kings River note.

iii. CMS Loan to Castle Sewer and Water.

Under federal regulations, CMS could not lend money directly for a down payment on real estate. Nor could CMS lend money directly to Tucker because Tucker had already received

the maximum amount that CMS could lend one person. McDougal recruited his long time friend R.D. Randolph, a contractor who had done work for the McDougals, to be Tucker's "partner." Although Randolph invested nothing, he was given one-third of the shares of Castle Sewer and Water ("CSW"), while Tucker held the other two-thirds. CSW then applied for a loan from CMS. In the loan application, Tucker falsely stated the proceeds would be used for operating capital and to paint a water storage tank.

On February 28, 1986, Hale issued CSW a \$150,000 check. Tucker endorsed and deposited the check into a CSW checking account that he controlled. Within ten days, Hale mailed the SBA a required form for this loan, falsely stating that the purpose was working capital. Neither Tucker nor Randolph ever repaid this loan. The loan funds were used by CSW to make the down payment on the purchase of the sewer and water utility property at Castle Grande from Madison Financial.

iv. Susan McDougal's Master Marketing Loan.

The fourth loan to come out of the \$825,000 loan scheme was a \$300,000 loan CMS made on April 3, 1986 to Susan McDougal d/b/a Master Marketing. This transaction was fraudulent and Jim and Susan McDougal were subsequently convicted for their participation in this scheme.

McDougal brought Hale a report in support of a loan application on behalf of Susan McDougal. Master Marketing requested a loan of \$300,000, asserting on the application that it was an advertising and public relations business. There was no "Master Marketing." The report also said Susan McDougal was a well-known Little Rock advertising personality and she was sole owner of this business. The report falsely asserted Master Marketing had been in business since 1983, and that in 1985 it had gross billings of \$1,500,000 from several TV, radio, and

newspaper advertising campaigns for various clients. The report said the loan would be used for working capital to service current and new clients. The report said the loan was needed because Master Marketing had to pay up front fees to media for advertising, thereby causing a cash flow problem while waiting for clients to pay their bills.

Hale knew that the loan would not be used for a Master Marketing advertising business. Every material assertion in the loan application report was false: Although Susan McDougal had done some advertising work for Madison Guaranty, she had done so under the name "Madison Marketing." And McDougal never intended that the proceeds be used for the purposes stated in the loan proposal.

Hale and McDougal both claimed before the loan was actually made, the two of them met with Governor Clinton at McDougal's Castle Grande office on 145th Street, where they discussed a loan to Susan McDougal. Hale and McDougal both said the Governor expressed an interest in the loan and offered property in Marion County he represented as his collateral.⁹² President Clinton denied he was present for any such discussion.

On April 3, 1996, Susan McDougal went to Hale's office to sign the necessary loan papers -- including the fraudulent application -- and receive the proceeds. Hale gave Susan McDougal a check for \$300,000 payable to Susan H. McDougal d/b/a Master Marketing. The check was deposited into Jim and Susan McDougal's personal checking account at Madison Guaranty. Over the next two months the entire \$300,000 was spent, much of it on personal expenses of the McDougals.

But, twenty-five thousand dollars of the \$300,000 loan was used for the down payment

⁹² Tr. at 3223, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); J. McDougal 4/3/97 GJ at 20-21. Governor Clinton did not personally own land in Marion County, however Whitewater Development Corporation did. Id. at 21-22.

on the purchase of land south of the Castle Grande property by Whitewater Development (which was then still jointly owned by the Clintons and McDougals). This property became known as Lorance Heights.

Another \$25,000 was used to pay off a loan at the Stephens Security Bank that was taken out to pay off the McDougals' various obligations, including an overdraft in a Whitewater account. The origin of that overdraft lay in the \$27,600 loan taken out in Bill Clinton's name to benefit Whitewater. The loan taken out in Bill Clinton's name was retired through a nominee loan to Chris Wade and a payment from the James B. McDougal trustee account (with a check signed by Susan McDougal and marked "payoff Clinton").

The Wade nominee loan was then paid off with a Whitewater Development check to Wade's corporation, Ozark Realty Co. The Whitewater Development check used to pay Ozark Realty Co. caused an overdraft in Whitewater Development's account at Madison Guaranty. The overdraft in the Whitewater Development account was later covered with proceeds from a \$135,000 loan taken out at Stephens Security Bank. The McDougals used \$111,524.21 from the fraudulent Master Marketing loan to pay off the balance on the \$135,000 loan taken out at Stephens Security Bank to cover the Whitewater Development overdraft.

d. Concealing the Loans' Fraudulent Nature.

Hale said in May or June 1986, while the examiners were still reviewing Madison Guaranty, McDougal appeared unexpectedly at Hale's office looking, in Hale's words, "visibly upset."⁹³ McDougal wanted Hale to substitute a new Master Marketing report for the original. Hale refused because the new report was inconsistent with the original, and Hale had already submitted an SBA Form 1031, verifying that the loan conformed to SBA regulations, based on

⁹³ Hale 8/2/95 GJ at 27.

the false assertions in the original loan documents. Moreover, the new report, asserting Master Marketing was a real estate brokerage, said the proceeds would be used to purchase real estate, which was not permitted under SBA regulations. Hale said at some point after funding Susan McDougal's loan, he had a chance encounter with Governor Clinton at a Little Rock shopping mall. Hale said the Governor, referring to Susan McDougal said words to the effect, "Can you believe what that [expletive deleted] Susan did?"⁹⁴

In response to an SBA audit inquiry, Susan McDougal confirmed she owed \$300,000 on the Master Marketing loan as of June 30, 1986, and that it was for her advertising business. In April 1987, Susan McDougal wrote to Hale explaining that she would temporarily be unable to make payments on the loan. She falsely asserted fluctuation between payment of media expenses and reimbursement prevented her from paying on the loan for thirty to sixty days. Susan McDougal never made any payments on this loan. She and McDougal did give Hale their Madison Guaranty stock, already encumbered, but Hale got no money from the stock. Hale later entered a consent judgment against Susan McDougal for \$300,000, but he never collected. That loan has never been repaid.

F. Concealment of Rose's Work for Madison Guaranty -- Hubbell's Conflict of Interest.

1. Findings.

The Independent Counsel also examined Webb Hubbell's conduct in securing the Federal Deposit Insurance Corporation ("FDIC") and Resolution Trust Corporation ("RTC") as clients. In 1989, Rose was asked to represent the FDIC in a pending lawsuit brought by Madison Guaranty against its former accountants, Frost & Company. In securing the FDIC as a client, Rose and Hubbell failed to disclose Rose's and Mrs. Clinton's prior work for Madison Guaranty

⁹⁴ Id. at 26.

on Castle Grande; Hubbell's relationship to his father-in-law, Seth Ward, who was potentially liable to Madison Guaranty for his conduct; and Rose's use of a Frost audit while representing Madison Guaranty before the Arkansas Securities Department ("ASD"). The concealment of these facts violated the FDIC and RTC's conflict of interest rules -- had these facts been disclosed it is likely Rose would not have been hired. It is also possible the FDIC might have pursued civil action against Rose for its role in causing losses to Madison Guaranty.

The Independent Counsel reports the following findings about Rose's representation of the FDIC and RTC in the lawsuit against Frost & Company:

- Madison Guaranty sued accountants Frost & Company for malpractice.
- The FDIC hired Rose to represent it when Madison Guaranty went into receivership.
- In securing the representation of Madison Guaranty from the FDIC, Hubbell failed to disclose:
 - Rose's prior work for Madison Guaranty before the Arkansas Securities Department;
 - Rose's and Mrs. Clinton's prior legal representation of work for Madison Guaranty in the Castle Grande transaction;
 - Hubbell's representation of Ward and POM, a Ward corporation;
 - Hubbell's close familial relationship with Seth Ward; and
 - Rose's representation of a Frost partner.
- 1993 press accounts caused the FDIC to investigate whether its conflict of interest rules had been violated
- When later questioned about the nature of his relationship to Ward, Hubbell told the FDIC they were "not particularly close" and that he had "never represented" Ward.
- As part of his work for the FDIC and RTC in the Frost litigation, Hubbell and others reviewed:
 - Mrs. Clinton's and Rose's billing records about the representation of Madison Guaranty in 1985 and 1986;

- The 1986 FHLBB report describing fraudulent land flips in the Castle Grande transaction; and
- The Borod & Huggins Report describing possible criminal conduct by Ward.
- When subpoenaed during the Frost litigation, former ASD Commissioner Beverly Bassett Schaffer reminded Hubbell of Rose's representation of Madison Guaranty, including Mrs. Clinton's work before the ASD, and suggested it created a conflict of interest.
- When later questioned, Hubbell assured FDIC attorney April Breslaw that Rose's prior Madison Guaranty work had been minimal.
- In late 1993 and early 1994, the FDIC Legal Division spoke directly with Hubbell, who said:
 - He was not aware of Rose's prior Madison Guaranty representation at the time the FDIC hired Rose;
 - He did no legal work for Seth Ward;
 - He did not review the Borod & Huggins report; and
 - Rose's Madison Guaranty representation was limited to lending and collection work.
- As a result of these statements, the FDIC issued a report dismissing the conflict of interest allegation.
- In 1994 at Congress's request, the FDIC-OIG and the RTC-OIG reexamined Rose's alleged conflicts of interest.
- Hubbell told the OIGs that:
 - He did not work on the Castle Grande transaction;
 - He never represented Ward in dealings with Madison Guaranty;
 - He did not review the Borod & Huggins report until "absolutely necessary"; and
 - He had no knowledge of or involvement in Ward's agreements with Jim McDougal and Madison Financial.
- Because substantial evidence had not been produced or provided, the FDIC-OIG and the RTC-OIG gave inaccurate testimony to the United States Congress about the alleged

Rose conflict.

- In September 1996 the FDIC-OIG issued a Supplemental Report which was more critical of Rose.
- In June 1999, Hubbell pleaded guilty to concealing by scheme a material conflict of interest from the RTC.

2. Evidentiary Summary.

As with all failures of financial institutions, the responsible agencies -- the Federal Deposit Insurance Corporation ("FDIC") and, later, the Resolution Trust Corporation ("RTC") -- examined the operations of Madison Guaranty to determine what went wrong and who was responsible. Typically, when a thrift fails, the federal agencies look at the conduct of all of the professionals who had responsibility for the thrift's operation and whose action (or inaction) might have contributed to the thrift's failure. In this regard, Madison Guaranty was not appreciably different from any other failed savings and loan.

Ultimately, the thrift initiated a lawsuit against Frost & Company ("Frost"), its auditing firm, charging that Frost was negligent in its audit of Madison Guaranty. When Madison Guaranty was put into a conservatorship by federal regulators in 1989, they continued the lawsuit against Frost.

The FDIC (and RTC) hired outside counsel to represent them (and the failed thrift) in the suit. In choosing its lawyers, the FDIC carefully screens potential lawyers and implements certain rules, known as conflict of interest rules. These conflict of interest rules serve two functions. First, broadly and generally, the FDIC only hired law firms that were representing the FDIC on behalf of other failed banks and thrifts. Second, and more particularly, because a law firm's earlier work for a savings and loan that failed was, itself, subject to potential examination, the FDIC would not hire a law firm to represent the failed thrift in a suit against professionals if

the law firm had itself provided professional services to the thrift that might arguably have contributed to the thrift's failure. As detailed more fully below, when the FDIC hired Rose, Hubbell failed to disclose that Rose had worked for Madison Guaranty.

a. The FDIC Hired Rose to Represent Its Interests and Madison Guaranty in the Frost Litigation.

The directors of Madison Guaranty initiated suit against Frost in 1988. They were represented by the law firm of Gerrish & McCreary (the successor to the firm of Borod & Huggins, which had conducted an internal audit of Madison Guaranty and recommended the suit). When Madison Guaranty failed and was put in receivership, the FDIC took over as the savings and loan's managing agent.

April Breslaw, an FDIC attorney, decided that Gerrish & McCreary had too many conflicts of interest to continue to represent the FDIC in the Frost case. She contacted Rick Donovan at Rose and asked if Rose could take the case. Donovan directed her to Webb Hubbell, who assumed the responsibility to report all actual and potential Rose attorney conflicts of interest to the FDIC and the RTC.

Hubbell circulated a memorandum to Rose's attorneys about conflicts of interest related to Madison Guaranty v. Frost. Hubbell "was aware that Mrs. Clinton had been the billing attorney in 1985 and 1986 . . . [and] that for a period of time, [Rose] had done some work for Madison."⁹⁵ Hubbell said Rick Massey "disclosed that there had been prior work done at the Securities Department," either in the fall of 1988 or after Hubbell circulated his March 21, 1989 memorandum.⁹⁶ Hubbell did not disclose that information to April Breslaw. Hubbell claimed

⁹⁵ Hearings on the Failure of Madison Guaranty Savings and Loan Association and Related Matters Before the House Comm. on Banking and Financial Services, 104th Cong. 47 (Aug. 10, 1995) (testimony of W. Hubbell) [hereinafter "House Banking Comm. Hearing"].

⁹⁶ Id. at 59.

later that he did not consider the prior Rose work to be a conflict "because we were standing in the shoes of Madison Guaranty in suing its former accountants."⁹⁷

b. Initial Complaints about Rose's Conflicts of Interests -- Hubbell's Relationship with Ward.

In June 1989, approximately three months after the FDIC hired Rose, a "noticeably agitated" Madison Guaranty employee, Sue Strayhorn, told Paul Jeddelloh, Madison Guaranty's intervention attorney, that Hubbell, Seth Ward, and Seth Ward II were in-laws. Jeddelloh told Breslaw. Breslaw then spoke with Hubbell:

[Hubbell] went to some lengths to make me have the impression that he was not particularly close to his father-in-law and that he was not representing his father-in-law and that he would not represent his father-in-law in the future. I said, please put that in writing. Confirm what you've just said in writing and send me a letter to that effect. And I believe he did that in June of 1989.⁹⁸

Breslaw kept the Frost case at Rose in part based on Hubbell's representation that Ward was not a Rose client.⁹⁹

On June 28, 1989, Hubbell sent a follow-up letter to David Paulson (FDIC's managing agent for Madison), copying April Breslaw and Rick Donovan. The letter read:

Dear Mr. Paulson:

⁹⁷ Id. at 49.

⁹⁸ Breslaw 6/6/95 Senate Banking Comm. Depo. at 23; see, e.g., Breslaw 10/23/95 Senate Banking Comm. Depo. at 246-47; Senate Whitewater Comm. Hearing, supra note 85, at 25-26, 41-42 (Nov. 30, 1995) (testimony of A. Breslaw); Breslaw 6/7/94 Int. at 2-3. Note: Citations in this Final Report to page numbers for Senate Banking Committee Depositions are to the page numbers in the original transcript as recorded by the court reporter. These depositions are reprinted in the official bound Committee volumes, which contain both the original court reporter's pagination cited in this Final Report, as well as the pagination for the Committee's bound volume.

⁹⁹ Breslaw 10/23/95 Senate Banking Comm. Depo. at 247-48; id. at 249 ("I believe that if I had understood in June of 1989 that Hubbell did represent Ward or Ward's interests, that I would have taken that up with supervisors. And I don't know what they would have advised me to do").

At April Breslaw's request, I am writing this letter. This letter is to advise you that I have not represented Mr. Seth Ward in connection with any issue or matter relating to his disputes with Madison Guaranty. It is my understanding that Mr. Ward was represented by Wright, Lindsey & Jennings until recently. When the FDIC became managing agent for the FSLIC as Conservator for Madison Guaranty, Mr. Thomas Ray of the firm Shultz, Ray & Kurrus began representing Mr. Ward. In addition, I do not represent Mr. Seth Ward, II in regard to any disputes he may have with Madison Guaranty. I have no intention of representing Mr. Ward or his son in the future concerning any matter relating to Madison Guaranty.¹⁰⁰

c. Other Conflicts of Interest Concealed by Hubbell.

In addition to his relationship with Ward, Hubbell also concealed his knowledge of Rose's prior work for McDougal. He gained this knowledge through a review of (among many other sources) the Rose billing records, the internal report created by Borod & Huggins, and discussions with Beverly Bassett Schaffer.

i. Rose Billing Records.

In late 1989 or early 1990, Rose attorney Gary Speed reviewed papers from Frost's Madison Guaranty audits. Speed came across a standard audit response letter to Frost and Company from the Rose Law Firm. Speed learned Rose had performed legal work for Madison Guaranty relating to Frost.

¹⁰⁰ Letter from Webb Hubbell, Rose attorney, to David Paulson, Madison Guaranty's FDIC Managing Agent (June 28, 1989); see also Hubbell 12/27/95 Telephone Int. at 39 (identifying letter). In her June 1994 sworn statement with the RTC-OIG, Breslaw said:

I have also been shown a copy of a June 28, 1989 letter from Hubbell to Paulson addressing the issue of representing Ward. This is the letter that Hubbell wrote at my direction. As I look at the letter today, I note that Hubbell limited his comments about not representing or intending to represent Ward to matters involving Madison. I do not recall noting this limitation in 1989.

Breslaw 6/8/94 RTC-OIG Sworn Statement at 10-11; see, e.g., Senate Whitewater Comm. Hearing, supra note 85, at 26 (Nov. 30, 1995) (testimony of A. Breslaw); House Banking Comm. Hearing, supra note 95, at 46 (Aug. 10, 1995) (testimony of A. Breslaw). In her RTC statement Breslaw added, "I am not aware of any representation that Hubbell ever undertook for Seth Ward or Seth Ward II." Breslaw 6/8/94 RTC-OIC Statement at 18 (sworn testimony).

