APPENDIX 5

PROSECUTIONS

I. PROSECUTION OF CONSPIRACY TO DEFRAUD THE SMALL BUSINESS ADMINISTRATION THROUGH CMS

A. Introduction.

The initial investigation of David Hale and Capital Management Services ("CMS") revealed that in 1988 and 1989, Hale had conspired with two other Little Rock attorneys -- Charles Matthews and Eugene Fitzhugh -- to defraud the Small Business Administration ("SBA"). Essentially, the scheme involved shifting money in and out of CMS to make it appear that it had more paid-in capital than it actually had, and thus was eligible for more SBA funding. One means by which this was accomplished was the transfer of client funds from accounts at Prudential-Bache Securities, Inc., where Matthews worked as a broker, to CMS either directly or indirectly. For example, on November 3, 1988, several hundred thousand dollars was transferred from accounts at Prudential-Bache and used to make CMS loans look current and to make CMS appear as if it had more paid-in capital than it actually did. Shortly thereafter, the funds were returned to CMS. Hale falsely represented to the SBA that he had received $400,000 in payments on loans. In reliance on this false representation, the SBA provided CMS with $900,000 in funding to which it was not entitled.

B. United States v. David L. Hale, Charles Matthews, and Eugene Fitzhugh.[1]

1. Indictment and Superseding Indictment.

On September 23, 1993, a grand jury in Little Rock returned an indictment against David Hale, Charles Matthews, and Eugene Fitzhugh.[2] Count I charged all three defendants with conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, regarding their

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[1] United States v. David L. Hale et al., No. LR-CR-93-147 (E.D. Ark. 1993).

[2] Id.

involvement in the transfer of funds to CMS for the purpose of defrauding the United States. Count II charged Hale with making a false statement to the SBA regarding the $400,000 deposit, in violation of 15 U.S.C. § 645(a). Count III charged Hale and Matthews with the felony offense of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, regarding a separate $275,000 transaction. And Count IV charged Hale with making a false statement to the SBA regarding this transaction, in violation of 15 U.S.C. § 645(a).

On February 17, 1994, after Independent Counsel Fiske assumed responsibility for the prosecution, a Little Rock grand jury returned a superseding indictment against all three defendants charging four counts: Count I charged all three defendants with conspiracy to defraud the United States, in violation of 18 U.S.C. § 371; this count alleged numerous fraudulent acts by the defendants regarding a variety of transactions. Counts II and III charged Hale with making false statements to the SBA in violation of 15 U.S.C. § 645(a). Count IV charged Hale with making a fraudulent statement to the SBA in violation of 18 U.S.C. § 1001.

2. Hale's Guilty Plea and Cooperation Agreement.

This case was set for trial on March 28, 1994, before Stephen M. Reasoner, Chief Judge of the United States District Court for the Eastern District of Arkansas. Shortly before trial, on March 22, 1994, Hale entered into a plea and cooperation agreement with Independent Counsel Fiske. In a hearing before Chief Judge Reasoner, Hale waived his right to indictment, and the government filed a two count criminal information against him, charging felony violations of 18 U.S.C. § 371 (conspiracy) and 18 U.S.C. §§□□ 1341 & 2 (mail fraud). Hale pleaded guilty to these charges on that day.

Hale was sentenced on March 25, 1996, by Chief Judge Reasoner to twenty-eight months imprisonment, three years supervised release, and a $10,000 fine, and was ordered to pay

restitution of $2,040,000 to the SBA. Hale testified at the trial of the McDougals and Tucker in April 1996. The Independent Counsel determined that Hale had provided the government with substantial assistance and moved for a reduction in his sentence under Fed. R. Crim. P. 35. On February 6, 1998, Judge Reasoner reduced Hale's sentence to time served (approximately nineteen-and-a-half months) and abated his fine.