Speed went to Rose's accounting department and requested copies of the bills Rose had submitted to Madison Guaranty. Speed spoke with Hubbell, lead attorney on the Frost case and primary contact with FDIC, who was knowledgeable about the ethical rules concerning conflicts. Speed asked Hubbell if he knew of Rose's prior work for Madison Guaranty:

[Hubbell] said he had been aware of some collection work. I showed him the bills I had retrieved concerning the ASD work. He said he would talk about it with April Breslaw. . .

. . .

Within a day or so, Hubbell told me that he had spoken to Ms. Breslaw about the ASD work and that she agreed it was not a conflict. I recall that conversation clearly. I do not believe that I ever spoke to Ms. Breslaw personally about the matter, and I do not believe I ever wrote anything about the matter.¹⁰¹

Breslaw later testified Hubbell did not disclose Rose's work for Madison Guaranty before the ASD, though she added whether this would have disqualified Rose was a closer question than the work for Ward or the IDC/Castle Grande transactions.

Additionally, Seth Ward's loans from Madison Guaranty, including the IDC and Castle Grande loans, were potential evidence of damages in the Frost suit. Rose lawyers prepared exhibits detailing the "bad land deals" causing Madison Guaranty's losses -- including Castle Grande. Hubbell did not disclose the work he had done for Ward on the Castle Grande loans. Hubbell said that as far as Breslaw was concerned, his June 28, 1989 letter put the Ward-Hubbell conflict issue to rest.

ii. The Borod & Huggins Report.

In January 1990, Rose requested a copy of the Borod & Huggins report from the FDIC. Madison Guaranty employee Sue Strayhorn objected to providing Rose a copy of the Borod &

¹⁰¹ Speed 6/30/95 RTC-OIG Statement at 5-6; see Speed 5/19/94 GJ at 88 ("Well, at a later time, [Hubbell] came back to me and said, 'I've talked with April Breslaw about these and she says there's no problem . . . that it's just not a problem'").

Huggins Report because Ward and Hubbell were in-laws. Breslaw spoke with her supervisor, John Beaty, who approved her decision to provide Hubbell with the report. Breslaw understood from her previous discussions with Hubbell that he and Ward were related.

Hubbell initially denied he ever saw the Borod & Huggins Report. Later he claimed his Frost co-counsel initially kept the report from him but that he looked at the report later. Still later Hubbell said perhaps Rose did not request the Report until absolutely necessary. The FBI found Hubbell's latent fingerprints on five pages of the Report, including pages discussing Seth Ward's role in various transactions and possible criminal liability. Hubbell's billing records reflect that he billed 9.10 hours for reviewing the report.

iii. Beverly Bassett Schaffer.

In 1990, Rose decided to subpoena Beverly Bassett Schaffer for testimony. Hubbell telephoned Bassett Schaffer, who:

asked him if he was not aware of that previous representation [Rose's work for Madison Guaranty] and asked him how it was that he could be representing the government now for -- in a lawsuit accusing Frost & Company of malpractice and negligence covering the very same audits that were supplied to us by the Rose Law Firm in 1985 in support of their effort to get the brokerage firm approved and to show us the financial condition of the institution for purposes of the preferred stock offering. And I just expressed my disapproval that I didn't appreciate him putting the State in that position, involving the State in the lawsuit, after their own law firm, whose partner was the governor's wife who represented Madison before the department and now sought to put the State and my office, me possibly, in a bad light in a civil lawsuit to recover for the government from an accounting firm who is their partner, I mean, essentially worked with them presenting what they did to our office. And I just told him I didn't appreciate it, wasn't going to cooperate. And he -- when I asked him about the previous representation and wasn't it true that he had previously represented -- that their firm had, and he didn't answer. And I said he needed to go talk to Rick Massey, and that they had files and that we had files that clearly showed they had done that.¹⁰²

Bassett was "angry with Webb Hubbell," so she called Frost's lawyer, Peter Kumpe, and

"told Peter . . . what Webb had done . . . and asked Peter if he was aware that the Rose Law Firm had represented Madison Guaranty before the [Arkansas Securities] department throughout 1985, and that there were documents and files to that effect, numerous documents that would reflect that at the department."¹⁰³ There is no evidence that Hubbell told Breslaw or anyone else at the FDIC or the RTC about Beverly Bassett Schaffer's comments to him. Neither Rick Donovan nor Gary Speed learned of her comments to Hubbell about her view of Rose's conflict.

d. Hubbell Concealed His Conflicts When Subsequently Questioned by the FDIC and RTC.

In 1993, the press reported that in representing the FDIC and the RTC in the Frost litigation Hubbell had deliberately concealed Rose's connection to Madison Guaranty. These allegations caused those federal agencies to examine whether Rose had violated their conflict of interest rules. The FDIC Legal Division conducted an examination, and from the statements of then-Associate Attorney General Webb Hubbell, concluded Rose's conduct was proper.

At Congress's request, in 1994-95 the FDIC's Office of Inspector General ("FDIC-OIG") and RTC's Office of Inspector General ("RTC-OIG") further examined Rose's Frost litigation representation. Relying largely on Hubbell's statements to the FDIC-OIG and RTC-OIG, those agencies gave materially incomplete testimony to the United States Congress, particularly about their understanding of Mrs. Clinton's role in the representation of Madison Guaranty, then-believed to be minimal.

It was not until January 1996, when Mrs. Clinton produced copies of Rose's billing records, that the FDIC-OIG and the RTC-OIG understood the more than minimal legal work she did for Madison Guaranty. Subsequently, the FDIC-OIG and RTC-OIG referred Hubbell for

¹⁰² Bassett Schaffer 11/8/95 GJ at 131-32 (emphasis added).

¹⁰³ Id. at 133.

criminal prosecution for the false statements he had made to those organizations. The Independent Counsel prosecuted Hubbell for concealing Rose's conflicts of interest and connection to Madison Guaranty, and he later pleaded guilty to one felony false statements count.

i. Initial Statements to Breslaw and the FDIC Legal Division.

When the press first raised the issue, Breslaw spoke with Hubbell a day or two later, and she testified:

[h]e told me that he had not known that others in the Rose Law Firm had represented Madison Guaranty before it failed; that he had not known that in 1989, when I retained him at the Rose firm, to represent the government in the accounting malpractice case. To the best of my current understanding, the representation occurred in 1985 or 1986. So you have this scenario in which the firm does a relatively small volume of work in 1985 or 1986, and then they are retained several years later to represent the government. So it was plausible to me, in the fall of 1993, when I had this conversation with Hubbell that he just had not known in 1989 about the prior representation.¹⁰⁴

Thereafter, the FDIC Legal Division initiated a review of Rose's work on Frost. Two high-ranking FDIC Legal Division attorneys, Jack Smith and Tom Schulz, directed another Legal Division attorney, John Downing, to review and investigate the matter. Downing began his investigation during November 1993.

On January 11, 1994, Smith and Downing met Hubbell for about forty minutes. Hubbell said, "[a]t the time that Rose was retained he was not aware that they had represented Madison Guaranty before the Arkansas securities commission and so [he] did not disclose [that representation] to FDIC."¹⁰⁵ Hubbell also said Rose did some limited lending and collection work for Madison Guaranty several years before Frost. Hubbell claimed he was not allowed to

¹⁰⁴ Breslaw 6/6/95 House Banking Comm. Depo. at 37-38. *See id.* at 145; Breslaw 10/23/95 Senate Banking Comm. Depo. at 69, 76-79, 101-03, 106-09, 118-20, 140-42, 150-57.

¹⁰⁵ Hubbell 1/11/94 FDIC Int. at 1.

review the Borod & Huggins Report because it involved his father-in-law, Seth Ward. Hubbell admitted attending the trial of Ward v. Madison Guaranty, but said he had no other involvement. Hubbell told Smith and Downing that he had not done legal work for Seth Ward. Downing later testified: "As a matter of fact, I believe Mr. Hubbell told me when we interviewed him that he had not had involvement with Mr. Ward in legal matters."¹⁰⁶ Jack Smith and James Lantelme, another FDIC Legal Division attorney, later testified Hubbell had not told them about the legal work he and Madison Guaranty had done for Seth Ward or about Hubbell's ownership interest in Ward's companies.

Jack Smith spoke with Hubbell again on January 19 and asked Hubbell if he had worked for Seth Ward on the Castle Grande loans, which Hubbell flatly denied. On February 17, 1994, the FDIC Legal Division issued its report, sending Hubbell a copy. Hubbell read the report and faxed a copy to the White House. "The whole report was founded on the fact that [Webster Hubbell] had told the truth," Jack Smith later testified.¹⁰⁷

ii. The FDIC and RTC Offices of Inspector General Investigations.

The FDIC-OIG and the RTC-OIG investigated Rose from March 1994 to July 1995. The FDIC-OIG interviewed Hubbell after his December 1994 guilty plea. Hubbell claimed he did not do any work on the IDC/Castle Grande matter. He denied purposely hiding from April Breslaw Rose's advocacy for Madison Guaranty before the Arkansas Securities Department. He claimed he never represented Seth Ward in his dealings with Madison Guaranty. He said he did not review the Borod & Huggins Report when Rose first obtained it.

Similarly, Hubbell told the RTC-OIG that he did not see the Ward-Madison Guaranty

¹⁰⁶ Downing 1/22/98 GJ at 31.

¹⁰⁷ Smith 2/5/98 GJ at 43. See, e.g., D. Jones 1/22/98 GJ at 13.

dispute as connected to Rose's work for each of them as clients. Hubbell said he did not review the Borod & Huggins Report until it was "absolutely necessary for him to do so because of an issue involving a ROSE attorney, [Patricia Heritage, who] had worked at MADISON GUARANTY."¹⁰⁸ Hubbell said he had no involvement in "preparing any of the agreements between [Seth] WARD and [Jim] MCDUGAL."¹⁰⁹ Hubbell denied knowledge of or involvement in: (1) the September 23, 1985 draft agreement between Seth Ward and Jim McDougal; (2) the backdated September 24, 1985 agreement between Ward and Madison Financial, and (3) the December 11, 1986 letter from Ward to Madison Financial.¹¹⁰ The FDIC-OIG issued its report on July 28, 1995. The RTC-OIG issued its report on August 3, 1995. Both reports found that Rose had concealed actual or potential conflicts of interest from the FDIC and RTC, especially in the Frost case.

On August 10, 1995 the House Committee on Banking and Financial Services held a hearing, taking testimony from members of FDIC and RTC OIGs. The witnesses testified about their reports, and about Mrs. Clinton's work for Madison Guaranty. After Congressman Frank Lucas asked RTC-OIG attorney Patricia Black about Castle Grande and Seth Ward's role as a "straw purchaser," the questioning turned to Hillary Clinton's role in the Castle Grande transactions. Black testified the RTC-OIG investigation found "no evidence that [Hillary Clinton] worked on Castle Grande."¹¹¹ When asked about Mrs. Clinton's work for Madison Guaranty, Hubbell said he "was not aware of the nature of the matters, but aware that the firm had represented Madison Guaranty in 1985 and 1986 and aware that Mrs. Clinton was the billing

¹⁰⁸ Hubbell 4/20/95 RTC-OIG Int. at 17.

¹⁰⁹ Id. at 24.

¹¹⁰ Id.

¹¹¹ House Banking Comm. Hearing, supra note 95, at 12 (Aug. 10, 1995) (testimony of

attorney."¹¹²

iii. Reopening the Investigation -- Billing Records Discovered In the White House.

After the January 1996 production of Mrs. Clinton's Rose billing records from the White House, the FDIC-OIG (the RTC had since expired by statute) reopened its investigation. On September 20, 1996, the FDIC-OIG issued a Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016:

[E]ntries in the billing materials and other evidence suggest that former Rose Law Firm partners Hillary Rodham Clinton and Webster L. Hubbell performed work that appears to have facilitated the payment of substantial commissions to Ward, who acted as a straw buyer for Madison Guaranty in the IDC transaction. . . . The method of payment of the commissions evaded regulations designed to protect the safety and soundness of the institution, and violated the integrity of its books and records. Further, Madison Guaranty used a document drafted by Clinton to deceive federal thrift examiners as to the true nature of the payments to Ward.¹¹³

Patricia Black realized based on the billing records and the 1996 FDIC-OIG investigation that her August 10, 1995, House Banking Committee testimony was wrong.¹¹⁴ In short, Hubbell's statements to the FDIC and RTC had the effect of deceiving the Offices of Inspector General -- had the billing records never been disclosed his deception would have gone undiscovered.

P. Black).

¹¹² *Id.* at 49 (testimony of Hubbell).

¹¹³ FDIC-OIG, Synopsis to Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-iii (Sept. 20, 1996).

¹¹⁴ Black 2/19/98 GJ at 4-7.

G. Other Evidence about the Knowledge of President Clinton, Mrs. Clinton, and Webb Hubbell.

1. Findings.

Beginning in 1994, Mrs. Clinton and Hubbell were questioned by numerous federal investigations (the FDIC, the RTC, Congress, Independent Counsel Fiske, and Independent Counsel Starr) about their interaction with McDougal. To a large degree, they testified in response to questions that they did not remember the details of work and interactions that happened as much as ten years before the initiation of the inquiries. To assess the credibility of that testimony, the Independent Counsel examined whether more recent intervening events might support the conclusion that the testimony was not truthful. In addition to the Frost lawsuit already discussed, three additional significant events happened in the intervening years that might have refreshed the participants' recollections as to events involving Madison Guaranty: a suit by Seth Ward against Madison Guaranty in 1989-90; the criminal trial of Jim McDougal in 1990; and press inquiries during the 1992 campaign.

The Independent Counsel reports the following findings:

- In 1987, Seth Ward sued Madison Guaranty to collect on the \$300,000 unfunded April 7, 1986, promissory note.
- Madison Guaranty counterclaimed that Ward's commissions were fraudulent.
- After Ward's initial victory in the trial court, Hubbell assisted Ward in filing writs of garnishment to collect Ward's judgment.

About McDougal's criminal trial:

- McDougal and the Henley brothers were indicted in 1989.
- McDougal's lawyer, Sam Heuer, warned Hubbell that his father-in-law, Seth Ward, was a critical witness who might have criminal liability for his conduct.
- During trial, Heuer talked with Governor Clinton about closing arguments.

- McDougal's trial was prominently covered in the press. Following the trial Heuer had lunch with Mrs. Clinton, who also had followed the trial.

About Governor Clinton's 1992 presidential campaign:

- In early 1992, the national news media asked about Governor and Mrs. Clinton's relationship with Jim McDougal, Whitewater Development, and Madison Guaranty.
- Because of the media inquiries, Hubbell and Foster collected and reviewed Rose records relating to Rose's representation of Madison Guaranty, including Mrs. Clinton's billing records.
- Campaign documents, including a draft press statement written by Mrs. Clinton with Hubbell's and Foster's help, asserted:
 - Rick Massey, and not Mrs. Clinton, was the source of Rose's Madison Guaranty business;
 - Mrs. Clinton's involvement with soliciting McDougal started in April 1985 when she asked him to pay past money owed to Rose, which the firm demanded before doing additional work; and
 - Mrs. Clinton did not represent anyone before an Arkansas state agency.
- After reviewing the Rose billing records, Foster created a detailed chronology showing that \$5,000 of Madison Guaranty's "old" bill was paid in October 1984.
- During the campaign, Foster and Mrs. Clinton prepared a draft statement about Mrs. Clinton's representation of Madison Guaranty.

2. Evidentiary Summary.

President Clinton, Mrs. Clinton, and Hubbell had three potential motives to minimize their connection to McDougal and Rose's role in the IDC/Castle Grande transactions. First, there was the potential for political embarrassment. Second, there was the potential for legal action by the FDIC and RTC against Rose for malpractice on transactions that had caused substantial losses to the institution and to the taxpayers. Third, there was the possibility of criminal liability resulting from frauds perpetrated by insiders and others associated with Madison Guaranty.

Many events occurred after Mrs. Clinton terminated Madison Guaranty as a client -- any

number of which might have refreshed the Clintons' recollection. In 1987-88, Ward sued Madison Guaranty on the cross-notes, a fact known to Hubbell and Mrs. Clinton. In 1990, McDougal and two of Susan McDougal's brothers were tried for alleged criminal conduct at Madison Guaranty. Hubbell was notified Ward might be a witness in the case and both Hubbell and Mrs. Clinton followed the trial.

More significantly, in 1992, Mrs. Clinton's work for Madison Guaranty became a campaign issue upon which campaign personnel, Mrs. Clinton, Webb Hubbell, and Vincent Foster devoted significant time and energy. Foster annotated a copy of Rose's Madison Guaranty billing records, writing several notes thereon for Mrs. Clinton. Hubbell reviewed the billing records and discussed with Mrs. Clinton the numerous conferences with Seth Ward.¹¹⁵ Mrs. Clinton herself may have reviewed the billing records.¹¹⁶

a. Ward's Suit against Madison Guaranty.

In 1987, Ward had a \$93,000 loan outstanding with Madison Guaranty. To preempt collection efforts, on September 2, 1987, Ward filed suit alleging¹¹⁷ that Madison Guaranty and Madison Financial owed him "not less than \$381,236.06" based on a September 3, 1985 memorandum between Ward and McDougal, a falsely backdated version of the September 24, 1985 agreement, and the \$300,000 April 7, 1986 unfunded cross note.

The case was tried before a jury on August 30-31, 1988. Ward prevailed, and the trial court entered a judgment in Ward's favor of \$468,306.25, offset by the \$93,000 plus interest Ward owed Madison Guaranty, for a total judgment of \$353,502.57. Mrs. Clinton learned "at

¹¹⁵ Hubbell 12/19/95 GJ at 177-78.

¹¹⁶ H. Clinton 1/26/96 GJ at 28 (testifying that her fingerprints were on the billing records because she may have looked at them during the 1992 campaign).

¹¹⁷ Complaint, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 2, 1987) (Doc. Nos. NE-00000012 through 15).

some point" that Ward was suing Madison Guaranty "for what he said were commissions."¹¹⁸

After the trial court entered the judgment, Ward wanted to collect by filing writs of garnishment against his own relatives and business, seeking an order directing them to pay him money they otherwise owed Madison Guaranty. Webster Hubbell represented the garnishees, his and Seth Ward's relatives and associates.

Though Ward had won judgment, when the RTC took over as receiver of Madison Guaranty his suit was removed to federal court. The Eighth Circuit Court of Appeals eventually held that the RTC could assert defenses previously unavailable when the case was tried before the state trial court, including the defense that "Ward's claim for real estate sales commissions is based on an unrecorded side agreement [the backdated September 24, 1985 agreement] barred by [federal law]. These defenses are available to the RTC as receiver, but were not available to Madison Guaranty or Madison Financial during the state trial."¹¹⁹ Consequently, Ward's judgment was worthless and he wound up repaying his "commissions." The RTC settled the case on April 30, 1993, and Ward agreed to pay the RTC \$325,000.

b. Criminal Charges against McDougal.

On November 20, 1989, a Little Rock grand jury indicted James B. McDougal, Jim Henley, and David Henley for alleged crimes related to the Castle Grande transactions. About three weeks before the criminal trial, Sam Heuer, Jim McDougal's attorney, sent Hubbell a letter warning that Seth Ward "might have some type of criminal exposure under these broad bank fraud violations that the U.S. Attorney's Office seems so happy to use these days."¹²⁰ Heuer said

¹¹⁸ H. Clinton 4/25/98 Depo. at 102.

¹¹⁹ Ward v. RTC, 972 F.2d 196, 199 (8th Cir. 1992).

¹²⁰ Letter from Sam T. Heuer, attorney for Jim McDougal, to Webster L. Hubbell (May 7, 1990) (Doc. No. 212-00011968).

he was "in a pretty tight situation on this McDougal case," and that "Seth Ward, who I understand to be your father-in-law, appears to be a pretty critical witness in this case."¹²¹ Heuer asked to interview Ward. Hubbell did not respond.

The McDougal/Henley trial began on May 29, 1990. None of the defendants were convicted. During the summer of 1990, shortly after McDougal's June 1990 acquittal, Hillary Clinton and Webb Hubbell met with Heuer over lunch individually and on separate occasions.¹²² Mrs. Clinton was knowledgeable about McDougal's well-publicized trial.¹²³ Sometime later, Hubbell and possibly Hillary Clinton discussed with Heuer the possibility of Heuer joining Rose.¹²⁴

c. The 1992 Campaign.

i. The Public Arena.

In October 1991, Governor Clinton announced he would run for President in the 1992 election. During the 1992 campaign, Democrats were using the savings and loan crisis to criticize the Bush administration. Democratic National Committee Chairman Ronald H. Brown, for example, called the savings and loan crisis "one of the biggest scandals in the history of our country."¹²⁵ The Clinton campaign was concerned when reporters began examining the Clintons' connection to Madison Guaranty and the McDougals. Connections between the Clintons and McDougals became an issue in the Democratic primary¹²⁶ when a story by Jeff Gerth was

¹²¹ Id.

¹²² Heuer 5/20/97 GJ at 69-70.

¹²³ Heuer 10/8/97 GJ at 5-8; Heuer 4/1/97 GJ at 102.

¹²⁴ Heuer 4/1/97 GJ at 103 ("Mrs. Clinton and I may have said something about that at lunch also").

¹²⁵ Bush role in S&L crisis target of Democrats' probe, Balt. Sun, July 6, 1992, at 3A.

¹²⁶ Howard Kurtz & Edward Walsh, Democrats Trade S&L Charges, Wash. Post, Mar. 12, 1992, at A14; Peter Goldman et al., Quest for the Presidency 194 (1994).

published in the New York Times on March 8, 1992.

Former Senator Paul Tsongas, a Democratic candidate in the 1992 presidential election, criticized Governor Clinton's "S&L caper," and said the Governor, if nominated, would be unable to exploit the savings and loan scandal against President Bush in the fall campaign.¹²⁷ The other Democratic candidate, Jerry Brown, charged during a Chicago debate that Governor Clinton had "funnel[ed] money to his wife's law firm for state business," and that Rose had "represent[ed] clients before the state of Arkansas agencies -- his appointees."¹²⁸ The Clinton campaign tried to defuse the issue. Campaign representatives denied that Governor Clinton had solicited legal work for Mrs. Clinton from Madison Guaranty, though the Governor had told aides he could not remember either way.¹²⁹ Mrs. Clinton told reporters that she had not done any state-related work for Madison Guaranty, although the campaign knew that Rose records reflected her work on the preferred stock matter.¹³⁰

ii. Rose and Mrs. Clinton.

The Clinton campaign, assisted by Vince Foster and Webb Hubbell at Rose, began gathering information on Mrs. Clinton's Madison Guaranty work. On February 12, 1992, the accounting office at Rose printed a copy of the "Client Billing & Payment History" of Hillary Clinton's Madison Guaranty work.¹³¹ Hubbell later admitted he reviewed the Madison Guaranty billing records during the 1992 campaign. He also admitted his campaign review of the billing

¹²⁷ Howard Kurtz & Edward Walsh, Democrats Trade S&L Charges, Wash. Post, Mar. 12, 1992, at A14.

¹²⁸ Peter Goldman et al., Quest for the Presidency 194 (1994).

¹²⁹ Lynch 2/1/96 GJ at 104.

¹³⁰ All Things Considered (NPR radio broadcast) (Mar. 23, 1994).

¹³¹ Rose Law Firm "Client Billing & Payment History" (Feb. 12, 1992) (Doc. Nos. DEK014936 through 40).

records focused on Mrs. Clinton's numerous conversations with Seth Ward.¹³²

When Rose lawyer Rick Massey learned newspaper articles had criticized Rose's representation of Madison Guaranty, he ordered his files on the preferred stock and broker dealer matters from remote storage. His secretary, Vera Hitt, retrieved the files from storage on March 24, 1992. Vince Foster asked Massey for these files. Foster told him he needed the files to prepare a response for the firm. Massey had his files copied for Foster.

On March 26, Massey signed a memorandum about representing Madison Guaranty before the ASD. Massey later testified he believed either Vince Foster or Loretta Lynch prepared the memorandum. The relevant portion read as follows:

I performed substantially all legal service on behalf of my firm My work was performed under the supervision of senior members of the Securities Section of this firm. To my knowledge, Ms. Clinton had no contact, either in person, telephonically or otherwise, with any ASD staff member in respect of [these] matter[s]. [That is, the stock offering and the broker/dealer application.] Further, I do not believe that any involvement by her in connection with this matter meaningfully influenced the ASD's ultimate determination with respect to this matter.¹³³

Hubbell said he had a conversation with Mrs. Clinton about her representation of Madison Guaranty within a month of the press focus on that issue.¹³⁴ He told her the billing records showed she had one conversation with Bassett.¹³⁵ Mrs. Clinton responded she did not remember the call, and Hubbell replied, "Well, it's in the bills and Rick does remember that it was in your office."¹³⁶

¹³² Senate Whitewater Comm. Hearing, supra note 85, at 99 (Feb. 7, 1996) (testimony of W. Hubbell).

¹³³ Memo from Massey at 1-2 (Mar. 26, 1992) (Doc. Nos. 1180-00000233 through 34).

¹³⁴ Hubbell 12/19/95 GJ at 177-78.

¹³⁵ Id. at 178.

¹³⁶ Id.

By March 26, 1992, Foster prepared a chronology on his firm computer¹³⁷ about Rose's representation of Madison Guaranty, beginning with Jim McDougal's April 3, 1981 hiring of the firm to represent the Bank of Kingston and ending with a February 21, 1990 Arkansas Gazette report of John Latham admitting to falsifying records.¹³⁸ The chronology was found in Vince Foster's briefcase in his attic in July 1997. The chronology had the following entries:

07/30/82	Final bill of Rose Law Firm to Bank of Kingston (a/k/a Madison Bank & Trust) of \$5,000 fees and \$893 in costs (contains note in Giroir's hand: "Have Hillary bill with letter to McDougal -- will pay.")
1983	Bank of Kingston final bill written off
10/23/84	\$5,000 paid on Bank of Kingston bill
04/85	Latham, as Madison's CEO, hired the Rose Law Firm to request an interpretative ruling of the S&L statutes from the S&L Administrator. ¹³⁹

Foster's chronology was significant because of the "computer card" name associated with the document on Rose computers.¹⁴⁰ This document, when discovered on the computers in December 1997, was entitled "Clinton campaign document II."¹⁴¹ This enabled Rose to de-archive another document entitled, "Clinton campaign document I."¹⁴²

¹³⁷ This document originated on Foster's computer at Rose. Clark 12/2/97 GJ at 136. Clark identified the numbers that appear on the second page, "RLL1860.WP5" as a document number under the firm's new system. Id. He was able to call up the document on their system, which showed the document was created for Foster by his secretary, Lorraine Cline. Id. The additional numbers on second page, "032692," is the date the document was printed, and it changes every time it is printed. Id. at 137. Clark was able to de-archive the document and print it out. Id. at 136-37. His printed version had a date of "120197." Id.

¹³⁸ Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 40).

¹³⁹ Id. (Doc. Nos. 1180-00000236 through 37).

¹⁴⁰ Clark 12/2/97 GJ at 137-38.

¹⁴¹ Id. at 138.

¹⁴² Id. at 138-39; H. Clinton Draft Campaign Statement, LR GJ Exh. 1601 (1992) (Doc.

The "Clinton campaign document I" from Foster's computer, prepared prior to the March 26, 1992 date of document II, was an edited copy of a draft campaign statement prepared by Mrs. Clinton.¹⁴³ The OIC had earlier been provided with a copy of Mrs. Clinton's draft statement containing handwritten changes.¹⁴⁴ Mrs. Clinton testified that the handwriting belonged to Vince Foster.¹⁴⁵ The version on Foster's computer at Rose contained Mrs. Clinton's original statement, amended by the handwritten changes.¹⁴⁶ As modified on Foster's computer, Mrs. Clinton's statement read:

In April 1985, Massey went to partners in the securities law section for permission to do the work Latham wanted him to do. He was told that the Firm could not do any further work for McDougal or his businesses until the bill owed the Firm for the previous work was paid.

Massey then came to see me because he knew that I knew McDougal I told him I would talk with McDougal for him and see if McDougal would be willing to pay the past due bill. . . .

On April 23, 1995, I called McDougal and asked if I could drop by to see him at his office. When I visited [McDougal], I told him that I understood Latham wanted Massey to do some work for them. . . . McDougal called Latham into the meeting . . . McDougal told Latham he could proceed with Massey, and he told me that he would arrange to pay the past due bill.

[After discussing this with my partners] Massey and I called McDougal [to tell him a \$2,000 retainer was required] but he was not in so we talked with Latham

Nos. DEK 200962 through 200963).

¹⁴³ H. Clinton Draft Campaign Statement, LR GJ Exh. 1601 (1992) (Doc. Nos. DEK 200962 through 200963). Mrs. Clinton said that as best she could recall, her purpose in writing the statement was to put down her memory of what happened when Madison Guaranty was represented by the firm. H. Clinton 1/26/96 GJ at 54. She was unable to identify when, during the campaign, she drafted the document. Id. She does not believe the statement was ever publicly released. Id. at 53-54.

¹⁴⁴ Fax from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. Nos. 118-0000012 through 13).

¹⁴⁵ H. Clinton 4/25/98 Depo. at 29. Mrs. Clinton was unable to say whether she had asked Foster to edit her statement, but said "Vince Foster edited everything." Id. at 29-30.

¹⁴⁶ Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (MGSL-FR-00000014-17).

and another employee.

During the first week or so of Massey's work for Madison Guaranty, [Massey] kept me advised because he wanted me to be generally aware of what he was doing in case he had any trouble being paid for his work.

I recall some uncertainty by Massey about who within the Commissioner's office would handle the issue raised by Madison Guaranty. . . . I have no recollection of ever discussing Madison Guaranty with the Securities Commissioner, although I may have made a procedural inquiry of her or her staff on this issue.

Massey has stated he does not know why he included my name in the letter to the Securities Commissioner, and I do not know either and do not recall ever seeing it before it was sent.

In addition to the matter Massey did for Madison Guaranty, the Firm was requested to handle two other legal matters that were unrelated to the State. The total billed by the Firm to Madison Guaranty for all matters was approximately \$21,000.00. . . .

As I have said repeatedly, I did not have any substantive involvement in the work our Firm did for Madison Guaranty that involved the Securities Commissioner. I did not discuss the merits of that matter with the Commissioner or anyone in her office. . . . I can see how in retrospect that to avoid even the appearance of conflict I should not have become involved at all [in helping Rick Massey work out the delicate client engagement problem he encountered]. . . .¹⁴⁷

The precise nature of Foster's interaction with Mrs. Clinton in drafting this document was never resolved. Contemporaneous evidence establishes that it was a collaborative effort and that Diane Blair (a Clinton friend) and Webb Hubbell were aware of Foster and Mrs. Clinton's work together. On March 23, 1992, Diane Blair faxed five pages (including a cover sheet) to Hubbell, though only the first two pages have been produced to the OIC.¹⁴⁸ The second page has Diane Blair's handwritten note: "Webb -- Vince + Hillary are drafting her answers on law practice.

¹⁴⁷ Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (MGSL-FR-00000014-17).

¹⁴⁸ Bill Clinton for President Fax transmission sheet from D. Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 852-00001932).

Ignore marginal notes. D."¹⁴⁹

H. Removal of Documents from Foster's Office.

1. Findings.

The Independent Counsel's inquiry examined whether any individual obstructed justice by removing documents from the office of Deputy White House Counsel Vince Foster. Foster, a former Rose partner who did some work on Whitewater-related issues during the Clinton Administration's early days, committed suicide on July 20, 1993. Several months after Foster's suicide it was alleged that Whitewater documents might have been in Foster's office at the time of his death, and that White House officials removed those Whitewater documents from Foster's office the night of his death.

The Independent Counsel reports the following findings:

- A precise chronology of all events following Vince Foster's death could not be determined with certainty. Although there were numerous logs and telephone records that showed times of calls and the entry and exit from the White House, many people involved stated they were unable to remember what was said or done, or the reasons for calls or meetings.

About possible perjury, false statements, and obstruction of subsequent investigations:

- Insufficient evidence exists to establish beyond a reasonable doubt that anyone committed perjury, made false statements, or obstructed justice by refusing to furnish subpoenaed records.

About President Clinton and Mrs. Clinton:

- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton or Mrs. Clinton withheld documents from a lawful grand jury subpoena, gave false testimony or otherwise acted or endeavored to act in a manner intended to obstruct the due administration of justice.

¹⁴⁹ Handwritten note from D[iane Blair] to Webb [Hubbell] (undated) (Doc. No. 852-00001933).

2. Evidentiary Summary.

On July 20, 1993, Vince Foster's body was discovered in Fort Marcy Park, Virginia shortly before 6:00 p.m. United States Park Police ("USPP") notified the United States Secret Service ("USSS") of Foster's death at about 8:30 p.m. President Clinton learned of Mr. Foster's death during his appearance on the Larry King Live show. The USPP notified Lisa Foster, Vince Foster's wife, of his death at about 10:00 p.m. President Clinton called Mrs. Clinton who was visiting her mother in Arkansas.

a. Sealing of Foster's Office.

There was a delay of several hours before Foster's office was sealed and access to it restricted. A Secret Service officer was not posted outside Foster's office until 10:20 a.m. on July 21. The Independent Counsel received evidence from Park Police officers who testified that the evening of July 20, they asked David Watkins, White House Director of Administration, to have Foster's office sealed. Watkins testified he did not remember being asked to seal the office, and said he would have complied with the request if asked. The USPP officers' contemporaneous notes do not reflect a request that the office be sealed.

b. Alleged Removal of Documents the Night of July 20.

Because Foster's office was not sealed, other individuals had uncontrolled access to the office the night of July 20. Records establish that: the alarm to the Counsel's suite was disarmed at 10:42 p.m.; subsequently Counsel to the President Bernard Nussbaum entered Foster's office; Patsy Thomasson, a White House employee, arrived at the White House at 10:49 p.m. and also entered Foster's office; and Maggie Williams, Chief of Staff to the First Lady, arrived at the White House at 11:00 p.m. and entered Foster's office. Williams spoke with Mrs. Clinton by telephone both before and after she entered Foster's office.

David Watkins asked Thomasson to search Foster's office for a suicide note. Nussbaum also testified that he went to Foster's office to look for a suicide note. Williams testified that she went by Foster's office and saw Thomasson. Thomasson, Nussbaum, and Williams each testified that they did not remove anything from the office. By contrast, Secret Service uniformed officer Henry O'Neill said he thought he saw Williams leaving Foster's office with documents that night. Williams denied she had removed any documents from the office and passed a polygraph examination corroborating her denial. In the absence of any index of documents in Foster's office, the Independent Counsel was, ultimately, unable to determine whether any documents were removed the night of July 20.

c. Alleged Removal of Documents the Morning of July 21.

On July 21, 1993, Betsy Pond, Nussbaum's secretary, entered the White House Counsel's suite at 7:01 a.m. and went into Foster's office. Pond said she entered the office to straighten it up. Linda Tripp, then a secretary in the White House Counsel's office, said Pond had told her that she (Pond) was looking for a note in Foster's office. Pond denied saying this to Tripp and passed a polygraph examination corroborating her denial.

Uniformed Secret Service officer Bruce Abbott was on duty on the White House's first floor the morning of July 21. He said he saw Craig Livingstone, Director of Personnel Security, exiting the elevator from one of the upper floors (the White House Counsel's suite is on the second floor) with another person. Abbot testified Livingstone and the other person were carrying boxes and perhaps a briefcase.