3. Matthews and Fitzhugh Pleaded Guilty.

The trial of Matthews and Fitzhugh began before Chief Judge Reasoner on June 20, 1994. Shortly after the trial began, on June 23, 1994, both defendants pleaded guilty to misdemeanor charges, and the felony charges against them were dismissed. The government's superseding criminal information against Matthews charged him with two misdemeanor offenses of bribing a Small Business Investment Company ("SBIC") officer (Hale) in violation of 18 U.S.C. § 215. The criminal information against Fitzhugh charged him with one misdemeanor offense of bribing Hale in violation of 18 U.S.C. § 215. On January 3, 1995, Chief Judge Reasoner sentenced Matthews to sixteen months imprisonment followed by one year of supervised release.

Fitzhugh was also scheduled to be sentenced on January 3, but Chief Judge Reasoner deferred Fitzhugh's sentencing pending a report on his heart condition. The hearing was rescheduled to April 13, 1995. Shortly before the rescheduled hearing -- some nine months after he pleaded guilty -- Fitzhugh filed a motion to withdraw his guilty plea, asserting that his heart condition had caused him to be incompetent at the time of his plea. Chief Judge Reasoner denied Fitzhugh's motion, concluding that this was a "classic case of post plea regret."[3] Chief Judge Reasoner also concluded that Fitzhugh's alleged memory loss was not credible. Chief Judge Reasoner sentenced Fitzhugh to one-year term of imprisonment followed by one year of

[3] United States v. Fitzhugh, 78 F.3d at 1328 (quoting Reasoner, C.J.).

supervised release.

Fitzhugh appealed his guilty plea and sentence. On March 15, 1996, the United States Court of Appeals upheld Chief Judge Reasoner's denial of Fitzhugh's motion to withdraw his guilty plea, and rejected Fitzhugh's other arguments attacking his plea, including his claim that Independent Counsel Fiske lacked authority to prosecute him. Nevertheless, the Court vacated Fitzhugh's sentence, concluding that Chief Judge Reasoner had used an incorrect basis for determining the appropriate amount of loss from Fitzhugh's crime. After the Court of Appeals denied Fitzhugh's petition for a rehearing en banc, he petitioned for a writ of certiorari. On October 7, 1996, the Supreme Court denied certiorari.[4]

On October 22, 1996, Chief Judge Reasoner resentenced Fitzhugh to ten months in custody. Fitzhugh appealed this sentence, which the court of appeals affirmed on May 7, 1997. Fitzhugh petitioned the court of appeals for rehearing en banc, which the Court denied, and then filed a motion for reconsideration of his sentence in the district court. Chief Judge Reasoner denied that motion on July 14, 1997, and ordered Fitzhugh to report to a Bureau of Prisons facility by September 15, 1997. Fitzhugh appealed the denial of his motion for reconsideration, and the Court of Appeals affirmed Judge Reasoner's order. On February 20, 1998, the district court stayed Fitzhugh's reporting date pending further consideration of Fitzhugh's health. On December 15, 1999, Judge Reasoner adhered to the ten-month sentence, but recommended that Fitzhugh be permitted to serve the first five months in a halfway house or medical facility and the final five months on home detention,[5] which the Independent Counsel did not oppose.[6]

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[4] Fitzhugh v. United States, 519 U.S. 902 (1996).

[5] Whitewater Defendant To Avoid Going to Prison, A.P., Dec. 16, 1999.

[6] Id.

II. PROSECUTION OF CHRISTOPHER WADE FOR BANKRUPTCY FRAUD.

A. Introduction.

Christopher V. Wade was a Whitewater Development real estate salesperson, and was also a business partner of James McDougal. During the course of his investigation, Independent Counsel Fiske discovered that Wade had purchased Lot 7 at Whitewater Development in the name of an acquaintance, who thereafter applied for a bank loan, pledging this property as security, without disclosing that Wade was the real owner. This was done while Wade's personal bankruptcy action was pending. This raised questions of whether Wade or others had committed the federal offenses of bank fraud, bankruptcy fraud, or tax fraud.