Abbott initially said the event happened around 6:45-7:00 a.m. Secret Service logs showed Livingstone did not enter the White House until 8:06 a.m. Abbott later said he could have seen Livingstone as late as 8:30 a.m. Livingstone denied removing any documents from

Foster's office.

In the absence of any index of documents in Foster's office, the Independent Counsel was, ultimately, unable to determine whether any documents were removed the morning of July 21.

d. DOJ Access to Foster Documents.

A meeting was held the afternoon of July 21 to discuss the investigators' desire to search Foster's office. FBI, USPP, and USSS personnel attended, as well as Nussbaum, Associate Counsels Stephen Neuwirth, and Clifford Sloan, and David Margolis and Roger Adams, two attorneys from the Department of Justice. It was agreed a search would be conducted the next day. Margolis and Adams testified that at the meeting Nussbaum agreed they would be allowed to examine the first page or two of each document in Foster's office to determine whether it was relevant to the investigations.

On July 22, 1993 at 9:56 a.m., Margolis and Adams arrived at the White House to search Foster's office. Nussbaum told Margolis and Adams that he (Nussbaum) would review the documents for privilege and turn over only those that the investigators wanted to see and that were not privileged. Margolis and Adams claimed this was a breach of their agreement. Nussbaum later testified that there was no agreement. The search of Foster's office began at 1:15 p.m. and lasted until 2:49 p.m. Phillip Heymann, Deputy Attorney General, said he understood from Margolis and Adams that there was an agreement with Nussbaum. He also testified he had a conversation with Nussbaum on July 22 when he criticized Nussbaum for breaching the agreement.

Nussbaum and Neuwirth said they had discussed permitting the DOJ attorneys to look at each document but that they had not agreed to that procedure. Nussbaum acknowledged the DOJ

attorneys asserted there was an agreement and were upset that Nussbaum was "breaching" it. Nussbaum testified he could not remember Heymann being angry with him over a broken agreement.

Because a complete index of the documents in Foster's office was never made, it could not be determined with any certainty what documents in Foster's office were kept from the investigators. Nor could it be determined the extent to which, if at all, Nussbaum -- in limiting the investigators' access to the documents -- impeded their investigation.

Whether Nussbaum breached an agreement was of particular interest in light of a series of phone calls between Mrs. Clinton and others, between the meeting on the 21st and the search on the 22nd. The documentary evidence establishes there were at least six calls and one page between Mrs. Clinton, Susan Thomases, and Maggie Williams, and between Thomases and Nussbaum.

All those involved in the calls denied attempting to influence Nussbaum on whether he would permit a search of Foster's office to proceed. Although the DOJ attorneys' credible testimony and the phone calls' sequence and timing raised the question whether someone had influenced Nussbaum's decision about how the search would be conducted, without a participant to those conversations testifying that such influence occurred, insufficient evidence exists to establish that anyone endeavored to obstruct justice.

e. Removal of Documents by Maggie Williams.

After the search of Foster's office, Maggie Williams came to collect personal files belonging to the Clintons. Williams and Tom Castleton, Special Assistant to the Counsel, carried one or perhaps two boxes of such documents up to the third floor residence of the White House. Williams and Castleton entered the third floor residence at 7:25 p.m. and stayed for

seven minutes. Carolyn Huber opened a locked closet and put the box or boxes in it. No complete document index was made for documents taken from Foster's office, and the White House was unable to later produce or identify the documents taken to the residence. Whether documents that were relevant to investigations were withheld could not be determined.

f. The Discovery of Foster's "Note."

On July 26, 1993, Stephen Neuwirth was assigned to index the files in Foster's office. He found a note written by Foster, which had been torn into pieces, in an empty briefcase in the office. Neuwirth showed the note to Nussbaum, who soon showed it to Mrs. Clinton. Lisa Foster was later shown the note at 6:00 p.m. on July 27, 1993. After showing the note to Mrs. Foster, Nussbaum telephoned Attorney General Reno and told her about the note found in Foster's briefcase. She told Nussbaum that he had to deliver the torn note to investigators. Nussbaum subsequently delivered the note to the USPP, approximately thirty hours after its initial discovery.

Nussbaum and Neuwirth asserted they delayed notification to the Attorney General to conduct research on whether the note was privileged and to permit Mr. Foster's widow to see the note first. Though this explanation did not appear to justify withholding the fact that the note was found, insufficient evidence exists to establish beyond a reasonable doubt that Neuwirth and Nussbaum's explanations of how the note was missed during the search, but found later, were false.

I. Department of Justice Handling of RTC Referrals.

1. Findings.

The Independent Counsel investigated delays in the handling of RTC Criminal Referral C-0004. The Independent Counsel concluded the evidence was insufficient to prove beyond a

reasonable doubt that any Department of Justice official obstructed justice by engaging in conduct intended to delay or impede the investigation of the RTC's Criminal Referral C-0004. There were numerous delays in the referral's handling -- in part as a result of attempts to consider the politically sensitive inclusion of a presidential candidate (and subsequently, President) as a witness and in part as a result of the transition to a new administration of a different party. The Independent Counsel concluded the evidence surrounding the delays failed to substantiate that any delays were the result of corrupt intent.

2. Evidentiary Summary.

Madison Guaranty Criminal Referral C-0004 ("C-0004" or the "Referral") arrived at both the FBI Little Rock field office and the U.S. Attorney's Office for the Eastern District of Arkansas ("USAO-EDAR") on September 2, 1992. The referral identified James and Susan McDougal and Lisa Aunspaugh as suspects. Witnesses listed in the referral included Governor Clinton, Hillary Rodham Clinton, Jim Guy Tucker (then the Lieutenant Governor of Arkansas), Stephen A. Smith, and Greg Young. Within a couple of days of the referral's receipt, U.S. Attorney Charles Banks said he did not want any investigative action taken until he had a chance to talk about the referral with FBI management.

The referral lay dormant at USAO-EDAR until after the election. Following President Clinton's election and inauguration, on January 27, 1993, Banks sent a letter to the Executive Office for United States Attorneys ("EOUSA") at the Department of Justice stating that his office had a "conflict of interest" regarding C-0004, and asking that it be recused from the matter and that decisions about its "investigation, indictment, prosecution or declination" be handled by the Department of Justice.

Banks's recusal notice was sent for review to the Criminal Division's Fraud Section,

where it was assigned to Mark MacDougall, a trial attorney in the Section.¹⁵⁰ MacDougall understood that his assignment was to review C-0004 and furnish an analysis as to whether it merited going forward. MacDougall determined that, although the report provided "substantial factual support for the assertion that Jim and Susan McDougal's conduct may have constituted a breach of fiduciary duty, abuse of position, and self-dealing,"¹⁵¹ it failed to provide "factual allegations sufficient to establish the elements of any of the criminal statutes used in the prosecution of bank fraud cases."¹⁵² The RTC investigators were not told about this conclusion.

Meanwhile, in Little Rock, the FBI conducted no investigation related to Madison Guaranty until the end of April or early May 1993, when it received an auxiliary office lead in a wire fraud case then being investigated by the FBI in Newark, New Jersey. New information developed in Newark, along with information already in FBI-Little Rock's old Madison Guaranty file, prompted FBI-Little Rock to open a new fraud investigation targeting David Hale (a Little Rock municipal court judge) and Capital Management Services ("CMS"), Hale's Small Business Investment Company ("SBIC"). At roughly the same time, around May 25, 1993, FBI-Little Rock received a referral from the SBA's Inspector General, indicating that audits of CMS raised questions about the handling of delinquent loans at the company.

The Hale inquiry was assigned to Fletcher Jackson, an Assistant United States Attorney in USAO-EDAR. Shortly after Paula Casey was appointed United States Attorney for the Eastern District of Arkansas by President Clinton, she met with Jackson and spoke about a

¹⁵⁰ MacDougall 2/3/95 Int. at 1.

¹⁵¹ Memo from Mark J. MacDougall, Trial Attorney, to Gerald E. McDowell, Chief, Fraud Section, Ref. Resolution Trust Corporation Criminal Referral No. C0004, dated August 31, 1992, Naming James B. McDougal, Susan H. McDougal and Lisa Aunspaugh (Feb. 23, 1993) (Doc. No. 004570).

¹⁵² Id.

number of matters on his docket, including the Hale matter. Casey recalled Jackson described the RTC referral as a "real hot potato," but that it had been closed.¹⁵³ Jackson also told her, though, that the ongoing Hale investigation could possibly "reopen that can of worms" (referring to the C-0004 referral) and lead back into the Madison Guaranty matter.¹⁵⁴ On September 23, 1993, Hale was indicted in Little Rock. On that same day, he made public allegations concerning Governor Tucker and President Clinton related to CMS loans.

Later that year, Department of Justice career official Jack Keeney called Casey and urged her to recuse from the Hale matter. Casey said this telephone conversation was the first time she learned the specifics of Hale's allegations about President Clinton. Casey resisted recusal, telling Keeney there was no basis for it.

On October 8, 1993, the RTC in Kansas City sent nine more criminal referrals regarding Madison Guaranty to Casey's attention in Little Rock. While Casey was considering whether to recuse herself from consideration of these matters, Deputy Attorney General Phillip Heymann intervened. On November 3, 1993, he met with Casey and told her that he wanted her to move the Hale and Madison Guaranty matters out of her office because of her relationships with President Clinton and Governor Tucker.

As a result, on either November 4 or 5, 1993, Casey wrote a recusal letter, requesting recusal of herself and her office. She had earlier told the FBI in late September 1993 that she would have to recuse on Madison Guaranty matters because of her relationship with Tucker, Stephen Smith, and Seth Ward. The Department of Justice assigned three Fraud Section trial attorneys to take over the Hale/Madison Guaranty matters -- Donald Mackay, Jim Nixon, and Dwight Bostwick -- who conducted the investigation until the appointment of regulatory

¹⁵³ Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

Independent Counsel Fiske.

J. White House Contacts with Department of Treasury.

1. Findings.

The Independent Counsel investigated whether contacts between White House and Treasury Department officials about the RTC's criminal referrals constituted an effort to obstruct justice by corruptly influencing the handling of the referrals. The Independent Counsel determined the evidence about contacts between Treasury Department officials and White House officials during the review of the RTC criminal referrals concerning Madison Guaranty did not show that any White House official, President Clinton, or Mrs. Clinton, were involved in any effort to obstruct justice in this way.

2. Evidentiary Summary.

In late 1993 and early 1994, a series of discussions occurred between officials at the Treasury Department and the White House regarding nine criminal referrals issued by the RTC, one naming the Clintons as witnesses and one naming a Clinton gubernatorial campaign as a suspect in connection with the failure of Madison Guaranty. When those discussions were later publicly disclosed, they raised the question of whether White House officials had exercised undue influence on the process at the RTC. These concerns were compounded by seemingly inaccurate testimony given to Congress by Deputy Treasury Secretary Roger Altman.

a. Early Contacts -- Fall 1993.

In the early fall of 1993, the RTC issued nine new criminal referrals related to Madison Guaranty. William H. Roelle, the RTC's Senior Vice President and Chief Financial Officer, briefed Jean Hanson, General Counsel of the Department of Treasury, about the referrals.

¹⁵⁴ Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

Hanson then briefed Deputy Secretary Roger Altman.

Hanson also told the White House about the referrals. On September 29, 1993, following a meeting with other Treasury officials in the office of White House Counsel Bernard Nussbaum, Hanson initiated a private conversation with Nussbaum. Nussbaum said Hanson told him that the RTC was making or had made a number of referrals regarding an Arkansas S&L -- he did not remember the name Madison Guaranty being mentioned. Hanson mentioned one of the referrals was about checks sent to a Clinton gubernatorial campaign and that the Clintons were mentioned in the referrals as possible witnesses.

The evidence indicates that the following events occurred after the initial meeting between Hanson and Nussbaum before the next meeting between Treasury and White House officials on October 14:

- The RTC and Treasury received press inquiries about the referrals, which were then passed to the White House by Hanson and the subject of ongoing discussion between officials at the RTC and Treasury;
- Bruce Lindsey, a longtime friend and advisor to the President and Director of Presidential Personnel, was told about the referrals;
- Lindsey told President Clinton about the referrals (or at least about press inquiries on the referrals);
- President Clinton then had a White House meeting with Governor Tucker, one of the criminal referrals' subjects;¹⁵⁵
- The referrals were sent to the U.S. Attorney in Little Rock over the criticism of some officials at the RTC; and
- The press inquiries about the referrals resulted in a meeting held at the White House on October 14.

¹⁵⁵ See Letter from Lloyd Cutler, then Counsel to the President, to Henry Gonzalez, Chairman, House Committee on Banking (July 27, 1994) (Doc. No. 226-DC-00000002) (attaching the President's briefing memo for his meeting with Tucker). The OIC uncovered no evidence that during this meeting the President told Governor Tucker that he was named in the criminal referrals. Both men have denied such a discussion.

b. Meeting on October 14.

On the afternoon of October 14, 1993, a meeting took place in Nussbaum's office at the White House. The White House officials who attended were Nussbaum, Clifford Sloan, Neil Eggleston, Bruce Lindsey, and Mark Gearan. Present from the Treasury Department were Hanson, Jack DeVore (a press spokesman for Treasury), and Joshua Steiner (an assistant to Altman).

DeVore said the New York Times was working on a Whitewater/Madison Guaranty story and was asking about the referrals and about the endorsements of four checks that were involved in one of the referrals. The reporters also believed the RTC criminal referrals were being stalled in Washington, D.C.

Though Steiner testified the meeting concerned the press inquiries and not the referrals' substance, Bruce Lindsey's notes of the meeting reflect substantive information DeVore passed on from the press's inquiries. An AP reporter asked about checks deposited at the Bank of Cherry Valley, an institution then owned by one of President Clinton's friends. The 1984 Clinton gubernatorial campaign had an account there -- and Jim McDougal at one time took out a loan there to benefit Whitewater. At one point, Lindsey's notes read: "US Atty --> LR --> other cashier's checks --> Jim McDougal/Susan McDougal \$300,000."¹⁵⁶ Lindsey also noted Tucker might be indicted.

c. Events Leading to a Meeting at the White House on February 2, 1994.

In November and December 1993, the Whitewater controversy became the focus of increasing scrutiny in the media, Congress, the Department of Justice ("DOJ") and the Clinton Administration itself. Within the Administration two issues received considerable attention: the

looming statute of limitations deadline for suits that might be filed against the Clintons; and whether Deputy Secretary Altman should recuse himself from substantive review of the RTC's actions.

i. Statute of Limitations.

One topic was the February 28, 1994 deadline for the assertion of civil claims arising out of Madison Guaranty's failure. Senate Republicans were raising the issue whether the RTC would be able to determine by the statute of limitations deadline if civil claims should be filed against the Clintons, and were calling for the RTC to ask for tolling agreements from the Clintons and other possible civil defendants.

On January 25, 1994, Senator Alfonse D'Amato sent a letter to Altman, urging that the RTC seek tolling agreements from all relevant potential defendants in the Madison Guaranty matter. Senator D'Amato also wanted information about how the RTC planned to handle the statute of limitations deadline. The RTC drafted a response to the Senate, saying the RTC would vigorously pursue all appropriate claims arising from the Madison Guaranty matter and would take all necessary steps required by the imminent deadline, including seeking voluntary tolling agreements.

On February 2, 1994, Harold Ickes held a meeting at the White House with Hanson, Altman, Nussbaum, Eggleston, and Maggie Williams in attendance. At the meeting Altman said it was not clear whether the RTC would fully complete its investigation before February 28. Ickes's notes showed Altman presented three options for action before the deadline: reach a conclusion to file a claim for fraud, preserve a claim by filing a protective lawsuit, or obtain a tolling agreement.

¹⁵⁶ Lindsey handwritten notes (undated) (Doc. No. 008-DC-00000079).

ii. Recusal.

In early February 1994, public scrutiny led Altman to consider whether he should recuse himself from Madison Guaranty matters at the RTC. Altman discussed his possible recusal with senior Treasury and RTC officials and asked for their advice. Hanson informally told Altman that his friendship with the Clintons did not legally require him to recuse. As a political matter, however, he should do so because he already said he would follow the RTC's recommendation regarding Madison Guaranty, and his failure to step aside would put him in a "no win" position.

In the early afternoon of February 1, 1994, Altman met with Secretary Lloyd Bentsen and Hanson in the Secretary's office. Altman testified he brought up the issue whether he should recuse and asked Bentsen for advice. Altman said Bentsen described recusal as a personal decision, but encouraged him to recuse himself in his own self-interest. Altman recalled Hanson agreed he should recuse. Hanson also testified Altman told the Secretary that he had decided to recuse himself from the Madison Guaranty matter and that Hanson had recommended he recuse.

The next day, at the February 2 meeting, Altman announced he had been advised to recuse himself and that he intended to take that advice. Nussbaum recalled Altman said either that he intended to recuse or that he was considering it. Eggleston and Ickes testified Altman said simply that he was considering the issue.

Whatever the precise wording of Altman's remarks on recusal, his remarks changed the meeting's tone. Almost all participants recalled that at this point Nussbaum's demeanor changed. Altman also recalled Williams conveyed discouragement. Altman testified Nussbaum and Williams then questioned him about the recusal issue and about his replacement.

Altman later testified that as a result of the meeting he considered the recusal issue overnight and decided not to recuse. As grounds for his decision, Altman said 1) he was not

required to step aside; 2) he would be following RTC General Counsel Ellen Kulka's recommendation; and 3) he did not want the White House taking his recusal personally.

d. A Second Meeting on February 3, 1994.

The next day, February 3, Altman went to the White House and told various officials there that he had decided not to recuse from the Madison Guaranty matter. Altman recalled that on the afternoon of February 3, he called Ickes and said he wanted to briefly see him. Altman went to Williams's office to meet with Ickes and, while standing in the doorway, told him that he would not recuse for the time being. Ickes might have said something to the effect of "good."

e. Congressional Testimony on February 24, 1994.

On February 24, the Senate conducted a hearing at which Altman testified. During his testimony, Altman discussed his contacts with the White House. On three matters, Altman's testimony appeared to be incomplete: first, Altman did not mention the recusal discussion in describing the February 2 meeting; second, he appeared to suggest that only one meeting had taken place between the White House and Treasury, when several meetings had occurred in the fall; and third, he appeared to testify that the February 2 meeting was at the White House's request, when it was initiated by Treasury.

f. Altman's Testimony Was Reviewed.

Beginning February 28, a series of meetings were held at the White House about the accuracy of Altman's February 24 Senate Banking Committee testimony. During that period, each of the following individuals participated in one or more of those meetings: Neil Eggleston, Harold Ickes, Joel Klein, Bruce Lindsey, Bernard Nussbaum, John Podesta, Clifford Sloan and Todd Stern.

The White House's concerns over Altman's testimony boiled down to three issues. First,

Altman had testified before the Senate that he had requested the February 2 White House meeting with Nussbaum. Nussbaum noted he had merely been asked to come to the February 2 meeting -- in other words, it was not "his" meeting. Second, there was concern that Altman's answers to questions about the number of meetings were inaccurate given the fall contacts. The third item of concern was Altman's failure at the Senate hearings to disclose that he had discussed his possible recusal at the February 2 meeting. The group determined Podesta would call Altman and raise the White House's concerns about his February 24 Senate testimony.

Altman testified that once he found out about the fall meetings, he became concerned about the accuracy of his Senate testimony, and decided to write a letter to Senator Donald Riegle stating that he had just learned about the fall meetings with the White House. The letter, dated March 2, 1994, disclosed the two fall White House meetings. On March 3, 1994, Altman sent a second letter to Senator Riegle. The letter conveyed the following: 1) No non-public information was transmitted to the White House on February 2; 2) Senator D'Amato's staff had already received the same information given to the White House on February 2; and 3) Dennis Foreman, the Treasury Department's designated ethics officer, cleared the February 2 meeting in advance. The letter did not disclose the meeting on February 3, or the fact that recusal was discussed.

On March 11, Altman sent Senator Riegle a third letter, disclosing the February 3 meeting with Ickes. He maintained, however, that: "The purpose of both meetings was to provide notification. At neither meeting did I seek advice, nor was it given."¹⁵⁷ On March 21

¹⁵⁷ Letter from Roger C. Altman, then Interim CEO of the RTC to the Honorable Donald Riegle (Mar. 11, 1994) (Doc. No. 001-DC-00000489) (emphasis added). Altman and the Treasury Department produced only an unsigned version of this March 11 letter. A signed copy of the final letter appears in the published report of the Senate Banking Committee. The Semiannual Report of the Resolution Trust Corporation Thrift Depositor Protection Oversight

(the day before his grand jury appearance), Altman sent Senator Riegle a fourth and final letter correcting his testimony:

I have been continuing an exhaustive review of all my files, phone logs and other information, with the assistance of Counsel. Every contact, regardless of significance, is being reviewed. As you may know, I generally attend meetings in the White House three or more times a day, and am on the telephone with White House staff even more often. It is difficult to recall every brief encounter. But, I would like to add to the record.

In my testimony, I referred to one substantive communication, and, upon further review, that is still my view. The meeting at the White House on February 2 related to procedural issues, which pertain to any RTC claim or case. There was not, and could not have been, any discussion on the substance of the case. I never had any information on it, or any other RTC case.

Before that meeting ended, I also informed those in attendance that I was weighing the issue of recusal. A few days after that meeting, I spoke with McLarty briefly on the telephone with the same message. As you know, on February 25, I decided to recuse myself and did so.

The night before my February 24 testimony, I informed Ickes by phone that I would announce that I was stepping down from the RTC the next morning. That was, indeed, announced on schedule. Also, around the same time, I literally bumped into Nussbaum in a White House corridor. He told me that the Administration would soon be submitting its nominee for permanent RTC head.

I have done my best to recall every communication with White House staff on anything, which could be connected to this matter. I hope that this is helpful.¹⁵⁸

K. Payments to Webster Hubbell.

1. Findings.

The Independent Counsel investigated whether Webster Hubbell's employment by the President's supporters, following his resignation from the Department of Justice in the midst of the Rose billing fraud matter, constituted a criminal quid pro quo to obstruct this investigation's

Board -- 1994: Hearing before the Committee on Banking, Housing, and Urban Affairs, 103d Cong., 2d Sess. 338 (1994).

¹⁵⁸ See Letter from Roger C. Altman, then Interim CEO of the RTC to the Honorable Donald Riegle (Mar. 21, 1994) (Doc. Nos. 001-DC-00000496 through 97).

access to truthful testimony from Hubbell. After leaving the Department on April 8, 1994, Hubbell began working as a consultant. From April through December 1994, fifteen individual clients with relationships to the Clinton Administration or Democratic Party supporters paid Hubbell consulting fees totaling \$450,010. He paid little or no taxes on these fees.

About the post-termination employment of Hubbell, the Independent Counsel reports the following findings:

- Before Hubbell's resignation was announced, White House employees and other supporters of the President discussed helping Hubbell find post-resignation employment.
- Chief of Staff Mack McLarty told First Lady Hillary Rodham Clinton that White House employees and others would "be supportive" of Hubbell.
- As a result of the efforts of Mack McLarty, Erskine Bowles, Truman Arnold, Vernon Jordan, and others, Hubbell was hired as a consultant by seventeen individuals and organizations that were Clinton supporters. Hubbell was paid in excess of \$500,000 in largely unspecified "consulting fees" during 1994-95. Insufficient evidence exists to prove these payments were intended to affect Hubbell's cooperation with the Independent Counsel.

About Hubbell's cooperation with the Office of the Independent Counsel's ongoing investigation after his December 1994 guilty plea:

- Insufficient evidence exists to establish beyond a reasonable doubt that Hubbell's lack of substantial assistance to the Office of the Independent Counsel's ongoing investigations was a result of, or because of, an effort to influence, impede, or obstruct the due administration of justice or an effort to induce Hubbell to withhold testimony from an official proceeding in violation of federal criminal statutes.

About Mr. and Mrs. Hubbell's tax liability and their attorney's and accountant's role:

- The Hubbells received over \$1 million in income from various sources during 1994-97.
- Following the Supreme Court's decision in United States v. Hubbell, 530 U.S. 27 (2000), insufficient admissible evidence existed to prove beyond a reasonable doubt that Hubbell violated federal tax law.

2. Evidentiary Summary.

In March 1994, under public scrutiny for his billing and expense practices at Rose, Associate Attorney General Webb Hubbell announced his intention to resign. Prior to resigning, Hubbell discussed his intentions with several Clinton confidants, including Mickey Kantor and Jim Blair.

On March 13, 1994, the day before Hubbell said he would resign, there was a meeting at the White House to discuss Whitewater-related matters. Mack McLarty said the meeting's purpose was to discuss an organizational structure to address Whitewater issues with the President and First Lady. After completing the set agenda, the group discussed Hubbell. As McLarty testified:

[A]nother matter that was topical and pressing in nature was raised at this meeting. And that's how I remember the Webb Hubbell resignation situation or possible resignation being raised at this meeting.¹⁵⁹

McLarty said as the meeting was breaking up, he told the First Lady:

"[W]e're going to try to be supportive of Webb." And her response to me, as I remember it, was, "Thank you, Mack. I appreciate that very much."¹⁶⁰

After the March 13 meeting, McLarty asked Clinton supporters Truman Arnold and Vernon E. Jordan to help Hubbell find clients. Because of their efforts and the efforts of others, Hubbell was hired by at least seventeen other Clinton supporters, earning income of \$450,010 during 1994 and \$84,750 in 1995.

In some instances, the amount of work Hubbell performed appeared disproportionate to the fees he received, or the client's satisfaction with the work. There was little, if any, direct evidence reflecting Hubbell's efforts and most of Hubbell's clients were unable (or unwilling) to

¹⁵⁹ McLarty 4/17/97 GJ at 25.

¹⁶⁰ Id. at 35.

recount work that Hubbell had done on their behalf. Few of Hubbell's clients complained when Hubbell failed to provide them with the work he had contracted for, creating the inference that they did not hire him with the expectation of receiving work. This in turn led to the inference that if they did not hire him to produce actual work -- so that both the putative employer and employee were creating the appearance of employment where no work was expected -- then Hubbell was being paid for some other reason that the parties wished to conceal.

In the Independent Counsel's judgment, however, the evidence is more consistent with a determination by a number of supporters of the President to help Hubbell following his resignation, only to find later, to their dismay, that his conduct was substantially worse than they had been led to believe when they agreed to support him. Their motives for doing so are doubtless as numerous as the number of individuals -- some may well have wished to curry favor with the Clinton Administration, others to help a friend, and still others who wanted a former high level official with influence to lobby on their behalf. In any event, there is insufficient evidence to prove beyond a reasonable doubt that any of the persons providing financial assistance intended to pay Hubbell hush money to buy his silence, or that there was an organized effort by anyone with such criminal intent to get unwitting clients to do so. For this reason, the Independent Counsel declined prosecution of this aspect of the investigation of Hubbell.

L. Investigative Issues -- Delay of and Resistance to the Investigation.

The Madison Guaranty/Whitewater aspect of the Independent Counsel's investigation required a substantial effort and took an extended period of time. In the view of the Independent Counsel, the resistance and recalcitrance of many whose testimony was sought caused a significant portion of this delay. As in the Travel Office investigation, the Independent Counsel's Madison Guaranty/Whitewater investigation experienced delay over its course caused

by the White House and others, involving both the failure to produce relevant evidence, the refusal of witnesses to testify, and the filing of meritless legal claims that ultimately were rejected by the courts.

1. The Rose Billing Records.

a. The Relation of the Billing Records to Investigations Examining Mrs. Clinton's and Rose's Legal Work for Madison Guaranty.

To investigate the Clintons' relationship with Madison Guaranty, it was necessary to examine how Madison Guaranty retained Rose and Mrs. Clinton to provide legal services, and the services Mrs. Clinton provided. It was known that Mrs. Clinton performed legal work for Madison Guaranty, but exactly what role she played was not known. Her bills to Madison Guaranty were crucial evidence of the time she recorded for Madison Guaranty, and on what specific legal tasks.

In February and March 1992, during Governor Clinton's campaign for President, reporters questioned the Clintons about their investment in Whitewater and about Rose's and Mrs. Clinton's representation of Madison Guaranty. Vince Foster and Webster Hubbell collected Rose files and billing records related to Mrs. Clinton's legal work on behalf of Madison Guaranty to assist the campaign. In September 1993, the RTC discussed in a criminal referral one aspect of Mrs. Clinton's representation of Madison Guaranty. Criminal and civil investigators were interested in determining the relationship of Mrs. Clinton with Madison Guaranty.

i. DOJ Investigation Sought Rose Firm Records.

Prior to the appointment of regulatory Independent Counsel Robert B. Fiske Jr., prosecutors responsible for the Madison Guaranty investigation were interested in Rose's records of its Madison Guaranty representation. DOJ Fraud Section Attorney Donald Mackay's November 26, 1993 Status and Strategy Report planned to "[o]btain information regarding

whether, and to what extent, the 'Mitchell' and 'Rose' Law Firms of Little Rock performed any legal work on any of the transactions mentioned in the referrals."¹⁶¹

Mackay issued the initial grand jury subpoena to Rose's Chief Operating Officer Ronald Clark on January 13, 1994.¹⁶² This subpoena commanded the production of, among other things, all Rose materials relating to Madison Guaranty, Madison Financial, Madison Bank & Trust, President and Mrs. Clinton, Mr. and Mrs. McDougal, Seth Ward, and Whitewater Development. The subpoena was withdrawn later that day, in part due to the President having called for the appointment of an independent counsel.

ii. Regulatory Counsel Fiske Sought the Rose Records.

On February 9, 1994, regulatory Independent Counsel Fiske had the grand jury issue a subpoena to Rose demanding all its records relating to its Madison Guaranty representation.¹⁶³ Clark testified that Madison Guaranty billing records could not be found at Rose. Clark explained that Rose was unable to locate any copies whatsoever of the bills or the billing memoranda.¹⁶⁴ No billing records, timesheets, copies of bills, backup billing memoranda, or other indicia of attorneys billing Madison Guaranty for work performed could be found at Rose.

The only case files that Rose found were related to its representation of Madison Guaranty before the Arkansas Securities Commission. At some point, these original files had been taken from Rose, and then returned to Rose in November 1993 by David Kendall, attorney

¹⁶¹ Memo from Donald Mackay, Dwight Bostwick and Jim Nixon, Trial Attorneys to G. Allen Carver Jr., Principal Deputy Chief, Fraud Section and John Arterberry, Deputy Chief, Fraud Section at 6-7 (Nov. 26, 1993) (Doc. Nos. GAC000368 through 374).

¹⁶² Grand Jury Subpoena No. 89 (E.D. Ark. Jan. 13, 1994) (issued during the tenure of Dept. of Justice Crim. Div. attorney Donald Mackay).

¹⁶³ Grand Jury Subpoena No. 105 (E.D. Ark. Feb. 9, 1994) (issued during tenure of regulatory Independent Counsel Robert Fiske).

¹⁶⁴ Senate Whitewater Comm. Hearing, supra note 85, at 89-90 (Jan. 18, 1996)

for the Clintons.¹⁶⁵ No copies of any billing statements were in the files Kendall returned to Rose.¹⁶⁶

Regulatory Independent Counsel Fiske also issued grand jury subpoenas to President and Mrs. Clinton demanding documents referring or relating to Madison Guaranty and Rose:

- Subpoena No. 319, issued on May 24, 1994 to William Jefferson Clinton with a production date of June 28, 1994;¹⁶⁷ and
- Subpoena No. 320, issued on May 24, 1994 to Hillary Rodham Clinton with a production date of June 28, 1994.¹⁶⁸

Independent Counsel Starr later issued an additional subpoena to the Rose Law Firm for these same records.¹⁶⁹ The RTC and FDIC had sought these files and billing records during criminal and civil investigations they had performed.

iii. The RTC through Pillsbury Madison Also Was Investigating Rose's Madison Guaranty Work.

On February 9, 1994, the RTC subpoenaed Rose for all of their records and files relating to Madison Guaranty.¹⁷⁰ On February 24, 1994, the RTC retained Pillsbury Madison & Sutro ("Pillsbury Madison") as outside counsel to investigate Madison Guaranty. The RTC directed Pillsbury Madison to investigate legal services Rose performed for Madison Guaranty.

(testimony of R. Clark).

¹⁶⁵ R. Clark 12/5/95 GJ at 16.

¹⁶⁶ R. Clark 11/19/97 GJ at 31.

¹⁶⁷ Grand Jury Subpoena No. 319 (E.D. Ark. May 24, 1994) (issued during tenure of regulatory Independent Counsel Robert Fiske).

¹⁶⁸ Grand Jury Subpoena No. 320 (E.D. Ark. May 24, 1994) (issued during tenure of regulatory Independent Counsel Robert Fiske). Independent Counsel Kenneth Starr later issued one additional subpoena to Carolyn Huber calling for production of the billing records. Grand Jury Subpoena No. 814 (E.D. Ark. Jan. 30, 1995).

¹⁶⁹ Grand Jury Subpoena No. 1171 (E.D. Ark. Nov. 28, 1995).

¹⁷⁰ Pillsbury Madison & Sutro LLP, A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Resolution Trust Corporation

iv. FDIC and RTC Inspector General Investigations.

When the FDIC Office of Inspector General questioned Mrs. Clinton in November 1994, agents had only one bill Rose sent to Madison Guaranty.¹⁷¹ This January 31, 1986 bill was in narrative form and did not specify which attorney performed what legal work.

In late July and early August 1995, the offices of Inspector General for the RTC and FDIC issued their reports on possible conflicts of interest when Rose was hired by the RTC to sue Frost & Company for accounting malpractice in its work for Madison Guaranty.¹⁷² But these reports had been prepared without most of Rose's files and billing records concerning its Madison Guaranty representation that would have reflected the true nature of Rose's work for Madison Guaranty.

In November and December 1995, Mrs. Clinton's legal work for Madison Guaranty came under increased scrutiny, not only by the Independent Counsel and the federal grand jury in Little Rock, but also by the Senate Whitewater Committee and outside counsel retained by the RTC.

v. Little Rock Federal Grand Jury Examinations of Rose's Madison Guaranty Work (November and December 1995).

When the Office of the Independent Counsel questioned Mrs. Clinton on April 22, 1995, it only had Clark's two-page fee-recap sheet, having been given no billing records by Rose or Mrs. Clinton. The Independent Counsel asked questions in three general areas relating to Madison Guaranty: 1) how the Rose retainer got started; 2) what work did Mrs. Clinton perform

80-81 (Dec. 28, 1995).

¹⁷¹ H. Clinton 11/10/94 FDIC-OIG Int. at 3.

¹⁷² Resolution Trust Corporation Office of Inspector General, Report on Investigation Concerning Rose Law Firm (Aug. 3, 1995); Federal Deposit Insurance Corporation Office of Inspector General, Report of Investigation, Alleged Conflicts of Interest by the Rose Law Firm, (July 28, 1995).

during the time Rose represented Madison Guaranty; and 3) how and why the retainer terminated.¹⁷³ When asked whether she could recall doing any other work for Madison Guaranty other than the matter with the Arkansas Securities Department, Mrs. Clinton said, "I have a recollection of the firm during that time doing some other minor matters for Madison, but I couldn't tell you what they were right now."¹⁷⁴

Mrs. Clinton was shown a copy of Clark's two-page fee-recap and questioned about what work she did to earn her allocation of the fees.¹⁷⁵ She said, "I think IDC is something different from the stock offering, but I don't have any memory of that."¹⁷⁶ She testified that work she performed coincided with the amounts on the re-cap sheet, but said she did not remember specifically what that work was. She said, "I did work. I just can't remember 10 years from the work exactly what the work was."¹⁷⁷

Mrs. Clinton further testified about Rose and Madison Guaranty:

Q I've shown you the memo from Loretta Lynch in March of '92, when this apparently was raised during the campaign. Did you back then look at records from the Rose Law firm? In other words, did the campaign, either Webb or Vince Foster or Bill Kennedy, to your knowledge, get some of the Rose Law Firm files or copies of them and actually go through this matter?