After Judge Starr replaced Mr. Fiske as Independent Counsel, Judge Starr sought and received specific referrals from the Special Division covering this matter. By orders dated December 19, 1994, and July 28, 1995, the Special Division referred to the Independent Counsel whether Wade had committed fraud regarding certain bank loans, had committed any federal crimes in regard to the bankruptcy he and his wife filed in 1989, or had filed fraudulent tax returns.[7]

The Independent Counsel investigation showed that on November 1, 1989, Wade and his wife filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code,[8] which is a petition for reorganization. Wade had verified under penalty of perjury that he had outstanding debts to

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[7] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994); Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 28, 1995).

[8] 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. 150-51 (May 8, 1996) (testimony of J. Patterson).

unsecured creditors of just over $489,000 and had assets of just over $371,000.[9] These statements were false in that Wade had concealed approximately $100,000 of assets by placing them in the name of other persons.

The Independent Counsel's investigation also showed that while Wade's bankruptcy was pending, he purchased Lot 7 in Whitewater Estates from a person who then resided in Texas.[10] Wade purchased Lot 7 by transferring to the owner 120 acres of property that Wade owned in northern Arkansas.[11] Wade concealed his participation in the transaction by having title to Lot 7 placed in another person's name.[12] In June 1991, Wade caused this other person to apply for a $45,000 loan from Citizens Bank of Lavaca.[13] The loan application was fraudulent because although the application asserted the loan was for the benefit of Wade's surrogate, both he and Wade intended this loan to benefit Wade, and Wade in fact used it to build his home on Lot 7.[14] Wade appraised the Lot 7 property in connection with this loan, and misrepresented in his appraisal that he had no interest in the property. Based on these false representations, the bank lent Wade's surrogate $45,000. In September 1991, Wade again caused the other person to obtain a loan from the Lavaca Bank by falsely concealing Wade's connection to it.[15] This second

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[9] Petition, In re: Christopher V. Wade and Rosalee Wade, (United States v. Wade), No. 89-13144 (E.D. Ark. Nov. 14, 1990).

[10] Wade 4/7/94 Int. at 6.

[11] Id.

[12] Id. at 7.

[13] Id. at 7-8.

[14] Id.

[15] Lauramoore 3/1/94 Int. at 3.

loan was for $15,015, and Wade used it in constructing his house.[16]

B. United States v. Wade.[17]

On March 7, 1995, Wade agreed to plead guilty to two felony counts and to cooperate with the Independent Counsel's investigation. On March 21, 1995, in a hearing before Judge Susan Webber Wright, Wade waived his right to indictment, and the government filed a two count criminal information against him.[18] The information charged one felony violation of 18 U.S.C. § 152 (bankruptcy fraud) in relation to Wade's having concealed assets in his bankruptcy case, and one felony violation of 18 U.S.C. § 1014 (false loan application), in relation to his fraudulently obtaining the two loans to construct his home.[19] Wade pleaded guilty to these two charges that day, and in doing so admitted that his false and misleading statements had been knowingly made with the intent to deceive.[20] On December 1, 1995, Judge Wright sentenced Wade to 15 months imprisonment followed by three years supervised release, and a $3,000 fine.[21]

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[16] Id.

[17] United States v. Christopher V. Wade, LR-CR-95-48 (E.D. Ark. 1995).

[18] Waiver of Indictment, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995); Information, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995).

[19] Information, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995).

[20] Plea Agreement, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995).

[21] Judgment, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Dec. 4, 1995).

III. PROSECUTION OF FRAUDULENT SCHEME CONCERNING $825,000 MADISON GUARANTY LOAN AND RELATED CMS LOANS.

Regulatory Independent Counsel Robert B. Fiske Jr. extensively investigated a series of related transactions involving fraudulent loans from Madison Guaranty and David Hale's CMS. The centerpiece of this scheme involved an $825,000 loan from Madison Guaranty to a nominee of David Hale. Hale used the "profits" of this transaction to infuse $500,000 in capital into CMS. Hale caused CMS to make four fraudulent loans to designees of Jim McDougal and Jim Guy Tucker. This section details this fraudulent scheme and the numerous prosecutions that this Office brought against the various participants.