A I think they did, but I don't know for sure whether they did.

Q I think your counsel has stated that as far as you know, you all -- and I can direct this to your counsel.

Mr. Ewing: You all produced all the records relating to this retainer issue? I say that because I have not seen the actual bills except in one instance, and the Rose Law Firm tells me they can't find any more.

¹⁷³ H. Clinton 4/22/95 Depo. at 7-8.

¹⁷⁴ Id. at 30.

¹⁷⁵ Id. at 39-43.

¹⁷⁶ Id. at 41.

¹⁷⁷ Id. at 43.

Mr. Kendall: We have produced all such records in our possession with respect to the retainer matter.¹⁷⁸

In the months before December 1995, the Independent Counsel questioned a number of witnesses before the federal grand jury in Little Rock about the work performed by Mrs. Clinton and Rose for Madison Guaranty from 1985 to 1986. On November 7, 1995, Rose attorney Richard Massey was asked about his and Mrs. Clinton's roles in representing Madison Guaranty.¹⁷⁹

On December 5, 1995, when questioned about the work done by Mrs. Clinton, Clark was shown a transmittal letter from Mrs. Clinton to Madison Guaranty, dated May 9, 1985, forwarding Rose's statement to Madison Guaranty for services rendered through April 30, 1985.¹⁸⁰ Clark testified that he had never seen the letter and statement before and reiterated that they had not been at Rose. Clark explained again for the grand jury the efforts made to locate Rose's Madison Guaranty billing records. He testified that they could not be located. He also testified about becoming aware that certain original Rose files were removed from Rose by Hubbell and Foster:

And I'll have to say, one of the biggest of many disappointments to this whole thing was to discover that those files had been removed from the Firm. Now, I didn't have any knowledge as far as sharing information with the campaign but, of course, I first learned with the David Kendall letter that files had been removed from the firm. And that's one of the two reasons I was very upset when I found out about it, because both Vince and Webb knew better, or at least they would have known better had their loyalties been to us.¹⁸¹

On December 6, 1995, Mrs. Clinton's former secretary at Rose, Sandra Moody, testified before the grand jury, about Mrs. Clinton's billing practices, and was shown bills to Madison

¹⁷⁸ Id. at 44-45.

¹⁷⁹ Massey 11/7/95 GJ at 28, 41, 43, 84-85.

¹⁸⁰ R. Clark 12/5/95 GJ at 86; R. Clark 12/2/97 GJ at 66-68.

Guaranty and transmittal letters she had prepared for Mrs. Clinton in 1985 and 1986.

On December 7, 1995, Jim Blair, a close friend and advisor of President and Mrs. Clinton, was questioned before the grand jury about McDougal's account of how he gave Madison Guaranty legal business to Mrs. Clinton as a result of a conversation he had with then-Governor Clinton in approximately August 1984.¹⁸²

Other witnesses questioned before the grand jury regarding the work of Mrs. Clinton on behalf of Madison Guaranty included several present and former employees of the Arkansas Securities Department and former Arkansas Securities Commissioner Beverly Bassett Schaeffer.¹⁸³

The Independent Counsel received additional documents and information in December 1995, providing further details of Mrs. Clinton's Madison Guaranty representation and Webb Hubbell's involvement. By letter dated December 11, 1995, the attorney representing 1992 Clinton campaign attorney Loretta Lynch produced additional documents falling within the scope of the April 28, 1994 subpoena,¹⁸⁴ claiming that these records had been recently discovered after being in storage since late 1993.¹⁸⁵ Included were memos and notes from the 1992 campaign, including Lynch's notes of a conversation she had with Webb Hubbell on February 24, 1992, in which Hubbell detailed for her Mrs. Clinton's relationship with and work for

¹⁸¹ R. Clark 12/5/95 GJ at 70-71 (emphasis added).

¹⁸² J. Blair 12/7/95 GJ at 38-43.

¹⁸³ Mrs. Schaeffer appeared on November 8, 1995. Other present and former ASD employees questioned about Rose's representation of Madison Guaranty were: Charles Handley (Oct. 3, 1995), Sarah Handley (Oct. 31, 1995), Lee Thalheimer (Oct. 31, 1995), and Nancy Jones (Nov. 1, 1995).

¹⁸⁴ Letter from Elliot Peters, Kecker & Van Nest, to Independent Counsel Kenneth Starr (Dec. 11, 1995) (Doc. No. 263-00000691).

¹⁸⁵ Id.

Madison Guaranty.¹⁸⁶

On December 12, 1995, attorneys from the Office of the Independent Counsel spoke with James Hamilton, attorney for Vince Foster's widow, Lisa, about records she had which might have been relevant to the investigation. Atkins, on behalf of Rose, reviewed these documents prior to their production to the Independent Counsel.¹⁸⁷

On December 17, 1995, Hubbell's attorney, John Niels told the Independent Counsel Hubbell had given him Mrs. Clinton's Rose time sheets from 1987 to 1989.

When Webster Hubbell appeared before the Little Rock grand jury on December 19, 1995, he was questioned extensively about his and Mr. Foster's efforts during the 1992 campaign to gather information and Rose documents covering Mrs. Clinton's work for Madison Guaranty. Hubbell admitted that Foster had asked him to take certain original Rose files with him when they left Rose in January 1993, including the Bank of Kingston file.¹⁸⁸ He admitted he looked at Rose billing records for Madison Guaranty in 1992 but said he returned the billing records to Foster when he completed his review.¹⁸⁹

vi. Pillsbury Madison Learned That Mrs. Clinton Created the Ward Option Agreement.

On December 19, 1995, Pillsbury Madison, in its investigation for the RTC, questioned Rose attorney, Davis Thomas, who was shown a copy of an option agreement between Seth Ward and Madison Financial dated May 1, 1986.¹⁹⁰ Thomas stated that the letter "g" in the

¹⁸⁶ Miscellaneous memos and notes of Clinton campaign staff member, Loretta Lynch during the 1992 presidential campaign (Feb. 23-27, 1992) (Docs. No. 263-00000691-714).

¹⁸⁷ Handwritten Notes of Deputy Independent Counsel Hickman Ewing Jr. (Dec. 12-21, 1995) (Doc. Nos. MGSL-FR-00000067 through 75).

¹⁸⁸ Hubbell 12/19/95 GJ at 152-54.

¹⁸⁹ *Id.* at 93-94, 96.

¹⁹⁰ Pillsbury Madison & Sutro LLP, A Supplemental Report on the Representation of

processing code on the document identified which Rose attorney was involved with the document. The RTC requested Rose to identify the lawyer.¹⁹¹

On December 21, 1995, counsel for Rose advised the RTC that the letter "g" in the processing code identified the author as Mrs. Clinton.¹⁹² On that same day, the RTC sent additional interrogatories to Mr. Kendall asking Mrs. Clinton about legal work done for Madison Guaranty related to the option agreement. On December 28, 1995, Kendall replied to Pillsbury Madison "that Mrs. Clinton has reviewed the options (there were several versions) but does not recall them."¹⁹³ Kendall promised Mrs. Clinton would respond to the interrogatories as soon as possible.

Pillsbury Madison negotiated a "tolling" agreement with Rose on Castle Grande matters due to Mrs. Clinton's attorney code being on the document and the outstanding interrogatories.

Pillsbury Madison issued its report on Rose's representation of Madison Guaranty on December 28, 1995. This report noted gaps and inconsistencies in the documentation relative to fees charged Madison Guaranty,¹⁹⁴ despite having issued subpoenas to Rose for Madison Guaranty files and billing data. The report also made reference to the lack of documentation regarding what work had been done by which Rose attorney.

On January 2, 1996, the Senate Whitewater Committee notified Clark that the Senate

Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Federal Deposit Insurance Corporation 2 (Feb. 25, 1996).

¹⁹¹ Id.

¹⁹² R. Clark 12/2/97 GJ at 75-77. The firm notified the Independent Counsel of this by letter dated January 11, 1996. Id. at 115-17.

¹⁹³ Pillsbury Madison & Sutro LLP, A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Resolution Trust Corporation 32 (Dec. 28, 1995).

¹⁹⁴ Id. at 4-5.

wanted him in Washington, D.C. on January 5, 1996 to give a deposition.¹⁹⁵ The Committee also notified Rick Massey that he was to testify before the Senate on January 11, 1996.¹⁹⁶

vii. Mrs. Clinton's Counsel Produced a Copy of the Billing Records -- January 5, 1996.

On January 5, 1996, Kendall produced certain Rose billing records regarding Madison Guaranty and one document relating to Rose's representation of the Bank of Kingston to the Independent Counsel.¹⁹⁷ Kendall also produced copies of these documents to the RTC and the Senate Whitewater Committee, and distributed them to the press.¹⁹⁸ These records reflected work performed by Mrs. Clinton and other Rose attorneys on behalf of Madison Guaranty from 1985 to 1987.¹⁹⁹ According to Kendall, Carolyn Huber, Special Assistant to the President, Director of Personal Correspondence, discovered the records in her White House office on January 4, 1996.²⁰⁰

b. Findings.

About the collection of documentary records at Rose in the spring of 1992, during the presidential campaign, the Independent Counsel reports the following findings:

- Webster L. Hubbell and Vincent W. Foster Jr. collected billing records of Mrs. Clinton's work for Madison Guaranty from Rose archives. The firm's accounting office was requested to create a computer printout summarizing Mrs. Clinton's work for Madison

¹⁹⁵ R. Clark 12/2/97 GJ at 73-74.

¹⁹⁶ Massey 12/2/97 GJ at 50.

¹⁹⁷ Letter from David E. Kendall, the Clintons' attorney, to John D. Bates, attorney for the Independent Counsel's Office at 1 (Jan. 5, 1996); see also Rose Law Firm Billing Records (1985-1986) (Doc. Nos. DEK014936 through 015049).

¹⁹⁸ Kendall 2/2/96 GJ at 9. Ron Clark of the Rose Law Firm was nearing the end of his deposition on that day when it was learned the billing records had been produced. R. Clark 12/2/97 GJ at 89-91.

¹⁹⁹ Rose Law Firm Billing Records (1985-1986) (Doc. Nos. DEK014936 through 015049).

²⁰⁰ Kendall 2/2/96 GJ at 11-12.

Guaranty.

- In the spring of 1992, Hubbell, Foster, and Mrs. Clinton reviewed billing records detailing Mrs. Clinton's work for Madison Guaranty.
- At least two copies of original billing records were created.
- One of those copies -- the copy produced from the White House residence in 1996 -- was in the possession of Foster and Mrs. Clinton at some point. Forensic (including fingerprint examination) and testimonial evidence established that both of them physically handled this copy.
- Another copy, later found in Foster's attic, was at some time in Foster's personal possession.
- Original billing records, routinely archived at Rose, and the original computer-generated billing summary, have not been found.
- Checkout logs produced by Rose showed that on March 25 and May 18, 1992, Mrs. Clinton's secretary, Mildred Alston, checked out files labeled "HRC Time Sheets."
- Hubbell obtained Mrs. Clinton's time sheets for 1987 through 1989 from Alston.
- Mrs. Clinton's time sheets for 1985 through 1986 have not been found.

Concerning shipment of documents from Arkansas to Washington, D.C., and their movement in the White House:

- Insufficient evidence exists to determine conclusively how the billing records were transported to Washington, D.C.
- Evidence gathered excludes, to a high degree of certainty, the possibility that Hubbell transported the billing records to Washington, D.C. or that they arrived in the shipment of Mrs. Clinton's Rose records to the White House.
- Evidence gathered could not exclude the possibility that the billing records traveled to Washington, D.C. with records from the Governor's Mansion or with Foster's personal records.
- Evidence gathered could not exclude the possibility that the billing records went to Washington, D.C. in some other shipment of records not known to the Independent Counsel.
- Records from the Governor's Mansion were variously maintained in White House residence rooms 319A, 323, and 309. Evidence gathered could not exclude the

possibility that some records from the Governor's Mansion were also maintained at other locations in the White House.

- After Vince Foster's suicide, a portion of records maintained in his office were stored in White House residence room 323's closet.

Concerning searches at the White House conducted in response to subpoenas issued by the Independent Counsel:

- Counsel and staff searched five boxes and two file cabinets containing the Clintons' financial records in response to subpoenas from the Independent Counsel.
- Counsel and staff searched records shipped to Mrs. Clinton from Rose in response to subpoenas from the Independent Counsel.
- Counsel and staff searched records collected and maintained by Hubbell in response to subpoenas from the Independent Counsel.
- The evidence was insufficient to determine whether counsel and staff searched all other records transported to Washington, D.C. in response to subpoenas from the Independent Counsel.

Concerning the billing records' August 1995 placement in Room 319A:

- The evidence was insufficient to determine who put the billing records in White House residence Room 319A.
- The evidence gathered could not exclude the possibility that White House staff members, construction workers, or White House visitors, put the billing records in Room 319A.
- The evidence gathered could not exclude the possibility that Mrs. Clinton put the billing records in Room 319A.
- The evidence gathered could not exclude the possibility that the billing records found in Room 319A came from Foster's office.
- Three witnesses testified about conduct by Mrs. Clinton consistent with her having had the billing records in July 1995.
- Mrs. Clinton gave sworn testimony denying possession of the billing records in July 1995, and denying placing them in Room 319A or knowing how they got there.

Concerning the billing records' discovery and handling after discovery:

- Carolyn Huber testified she discovered the billing records in August 1995 in White

House residence Room 319A.

- Huber testified she failed to recognize the records' significance and put them in a box in her office until January 1996.
- In January 1996, Huber testified she examined the billing records, recognized their significance, and gave them to David Kendall, personal attorney to President and Mrs. Clinton.
- Kendall, Henry Schuelke, and Jane Sherburne copied the billing records before giving them to the Office of the Independent Counsel.
- The FBI cannot exclude the possibility that the handling of the billing records destroyed forensic evidence.

Concerning discovery of a second set of billing records in the attic of Vince Foster's home:

- Foster stored copies of some records he had on Mrs. Clinton's Madison Guaranty work in a briefcase in his attic, discovered in July 1997.
- Foster's copies included documents and information not contained in the version of the billing records produced by the White House in January 1996.
- Among the records in Foster's possession (but not in the White House production) was a copy of a Rose bill to the Bank of Kingston, dated July 30, 1982, and marked "paid" on October 23, 1984. Foster's records also contained a Foster-created chronology absent from the White House production with entries showing payment of the Bank of Kingston bill in October 1984.

As to Mrs. Clinton:

- The evidence was insufficient to prove beyond a reasonable doubt that Mrs. Clinton withheld documents from the grand jury or otherwise intended to obstruct justice.

c. Evidentiary Summary.

A criminal investigation depends on the ability to obtain and review all available documentary evidence. This is especially true in the investigation of matters that happened a number of years ago. Real and claimed loss of memory and conflicts in those memories can often be resolved through the use and analysis of documents created at the time of the

transactions.

In trying to reconstruct the work performed by Rose and Mrs. Clinton for Madison Guaranty in 1985 and 1986, investigators sought all Rose files for work done for Madison Guaranty. This included: 1) the legal files themselves, including pleadings, correspondence, memoranda and notes of contacts with the client and others; and 2) individual time sheets kept by attorneys, and the actual billing statements transmitted to clients, with the internal backup documentation justifying the bills.

i. Gathering and Reviewing Records at Rose.

On February 12, 1992, either Vince Foster or Webb Hubbell had the Rose accounting office print a copy of the "Client Billing & Payment History," detailing Hillary Clinton's work for Madison Guaranty.²⁰¹ The records summarized Mrs. Clinton's total billing between May 1985 and May 1987 on six different Madison Guaranty matters.

Hubbell testified either he or Foster also asked accounting to get Madison Guaranty records from remote storage.²⁰² February 14, 1992 check out logs at Rose's remote storage facility show that Mary Russell checked out billing records on Madison Guaranty from for the period 1985-87. These records included files labeled: "'85 Madison Guaranty," "'86 (M's)," and "'87 (M's) Paid Client."²⁰³ On February 21, 1992, Russell also checked out records about Madison Bank and Bank of Kingston from 1981. These included: "'81 & '82 B's & K's,"

²⁰¹ Hubbell 5/7/96 GJ at 20-21; Senate Whitewater Comm. Hearing, supra note 85, at 48 (Feb. 7, 1996) (testimony of W. Hubbell).

²⁰² Hubbell 5/7/96 GJ at 15, 18-19. The billing records were removed from archives in 1989, returned, and retrieved again in 1992. Former Rose attorney Gary Speed said he retrieved the original Madison Guaranty billing records in 1989 for a lawsuit against the Frost & Company accounting firm. Speed 8/7/96 Int. at 1.

²⁰³ Rose storage facility checkout log (Feb. 1992) (Doc. No. 105-00054214). Rose staff testified the files labeled "M's" included accounting records for multiple clients, including Madison Guaranty, beginning with the letter "M." Russell 4/16/96 GJ at 25-27.

"Madison Bank," and "Bank of Kingston."²⁰⁴ Check out logs show that both "'86 (M's)" and "'81 & '82 B's & K's" were returned to storage.²⁰⁵ On March 24, 1992, a file for "Madison Guaranty" was checked out to "Vera."²⁰⁶ On March 25, 1992, a second Bank of Kingston file was checked out to "VF/WHK."²⁰⁷

Check out logs Rose produced showed that on March 25 and May 18, 1992, "Millie" checked out files labeled "HRC Time Sheets."²⁰⁸ Millie Alston, Mrs. Clinton's secretary, did not remember checking out any of Mrs. Clinton's time sheets from remote storage. Mrs. Clinton's time sheets from 1985-86 were never found. The Independent Counsel was unable to establish what happened to the time sheets after Alston removed them from storage.

Hubbell testified he had the billing records in February or March 1992.²⁰⁹ He reviewed bills for any specific contacts Mrs. Clinton might have had with the Securities Department to corroborate campaign statements. After Hubbell reviewed the billing records, he gave them to Foster.

²⁰⁴ Rose storage facility checkout log (Feb. 1992) (Doc. Nos. 105-00054214 through 215).

²⁰⁵ See Rose storage facility checkout log (Feb. 1992) (Doc. No. 105-00054214); see also Russell 4/16/96 GJ at 12-13 (Rose procedure required accounting clerks to highlight entries in the check-out logs for returned files). The "'86 (M's)" and the "'81 & '82 B's & K's" entries were highlighted, meaning they were returned to Rose's remote storage facility.

²⁰⁶ Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216). Vera Hitt was Rick Massey's secretary.

²⁰⁷ Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216). Check out logs showed this was the only file returned to remote storage. See id.; see also Russell 4/16/96 GJ at 12-13. This Bank of Kingston file was returned to storage and later produced to the Independent Counsel. Bank of Kingston file produced by Rose (Doc. Nos. 1171-00000008 through 446).

²⁰⁸ Rose storage facility checkout log (Mar. 25, 1992) (Doc. No. 105-00054198); Rose storage facility checkout log (May 18, 1992) (Doc. No. 105-00054199).

²⁰⁹ Senate Whitewater Comm. Hearing, supra note 85, at 42 (Feb. 7, 1996) (testimony of W. Hubbell).

ii. Records Shipped to Washington, D.C.

The Independent Counsel was able to identify five distinct shipments of records from Little Rock to Washington, D.C. in 1992:

a) Records Sent from the Governor's Mansion to the White House.

After the 1992 election, Carolyn Huber moved the Clintons' personal effects from Little Rock to Washington, D.C. Most boxes from the Governor's Mansion were delivered to the White House's residential East Wing. Three rooms on the residence's third floor served as storage space during the relevant time periods, Room 319A, Room 323 and Room 309. The evidence could not exclude the possibility that the Rose billing records were transported in this shipment.

b) Rose Records Shipped to the White House for Mrs. Clinton.

On February 25, 1993, Millie Alston wrote to Amy Stewart, a Rose attorney, about Mrs. Clinton's Rose files, enclosing a six-page list of Mrs. Clinton's files still at Rose. Rose shipped two boxes of documents to the White House in the spring of 1993. Given the detailed inventory accompanying this shipment, the evidence excludes, to a high degree of probability, the possibility that the Rose billing records were transported from Rose.

c) Vince Foster's Office Records Shipped to the White House.

Lorraine Cline, Foster's Rose secretary, boxed Foster's office materials before he left for the White House in 1993. Among the indexes created for this shipment was a draft file list of Mrs. Clinton's files Foster took with him when he left Little Rock to go to Washington D.C. The

list included a file entitled, "Whitewater Development."²¹⁰ Maggie Williams, Mrs. Clinton's Chief of Staff, testified that after Foster's death, she removed the Clintons' personal files from Foster's office and had the documents put in Room 323's closet.²¹¹ Given the lack of an inventory, the evidence could not exclude the possibility that the Rose billing records were transported in this shipment and later moved to Room 323.

d) Clinton Campaign Records.

Joan Watkins, a Clinton campaign worker, said while she was organizing the campaign documents for storage, she learned Betsey Wright had removed certain documents from the campaign before she (Watkins) took charge of storage. Wright acknowledged she kept ten boxes of sensitive campaign documents known as the "Betsey files."²¹² Wright turned over the "Betsey files" to Hubbell in January 1993 at his request.²¹³ Given the detailed inventory accompanying this shipment, the evidence excludes, to a high degree of probability, the possibility that the Rose billing records were transported from Rose.

e) Hubbell's Records Transferred to Washington, D.C.

Hubbell received the Rose "Betsey files" from Betsey Wright around January 1993.²¹⁴ Wright produced a five-page index of those files to the Independent Counsel. No Madison Guaranty files are listed. Hubbell added to the "Betsey files" at Rose. Hubbell moved the "Betsey files," Madison Guaranty files, the Bank of Kingston file, and Southern Development Bank Corporation files to his home in Washington, D.C. and later produced some of the files to

²¹⁰ List of Clinton files located in Vince Foster's White House office (Doc. No. BD-DC-00000005).

²¹¹ See Williams 6/2/95 GJ at 36-37; Senate Whitewater Comm. Hearing, supra note 85, at 155 (July 26, 1995) (testimony of M. Williams).

²¹² Wright 2/29/96 GJ at 85, 87; Hubbell 12/19/95 GJ at 150.

²¹³ Wright 2/29/96 GJ at 85, 88.

the Independent Counsel. Hubbell transferred the bulk of these files to David Kendall in November 1993. The evidence excludes, to a high degree of probability, the possibility that the Rose billing records were transported in Hubbell's shipment to Washington D. C.

iii. Searches of the Records.

Four of these separate sources of documents -- the Clintons' personal records, Mrs. Clinton's law firm records, and Hubbell's records, as merged with the "Betsey files," were searched, in one manner or another, in response to subpoenas issued by regulatory Independent Counsel Fiske and/or Independent Counsel Starr. The fifth potential source of records -- documents Foster took from Rose -- was not in his office when the first subpoena was issued.

iv. The Billing Records in the White House.

Carolyn Huber testified that sometime during the first two weeks in August 1995, she found on a table in Room 319A, and packed in a box, what she later determined were Rose billing records of Mrs. Clinton's Madison Guaranty work. On January 4, 1996, Huber removed the records from the box she had stored them in back in August 1995, and looked at the first page. At that time she identified the documents as Madison Guaranty billing records. After realizing she was in possession of the billing records, she contacted David Kendall.

The Independent Counsel's investigation tried to determine who had access to Room 319A in late July and early August 1995. The Independent Counsel determined that, in addition to the First Family, the following people (with total number of people indicated) had access:

- White House Executive Residence staff (140);
- Construction contractors renovating the White House's heating, ventilation, and air conditioning system (67);
- Secret Service officers escorting construction workers (57);

²¹⁴ Hubbell 12/19/95 GJ at 149-50.

- Overnight houseguests (78);
- Visitors to the residence (37);
- Staff not recorded on entry and exit logs (2) (Capricia Marshall and Carolyn Huber).

The Independent Counsel conducted interviews in person or by telephone with most of these people, excluding some because of age or other logistical reasons. Each person interviewed said they did not place billing records in Room 319A and did not know how they got there.

a) Renovation.

In July and August 1995, the White House's executive residence heating, ventilation, and air conditioning system was renovated. The Independent Counsel closely examined this activity and determined that approximately a month before the Clintons' Wyoming summer vacation, Assistant Chief White House Usher Dennis Freemyer decided to run certain air conditioning and heating ducts through a closet in Room 323, instead of through an adjacent bathroom. In mid-July 1995, Freemyer asked Capricia Marshall if he could use the closet in this manner and she told him he could. Freemyer checked the closet on August 15, 16, and 17, finding it locked each time. Each time, Freemyer contacted Marshall to gain access to the closet. On the morning of August 18, the closet was unlocked and empty. Freemyer thought Marshall told him she emptied the closet. Freemyer said work on the closet occurred on August 18, 1995.

b) Mrs. Clinton.

Beginning in June 1995, Mrs. Clinton used Room 323 to write a book. In July and August 1995, she worked daily in Room 323, though the time she spent there varied. Three witnesses testified that in July 1995 they saw Mrs. Clinton carrying a box possibly containing the

billing records. CW²¹⁵ testified about a brief encounter with Mrs. Clinton in July 1995. CW encountered Mrs. Clinton in a doorway connecting a hall to the service elevator and stairs to the second floor.²¹⁶ Mrs. Clinton was "comfortably" carrying a brown cardboard box in her arms. CW noticed that inside the box there was a stack of papers "coiled or rolled up into a -- what appeared to be a tube."²¹⁷ One end of the papers stuck out. The papers were an off-white color, slightly discolored due to age, and the edges appeared curled, as if used. The only person CW told about this brief encounter with Mrs. Clinton was CW's spouse that evening.

David Parker, a construction worker, said he saw Mrs. Clinton coming upstairs to the third floor with a cardboard box. Parker and two other individuals held the door open for Mrs. Clinton as she walked through. Parker thought this encounter happened in July 1995. Shown a copy of the billing records rolled up, Parker said they looked like his renovation work drawings.

Construction worker William Fowble remembered seeing Mrs. Clinton carrying a cardboard box on the residence's third floor. He was working in the attic above the North Portico hall when he saw her walking from the third floor main corridor into the North Portico hall. Fowble described the box as not very large, so Mrs. Clinton could easily carry it. He did not see what was in the box.

v. Handling the Billing Records after Discovery.

After Huber discovered the records, notwithstanding questions raised by Special Counsel to the President Jane Sherburne about handling the records, Kendall, Sherburne and Henry Schuelke agreed that they had to review and make copies of the records before notifying the

²¹⁵ To obtain this confidential witness's information, the Office of Independent Counsel promised that their identity would remain confidential unless required in a court proceeding.

²¹⁶ CW 8/15/96 GJ at 7-8.

²¹⁷ Id. at 9.

Office of the Independent Counsel. Huber and Sherburne proceeded to make two copies of the records. Kendall then took the original records and one copy with him back to his office, where he locked the original in a drawer and left the copy with staff to make six or seven more color copies. Once copies were made, Mark Rolfe, a Williams & Connolly paralegal, handled the "original" records to copy check every page.

Once the originals were produced to the Independent Counsel, the records were examined by the FBI. The examination found: one palm print of Mildred Alston; two fingerprints of Hillary Rodham Clinton; four fingerprints of Vincent W. Foster Jr.; three fingerprints of Sandra Hatch (a Rose employee); six fingerprints of Carolyn Huber; thirty-six fingerprints and one palm print of Marc Rolfe; and one fingerprint of Henry F. Schuelke III. The FBI Laboratory identified some of the red handwritten notations on the billing records as Foster's.

vi. The Records in Foster's Attic.

The Independent Counsel received a second set of Madison Guaranty billing records on July 31, 1997 from Vincent Foster's widow, Lisa Foster Moody. They were found in Foster's briefcase in the attic of his house in Little Rock, Arkansas in July 1997. Moody's best guess was that the briefcase was put in the attic by Foster shortly after the 1992 election.

The set of Madison Guaranty billing records found in Foster's attic differed from the records produced in January 1996 in four ways: 1) they did not contain any of red markings and handwriting identified as Foster's; 2) they did not contain post-it notes like those on the White House documents; 3) there were some minor underlining and other marks not in red ink that did not appear on both sets of records; and 4) more documents about Madison Guaranty and other related entities accompanied Foster's documents.

Among the additional documents contained in the briefcase were: 1) a copy of a Rose bill

to the Bank of Kingston, dated July 30, 1982, for total fees and costs of \$5,893.63. The copy bore the handwritten word "paid" and the date October 23, 1984, reflecting payment of \$5,000.00; 2) a five-page chronology of Rose's representation of Madison Guaranty; and 3) an original memorandum of Rick Massey.

2. Delays Due to Contumacious Conduct and Refusal to Testify or Produce Documents.

Delays in obtaining relevant evidence included Susan McDougal's refusal to testify (despite a court order compelling her testimony); and the contumacious conduct by Herby Branscum Jr. and Robert Hill.

a. Susan McDougal.

On August 20, 1996, Susan McDougal, was sentenced by U.S. District Judge George Howard Jr. to two years imprisonment, and ordered to pay \$300,000 in restitution to the SBA. On the day of her sentencing, Susan McDougal was subpoenaed to testify before the federal grand jury in Little Rock. She filed motions to quash the subpoena, all of which were denied by U.S. District Judge Susan Webber Wright, who was the judge supervising the grand jury's work. The Court entered an order compelling her testimony, under 18 U.S.C. § 6002. Pursuant to that order, none of her testimony could be used against her in any criminal prosecution, except a prosecution for perjury. On September 4, 1996, Mrs. McDougal was asked the following three questions before the grand jury:

Q. Did you ever discuss your loan from David Hale with William Jefferson Clinton?

.....

Q. Did you ever discuss Lorange Heights with William Jefferson Clinton?

Q. To your knowledge, did William Jefferson Clinton testify truthfully during the

course of your trial?²¹⁸

Mrs. McDougal refused to answer these questions, and Judge Wright held her in civil contempt.²¹⁹ Her contempt order was quickly affirmed by the U.S. Court of Appeals for the Eighth Circuit.²²⁰

On September 23, 1996, shortly after Susan McDougal was incarcerated because of her contempt of Judge Wright's order, President Clinton was asked on a television news program about her allegations that the Independent Counsel had asked her to lie about him. The President replied, "[I]sn't it obvious?"²²¹ The Independent Counsel then wrote President Clinton, through his counsel, several times asking that he encourage Susan McDougal to testify. He declined, through counsel, to encourage Susan McDougal to tell what she knew about the matters under investigation.

After Susan McDougal refused to answer questions in early September 1996, additional evidence was discovered which further increased the importance of Susan McDougal's testimony. President Clinton had testified at her trial that he had never received a loan from Madison Guaranty. Jim McDougal told this Office that Madison Guaranty had made a loan to Bill Clinton to pay off a loan to the Whitewater Corporation at the Madison Bank & Trust. In December 1996, the Independent Counsel's Office located a microfilm copy of a Madison Guaranty cashier's check made payable to "Bill Clinton" in the amount of \$27,600. Internal Madison Guaranty documents indicated that Madison Guaranty had treated the check to "Bill

²¹⁸ S. McDougal 9/4/96 GJ at 9.

²¹⁹ Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996).

²²⁰ In re: Grand Jury Subpoena: United States v. McDougal, 97 F.3d 1090 (8th Cir. 1996).

²²¹ The NewsHour with Jim Lehrer: Tr. of Jim Lehrer Interview of President William J. Clinton (PBS television broadcast) (Sept. 23, 1996).

Clinton" as a loan. The Office also located a check payable to Madison Guaranty drawn on the James B. McDougal Trustee account, dated August 1, 1983, with the notation "Payoff Clinton." This check, in the amount of \$5,081.82, was signed by Susan McDougal and was in the precise amount necessary to payoff the last portion of the \$27,600 loan.

The importance of Susan McDougal's testimony was heightened when, on March 8, 1998, Jim McDougal died in federal prison. As to a number of questions, Jim McDougal had advised that the Office needed to "ask Susan," contending there were transactions that she knew or should have known about, and he did not. After an 18-month period of civil contempt ended, Susan McDougal started service of her two-year sentence on her four felony convictions.

In light of new information gathered by the OIC since early September 1996, Susan McDougal was required to testify again in April 1998 before the grand jury. The Court, at the grand jury's request, again ordered Susan McDougal to answer its questions. She again refused to testify, including answering questions about the check signed by her with the notation, "Payoff Clinton."

Susan McDougal's testimony was initially unavailable to the Office pending resolution of the criminal charges against her. Following her conviction, she refused two lawful orders to testify. Susan McDougal (one of seven critical percipient witnesses to events) refused to answer questions before the grand jury investigating Madison Guaranty matters.

b. Branscum and Hill.

An investigation into allegations about Perry County Bank ("PCB") encountered substantial delay. Subpoenas were issued to the PCB, its owners Herby Branscum Jr. and Robert M. Hill, and to their professional corporations. After the initial production of certain records, the PCB, Branscum, and Hill, and their associations filed motions to quash the grand jury subpoenas,

contending that the Independent Counsel had exceeded his jurisdiction. Chief United States District Court Judge Stephen Reasoner, who supervised the grand jury, denied the motions to quash, ordering the production of all the records requested.

When they refused, Judge Reasoner held Hill, Robert M. Hill, P.A., Branscum, Herby Branscum Jr. P.A., and PCB in contempt for refusing to comply with properly issued subpoenas duces tecum. The court imposed a fine of \$5,000 per day on PCB, \$1,000 per day on Branscum, and \$1,000 per day on Hill until they complied with the subpoena. Robert M. Hill, P.A., Branscum, and PCB eventually purged themselves of contempt by obeying the district court's order and responding to the subpoenas. Branscum's association and Hill complied with the subpoenas only after they appealed and the Eighth Circuit affirmed the contempt citation. The district court eventually imposed fines of \$77,000 as to both Branscum's association and Hill. The contumacious conduct delayed this investigation by more than six months.

3. Privilege Litigation.

Unmeritorious litigation by the White House included its claim to an attorney/client privilege between an individual involved in a federal criminal investigation and a government lawyer.²²² On June 21, 1996, the Office of the Independent Counsel served the White House with a grand jury subpoena requiring production of "[a]ll documents created during meetings attended by any attorney from the Office of Counsel to the President and Hillary Rodham Clinton (regardless whether any other person was present)" concerning several Whitewater-related subjects.²²³ The White House identified, but refused to turn over, nine sets of notes responsive to the subpoena. It asserted that executive privilege, attorney-client privilege, and the attorney work product doctrine shielded the notes from production.

²²² See, e.g., In re: Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir. 1997).