A. Factual Overview of the Fraudulent Scheme.

1. Introduction.

Beginning in the fall of 1985 and into the spring of 1986, Jim McDougal, David Hale, and Jim Guy Tucker planned and executed an illegal scheme involving Madison Guaranty, CMS, and other entities and people. The scheme cost Madison Guaranty more than $1.8 million and cost CMS more than $500,000 -- costs ultimately shouldered by the federal taxpayers. The scheme grew in part out of the McDougals' need for funding to take care of various financial pressures they were then facing. Jim McDougal told Hale he needed a loan from CMS to "clean up some things" for himself and Madison Guaranty, as well as for "the political family."

Hale said he met with McDougal and Tucker in the fall of 1985 to discuss a possible loan for McDougal. Hale's CMS, a federally insured Small Business Investment Corporation ("SBIC"), was limited to $150,000 in lending per individual, and had capital between $700,000 and $800,000 available for lending, which McDougal concluded was insufficient for his purposes. He proposed they provide additional money for CMS, which was an attractive prospect because the capital would be matched by the Small Business Administration ("SBA")

up to three dollars for one.

According to Hale, to increase CMS 's capital, it was agreed that Madison Guaranty would finance the purchase of property in which Hale had an interest. The property was to be bought by a nominee at an inflated price, thus netting a large "profit" for Hale who, in turn, would put his "profit" into CMS, which, multiplied by the SBA's additional funding, would increase Hale's ability to lend to others. The loans by CMS would be structured so that McDougal's and Tucker's roles were hidden.

Madison Guaranty could not lend CMS money directly because borrowed funds would not be recognized by the SBA as an increase in capital. It was agreed Hale would sell the properties to a third party, with Madison Guaranty providing the financing. Hale approached Dean Paul, a business associate, to act as the straw purchaser for the properties. Dean Paul agreed that his company, Dean Paul Ltd., would purchase, in name only, three properties in which Hale had an interest, and he agreed to sign for the loan in exchange for certain financial incentives. McDougal arranged for Madison Guaranty to loan Paul $825,000 to finance the purchase. To justify a loan that large, Hale, with William Watt's help, secured fraudulent appraisals that greatly overvalued the properties by Robert Palmer, a Little Rock appraiser. With the payment from Paul for the over-valued properties, the real estate transactions netted Hale approximately $500,000 in "profits," which Hale put into CMS. This money let CMS get an additional $1.5 million in funding from the SBA, and raised CMS's per-individual loan limit from $150,000 to $300,000.

For its part in the scheme, Hale's CMS loaned funds to McDougal designees. There were four such loans, all of which were fraudulent because the true nature of the transactions and the people benefited were purposefully concealed. The four such loans were:

1) $149,000 to Larry E. Kuca, McDougal's business partner;

2) $65,000 to Stephen A. Smith, Tucker and McDougal's business partner;

3) $150,000 to an entity controlled by Tucker for the purchase of the Castle Grande sewer and water system; and

4) $300,000 to Susan McDougal, doing business as "Master Marketing," a fictitious advertising business.

None of the loans were used for the purposes stated in the application documents. Tucker used the loan for Castle Sewer & Water to make a down payment on the system previously purchased by Madison Guaranty and its straw purchaser Seth Ward -- thereby benefiting Madison Guaranty and Jim McDougal. Similarly, part of the loan to Mrs. McDougal was used to fund Whitewater Development's down payment on another piece of property, and to help retire a Whitewater debt, conferring a benefit on the Whitewater Development, jointly owned by the McDougals and the Clintons.

Several of the events surrounding these illegal transactions took place on or near February 28, 1986, the "as of date" for the imminent FHLBB exam of Madison Guaranty. By concluding the transactions before the "as of" date, Madison Guaranty's books and records would show better financial health and net worth to the regulators than was actually the case. The events regarding that federal examination are discussed in Chapter 1 of Part B of this Report.

After his convictions in 1996 and his guilty plea in 1998, Jim Guy Tucker testified before the grand jury regarding the meetings between Tucker, McDougal, and Hale that Hale had described. Tucker asserted that Hale's testimony had been false and that the meetings described by Hale never occurred.[22] Tucker did admit, however, to having had a meeting with Hale and

[22] Tucker 4/21/98 GJ at 110.

McDougal at which the sale of Etta's Place was discussed.[23] As will be discussed in the sections that follow, Etta's Place was one of the properties involved in the fraudulent scheme.

2. The $825,000 Dean Paul Nominee Loan.

Madison Guaranty's $825,000 loan to Dean Paul Ltd. Inc., was the focal point of the scheme. The stated purpose of the loan was to finance Paul's purchase of three properties in which David Hale had an ownership interest. The loan closed on February 28, 1986. Paul's "purchase" netted Hale a profit of $502,000, which he used to put money into his SBIC.

David Hale brought Dean Paul into the transaction as the straw purchaser.[24] Hale first approached Dean Paul about the $825,000 transaction in December 1985.[25] Hale told Paul the objective of the transaction was to help McDougal and others by putting capital into Hale's SBIC.[26] Paul said Hale told him that McDougal was in trouble, and with the examiners coming to Madison Guaranty, he needed to be "cleaned up."[27] They had an understanding that Paul would not make any payments on the $825,000 loan.[28] Hale assured Paul that Hale and Tucker were working on a few deals, and the $825,000 loan would be paid back from those

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[23] Id.

[24] Paul held a variety of jobs through the 1960s and early 1970s, mostly involving buying and selling. In the late 1970s, Paul made a significant amount of money buying and selling coal in Oklahoma and other western states.

[25] Tr. at 3133-34, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[26] Id.

[27] Id. at 1914-15 (testimony of Paul).

[28] Id. at 1918.

transactions.[29]

Three properties were sold to Dean Paul Ltd. as part of the $825,000 transaction -- two in Sherwood, Arkansas, and one on Woodson Lateral Road. One Sherwood property was called "Etta's Place," after a restaurant with that name located on the property.[30] The other Sherwood property was located not far from Etta's Place.[31] In preparing to sell the three properties, Hale first acquired the remaining half interest in Etta's Place that he did not own.[32]

Hale took several steps to prepare the three properties so that, at least on paper, they could support the amount of the loan to Dean Paul.[33] Most importantly, Hale brought William Watt into the deal as the attorney handling the sale of the properties.[34] When Hale told Watt what appraised value he needed on the three properties,[35] Watt said the land could not net that amount, but that he would retain Robert Palmer to do the appraisals.[36] Watt contacted Palmer about the appraisals, and told him he needed the appraisals quickly.[37] Watt told Palmer that he needed them for a restaurant located on Warden Road -- Etta's Place -- and a vacant piece of

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[29] Id. at 1918-19, 1922.

[30] Id. at 3099 (testimony of Hale).

[31] Id.

[32] Id. at 3912-14.

[33] Id. at 3135-37.

[34] Id.

[35] Id. at 3138-39.

[36] Id.

[37] Id. at 2171-72 (testimony of Palmer).

property down the street from the restaurant.[38] Palmer said Watt told him that he needed a certain value on the appraisal -- somewhere in the $750,000 range.[39] Palmer concluded the property was not worth more than $300,000 to $400,000.[40] When he told Watt this, Watt told Palmer to come to his office.[41] Palmer told Watt that to reach the value he wanted, the appraisal would have to be inflated, and Watt told him that Jim McDougal had approved the deal and Palmer was to do what had to be done, that the deal went all the way to the top.[42] Palmer asked him if he meant Jim McDougal, and Watt said "higher."[43] When Palmer asked Watt if he meant "politically," Watt replied affirmatively.[44]

The third property involved in the Dean Paul transaction was 240 acres located on Woodson Lateral Road.[45] Two appraisals existed for this property: an accurate one, dated January 14, 1986, valuing the property at $275,000, and an inflated appraisal, dated February 10, 1986, valued at $720,000.[46] Palmer said Watt initially told him the appraisal for Woodson Lateral was a "straight deal" to be appraised properly.[47] Palmer appraised the property at a value

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[38] Id. at 2173.

[39] Id. at 2173-74.

[40] Id. at 2177.

[41] Id. at 2177-78.

[42] Id. at 2178-79.