Although the White House previously had advised this Office it would rely on executive privilege regarding these documents, before the district court it asserted only a governmental attorney-client privilege, arguing that Mrs. Clinton had a privilege for communications with her government-paid attorneys. The district court, in an unpublished opinion, held that the attorney-client privilege protected the documents because Mrs. Clinton and the White House had a "genuine and reasonable (whether or not mistaken)" belief that the conversations at issue were privileged.

The Independent Counsel appealed to the United States Court of Appeals for the Eighth Circuit. In a split decision, the court of appeals reversed the district court. The majority opinion, written by Judge Bowman and joined by Judge Wollman, concluded that even if a privilege protects communications between the Office of the President and its attorneys, "the White House may not use the privilege to withhold potentially relevant information from a federal grand jury."²²⁴ The court reasoned, among other things, that assertion of the privilege would work against "the strong public interest in honest government and in exposing wrongdoing by public officials."²²⁵ The Supreme Court declined to review the case. More than twelve months of delay were experienced in litigation with the White House on this issue.²²⁶

²²³ Id. at 913.

²²⁴ Id. at 915.

²²⁵ Id. at 921.

²²⁶ Id. Nor was this the only occasion in which White House litigation delayed this investigation. Notwithstanding the rejection of its position by the Eighth Circuit, the White House reasserted the identical arguments before the District of Columbia Circuit, where they were, again, rejected. In re: Lindsey, 158 F.3d 1263 (D.C. Cir. 1998) (per curiam).

4. Successor to a Regulatory Independent Counsel -- A Broad Mandate and Inherent Jurisdictional Questions.

One significant factor that differentiates this Independent Counsel's investigation from that of any other independent counsel was the investigation's genesis. The Independent Counsel was the successor to a regulatory independent counsel investigation conducted by Robert Fiske. Fiske was appointed by Attorney General Janet Reno and given broad investigative jurisdiction. When Independent Counsel Starr was appointed, the Special Division authorized him to conduct a criminal investigation of the same jurisdictional scope. The Independent Counsel (unlike any other independent counsel's office) succeeded to an already ongoing criminal investigation.

One example of the breadth of Mr. Fiske's inquiry will suffice to illustrate the situation. Mr. Fiske inherited an ongoing investigation of the criminal conduct of David Hale, a former Municipal Court judge in Little Rock, Arkansas. Hale's involvement with Capital Management Services, Inc. was squarely within Mr. Fiske's original jurisdictional grant. Hale subsequently entered into a cooperation agreement with Mr. Fiske and pleaded guilty to federal offenses while agreeing to provide Mr. Fiske with evidence about other ongoing crimes. One of the crimes Hale disclosed was a heretofore unknown tax fraud scheme involving a Texas bankruptcy perpetrated by Governor Jim Guy Tucker and two others.

The crime Hale disclosed was squarely related to Mr. Fiske's jurisdiction in the common understanding of prosecutors nation-wide. One test of the veracity of a corroborating witness is the witness's ability (or inability) to provide a prosecuting office with leads to criminal conduct that is otherwise unknown. Hale's disclosure of the Tucker bankruptcy and tax fraud was a classic example of such a test -- if the facts were as Hale portrayed them to be, that would be powerful confirmation of his inherent credibility.

Mr. Fiske initiated an investigation of the Tucker bankruptcy and tax fraud allegation --

an investigation that substantially corroborated Hale's account and led to the indictment and guilty plea of Governor Tucker, William Marks, and John Haley. Mr. Fiske's investigation was ongoing when Independent Counsel Starr was appointed. Because it was related to the core investigation, this Office was obliged to continue where Mr. Fiske left off.

On June 7, 1995, a grand jury in the Eastern District of Arkansas indicted Arkansas Governor Jim Guy Tucker, and his business partner, William J. Marks Sr., and his lawyer, John H. Haley. Prior to indictment, Tucker filed a motion seeking discharge of the grand jury on jurisdictional grounds. That motion was denied by Judge Reasoner. The indictment alleged they had pursued a fraudulent scheme to transfer valuable cable television assets to greatly minimize taxes utilizing a sham bankruptcy proceeding involving Land Management System, Inc. ("LMS"). The Attorney General had earlier determined the LMS bankruptcy was a related matter within the Independent Counsel's jurisdiction under 28 U.S.C. § 594(e), and had referred to the Independent Counsel prosecutorial jurisdiction to investigate whether "any person committed any federal crime relating to the bankruptcy action." The Special Division had entered an order confirming this jurisdiction. Nevertheless, Governor Tucker moved to dismiss the indictment on grounds that the Independent Counsel lacked jurisdiction to prosecute the case.

The case was assigned to Senior United States District Court Judge Henry Woods, who on September 5, 1995, granted the motion and dismissed the indictment as to all three defendants. The district court held that offenses did not fall within and were not related to the jurisdiction of the Independent Counsel.

The Independent Counsel appealed to the United States Court of Appeals for the Eighth Circuit. The court of appeals unanimously reversed the district court in March 1996. The court of appeals first held that the Attorney General's decision to refer the matter to the Independent

Counsel was not reviewable. The court of appeals then held that, even if it could review the Attorney General's decision, it would reverse the district court's conclusion that the indictment concerned matters unrelated to the original grant of jurisdiction. The court of appeals said Governor Tucker had "clearly defined" relationships with Jim McDougal, CMS, and Madison Guaranty.²²⁷ The panel denied rehearing and the Eighth Circuit denied the suggestion for rehearing in banc.²²⁸ The Supreme Court denied certiorari in October 1996.

This delay tactic would have been unavailable to the defendants had the prosecution been brought by Mr. Fiske or the Department of Justice. Nearly three years elapsed between the time of the indictment and the defendants' guilty pleas. At least one year of that delay was occasioned by litigation relating to the jurisdiction of this Office.²²⁹

This endless litigation prolonged the Independent Counsel's tenure in a way that is unique. To an Independent Counsel's Office, the defendant's litigative strategy inexorably leads to a seemingly endless inquiry.

²²⁷ 78 F.3d 1321.

²²⁸ See United States v. Tucker, 82 F.3d 1423 (8th Cir. 1996).

²²⁹ Nor was this the only such instance of jurisdictional delay. For example, on April 30, 1998, a grand jury in the District of Columbia issued a 10-count indictment against Webster Hubbell, his wife Suzanna Hubbell, his tax lawyer Charles Owen, and his accountant Michael Schaufele. See United States v. Hubbell, 11 F. Supp. 2d 25, 28 (D.D.C. 1998). Under 28 U.S.C. §594(e), the Special Division concluded the alleged payment of consulting fees and failure to pay taxes were related to the Office's original grant of jurisdiction. Id. at 27. Nonetheless, the United States District Court for the District of Columbia, Judge James Robertson presiding, granted Hubbell's motion to dismiss the indictment as beyond the Office's jurisdiction, concluding the "asserted connection" between the original jurisdiction and the charges relating to the consulting fees "too attenuated" to constitute "related matters" under □Section 594(e). Id. at 32. The United States Court of Appeals for the District of Columbia reversed. In a per curium opinion joined by Judges Wald and Williams, the court of appeals ruled the Special Division's referrals under □ 594(e) are entitled to deference and the referral of Hubbell's offenses was proper. United States v. Hubbell, 167 F.3d 552, 558-59 (D.C. Cir. 1999). In this instance, the delay occasioned by jurisdictional litigation was more than 18 months.

M. Summary Analysis of the Conduct of President and Mrs. Clinton.

1. President Clinton.

Due to the centrality of his testimony to the issues confronting this investigation, the Independent Counsel investigated whether President Clinton gave knowingly false testimony during the McDougals' and Governor Tucker's trial and, thereby, concealed his participation in or knowledge of McDougal's criminal activity.

a. \$27,600 Loan to Bill Clinton.

The Independent Counsel investigated whether the President gave knowingly false testimony when he testified he "never borrowed any money from Madison Guaranty,"²³⁰ never caused anybody to borrow any money for his benefit, and never had any personal loan with Madison Guaranty at any time.²³¹ Along with additional documentary and testimonial evidence, two checks were located by the Independent Counsel proving a loan was taken out in Bill Clinton's name at Madison Guaranty.

The first check was a Madison Guaranty cashier's check, dated November 15, 1982, made out to "Bill Clinton" in the amount of \$27,600. The original check was found in July 1997 by happenstance with other Madison Guaranty records in the trunk of a car following a tornado.²³²

The second check was a microfilm copy, dated August 1, 1983, from the James B. McDougal Trustee account in the amount of \$5,081.82. The check was payable to Madison Guaranty and was signed by Susan McDougal. The check amount was exactly equal to the

²³⁰ W. Clinton 4/28/96 Depo. At 11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996).

²³¹ See id.

²³² A microfilm copy of the check was located in December 1996.

outstanding principal and interest on the November 15, 1982 loan as of August 1, 1983. The check's memo line had the words "Payoff Clinton." Proceeds from both checks were used to the benefit of Whitewater Development.

But neither check reflected a signature or endorsement by Bill Clinton or anyone else. The backs of both checks had bank stamps, indicating that they had been deposited and processed. Susan McDougal was charged with criminal contempt and obstruction of justice in part for refusing to testify about matters that included the \$27,600 Madison Guaranty loan.

The Independent Counsel determined that the evidence about this loan was insufficient to prove beyond a reasonable doubt that President Clinton knew of the loan from Madison Guaranty, caused anyone to borrow money for his benefit from Madison Guaranty, or had any personal loan at any time from Madison Guaranty. Consequently, the evidence was insufficient to prove beyond a reasonable doubt that his testimony about the alleged loan was knowingly false.

b. Knowledge of CMS Loan to Susan McDougal.

The Independent Counsel also examined whether President Clinton gave knowingly false testimony when he testified he did not know about the \$300,000 loan made by CMS to Susan McDougal in April 1986 that benefited Whitewater Development. There was testimony from two people that Governor Clinton knew about the loan to Susan McDougal.

Both Jim McDougal and David Hale testified they spoke with Governor Clinton about the loan several times, separately and together. McDougal, after he began cooperating with the government, and Hale recalled discussing the loan with Governor Clinton on one such occasion at McDougal's trailer office at Castle Grande (although they contradicted each other on some issues including the time of the alleged meeting). Jim McDougal, however, had denied in his

trial testimony that the meeting took place. In addition, some evidence existed that Governor Clinton knew of Whitewater Development's acquisition of the Lorance Heights property -- the down payment of which was derived from the CMS loan to Susan McDougal. The Independent Counsel nevertheless determined the evidence was insufficient to prove beyond a reasonable doubt that President Clinton knew about the loan, or that his testimony about the loan was knowingly false.

c. Retention of Rose.

The Independent Counsel also investigated whether President Clinton gave knowingly false testimony at the same trial and during an April 1995 deposition about the circumstances of Madison Guaranty's retention of the Rose Firm and Mrs. Clinton. Jim McDougal testified that Governor Clinton had jogged by Madison Guaranty, and in a meeting with McDougal, McDougal agreed to give some of Madison Guaranty's legal work to Mrs. Clinton. Bill Henley, Susan McDougal's brother, partially corroborated McDougal's account, recalling a morning when Governor Clinton stopped by Madison Guaranty and McDougal mentioned giving Rose some business. Susan McDougal made public statements to the media corroborating Jim McDougal's testimony.

During his testimony, President Clinton did not deny that the retention of Rose happened in the manner described by Jim McDougal. President Clinton said he had jogged by Madison Guaranty occasionally, and had stopped in on at least one occasion to see Jim McDougal. President Clinton testified he could not remember having a conversation with McDougal about giving legal business to his wife, but did not directly dispute McDougal's account of the conversation.

The Independent Counsel determined the evidence was insufficient to prove beyond a

reasonable doubt that President Clinton's testimony that he could not remember this matter was knowingly false.

2. Mrs. Clinton.

The Independent Counsel also examined Mrs. Clinton's testimony to this Office, to the grand jury, and other investigative bodies to determine whether Mrs. Clinton had provided knowingly false testimony in an effort to conceal her own role and conduct in relation to Jim McDougal and Madison Guaranty.

a. Retention of Rose.

One area of inquiry was the question of how Madison Guaranty retained Rose. On several occasions, including in testimony before the grand jury, Mrs. Clinton said although she was the billing partner for Madison Guaranty, that client was obtained by Rose through an associate with the firm, Rick Massey. Mrs. Clinton said Massey was a friend of Madison Guaranty's president, John Latham. She testified she was involved in the retention only because Jim McDougal's other financial institution, Madison Bank, had an unpaid old bill with Rose. Before the firm would undertake representation of Madison Guaranty, the bill needed to be paid. Mrs. Clinton testified she met with McDougal on April 23, 1985, and arranged payment of the old bill and the payment of a retainer.

Massey testified he did not remember bringing in Madison Guaranty as a client. Massey recalled pitching the business to Latham, but was told by Latham that Jim McDougal selected the attorneys Madison Guaranty hired, and that McDougal was happy with Mitchell Williams, Jim Guy Tucker's law firm. Massey testified he did not remember asking for Mrs. Clinton to arrange for the payment of the old bill, and did not remember asking Mrs. Clinton to be the billing partner. Documentary and testimonial evidence demonstrated conclusively that the old bill was

paid and settled in October 1984, six months before the date Mrs. Clinton testified she had visited McDougal to arrange for its payment.

In addition, Jim McDougal testified Governor Clinton had jogged by Madison Guaranty one morning in late August or early September 1984. McDougal claimed Governor Clinton said something had happened at Rose reducing Mrs. Clinton's earnings and McDougal offered to send her legal work. McDougal testified he offered to put Rose on retainer for \$2,000 monthly, and that Mrs. Clinton came by McDougal's office the same day of Governor Clinton's visit and finalized the arrangement.

The Independent Counsel has concluded Mrs. Clinton's testimony was factually inaccurate -- the allegedly unpaid bill was paid and settled before April 1985. The evidence also established that in 1983, prior to the bill's payment, Mrs. Clinton was asked to assist in the collection of the unpaid bill. Because a finder of fact likely would be unable to exclude the possibility that Mrs. Clinton's testimony was the product of confusion and error, the Independent Counsel determined insufficient evidence existed to establish beyond a reasonable doubt that Mrs. Clinton knowingly gave false testimony about the retention of Rose by Madison Guaranty.

b. Nature of Rose Work for Madison Guaranty.

Mrs. Clinton also made numerous statements to the RTC, to the Independent Counsel, and before the grand jury about the relationship between Madison Guaranty and Rose, as well as her own work related to Madison Guaranty. In addition to the work on the preferred stock matter, Rose and Mrs. Clinton did legal work for Madison Guaranty and Seth Ward on the Castle Grande property. Rose and Mrs. Clinton performed legal work on two issues about the use of the property involving approval by state agencies: 1) whether a brewery could be constructed at the property, involving the Arkansas Alcohol Beverage Commission; and 2) whether the utility

on the property could sell services outside of Castle Grande, involving other Arkansas state agencies.

Initially, Mrs. Clinton's testimony about this work was vague and incomplete. She testified to a lack of recall of events. Upon discovery of the Rose billing records, Mrs. Clinton testified in greater detail. The Independent Counsel considered whether Mrs. Clinton's lack of memory was an instance of feigned forgetfulness. Of particular evidentiary importance to the resolution of this question was Mrs. Clinton's conduct during the 1992 campaign -- at that time there was substantial public interest in Mrs. Clinton's legal work for Madison Guaranty and both she, Webb Hubbell, and Vince Foster reviewed Rose records of her prior work for Madison Guaranty.

The Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that Mrs. Clinton committed any crimes in connection with Madison Guaranty. The evidence was insufficient to establish that Mrs. Clinton knew how Madison Guaranty and Seth Ward intended to use the option agreement when it was drafted. The Independent Counsel determined the evidence, including Rose billing records, was insufficient to prove beyond a reasonable doubt that her statements to the RTC, the Independent Counsel, and before the grand jury were knowingly false.

c. Billing Records.

On January 5, 1996, eighteen months after Mrs. Clinton received a federal grand jury subpoena for all records in her possession about Madison Guaranty and related entities, a copy of Rose billing records reflecting the firm's and Mrs. Clinton's representation of Madison Guaranty and related entities were produced by her lawyer. The evidence about the circumstances surrounding the eighteen-month delay in producing the billing records was inconclusive. Webb

Hubbell testified he and former Deputy Counsel to the President Vincent W. Foster Jr. had the billing records in February/March 1992. Carolyn Huber, an assistant to President Clinton, testified before the Senate Whitewater Committee that she found certain documents in the White House residence in August 1995 and put them in an office where they remained until January 1996. She also testified she found them again in January 1996 and realized those same documents were the billing records. It was only then that the records were produced to the Independent Counsel.

The Independent Counsel determined the evidence surrounding the handling of the billing records between March 1992 and August 1995 and January 1996 was inconclusive, and thus insufficient to prove beyond a reasonable doubt that any person, including Mrs. Clinton, knowingly and willfully possessed the billing records with the intent to obstruct justice, or that any person, including Mrs. Clinton, gave knowingly false testimony regarding the handling of the billing records.

V. CONCLUSION

The Madison Guaranty/Whitewater investigation resulted in the convictions of twelve defendants, including Jim McDougal, Susan McDougal, former Associate Attorney General and Rose partner Webster L. Hubbell, and Arkansas Governor Jim Guy Tucker. The Independent Counsel determined the evidence was insufficient to prove to a jury beyond a reasonable doubt that either President Clinton or Mrs. Clinton knowingly participated in any criminal conduct involving Madison Guaranty, CMS, or Whitewater Development, or knew of such conduct. The evidence about their testimony and conduct, in this investigation and other investigations involving the same entities, was also, in the Independent Counsel's judgment, insufficient to prove beyond a reasonable doubt that either committed any criminal offense, including perjury

(18 U.S.C. § 1621) or obstruction of justice (18 U.S.C. § 1503).

The Independent Counsel conducted a thorough and comprehensive investigation, which has now concluded. Matters involving Madison Guaranty/Whitewater are closed.