[43] Id. at 2179.

[44] Id.

[45] See id. at 2189.

[46] Id. at 2188, 2191.

[47] Id. at 2187.

of $275,000,[48] and gave Watt that appraisal dated January 14, 1986.[49] Palmer said Watt subsequently told him a higher value was needed on the appraisal.[50] Palmer said Watt told him the same people involved in the Etta's Place deal were involved in this one, and they needed a higher amount.[51] Palmer's second appraisal, dated February 10, 1986, valued the property at $720,000.[52]

The $825,000 loan was considered and approved by the Madison Guaranty loan committee on February 20, 1986.[53] Don Denton remembered Jim McDougal pressing for the loan; Denton said he would not have made the loan had Jim McDougal not told him to do so.[54] On February 28, 1986, Paul signed all of the documents for the $825,000 loan without reviewing them.[55] Paul then went to Standard Abstract and Title to complete closing documents.[56] The proceeds of the Dean Paul loan were distributed to David Hale in three checks cut by Standard Abstract and Title company that same day.[57] Of the $825,000 loan, approximately $313,000

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[48] Id. at 2188-89.

[49] Id.

[50] Id. at 2190-91.

[51] Id. at 2190.

[52] Id. at 2191.

[53] See id. at 1109-11 (testimony of Denton).

[54] Id. at 1144-45, 1152.

[55] Id. at 1926, 1928 (testimony of Paul).

[56] Id. at 1927-28.

[57] Id. at 3291-93 (testimony of Hale); Check No. 44852 from the account of Standard Abstract & Title Company, signature illegible, payable to David Hale for $200,000 (Feb. 28,

retired a mortgage on Etta's Place and paid for closing costs. Hale received the remainder. Specifically, on March 3, 1986, Hale received the proceeds of a check for $200,000 and William Watt, as trustee for Etta's Place, received proceeds of $302,000. Hale used the $502,000 to purchase a certificate of deposit at the People's Bank in Russellville, which Hale acquired in CMS's name.[58]

Hale then requested additional funding from the SBA; he ultimately obtained $1.5 million in additional SBA funds.[59] On about April 1, 1986, the SBA notified Hale the $500,000 was recognized, and, consequently, the SBA would contribute additional money.[60] CMS's lending limit to any one borrower also increased from $150,000 to $300,000.[61] On April 2, 1986, Hale redeemed the certificate of deposit, deposited $400,000 into CMS 's account at Pulaski Bank, and rolled over the remaining $102,000 into another certificate of deposit.[62]

3. James McDougal, CMS, and Larry Kuca.

One nominee McDougal sought a loan for was Larry Kuca, who McDougal knew from their joint participation in a real estate development known as Campobello Development. They

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1986) (Doc. Nos. 247-0000007-08); Check No. 44853 from the account of Standard Abstract & Title Company, signature illegible, payable to Dean Paul Ltd. Inc., for $1,066.15 (Feb. 28, 1986) (Doc. No. 247-00000009-10); Check No. 44851 from the account of Standard Abstract & Title Company signature illegible payable to William W. Watt, Trustee, for $302,000 (Feb. 28, 1986) (Doc. No. 247-000000011-12).

[58] Tr. at 3959-60, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[59] Id. at 3293, 3714-15, 3847.

[60] Id. at 3300.

[61] Id. at 3294.

[62] Id. at 3959.

were also partners in a joint venture known as KUMAC (for KUca and MACdougal).

In the fall of 1983, Jim McDougal through Madison Financial formed a limited partnership with Chris Wade called Campobello Development Company[63] to purchase approximately 3,900 acres of land on Campobello Island in New Brunswick, Canada.[64] The property was purchased for, coincidentally, $825,000.[65] Madison Guaranty financed the entire purchase price.[66] McDougal soon found four individual investors for the Campobello project, who formed a partnership called Head Harbor, which became equal partners with Campobello Development in a partnership called Campobello Properties Venture ("Campobello Properties"). Kuca started at Campobello in the spring of 1985, implementing a sales program that became quite successful.[67]

To finance the purchase of additional property adjacent to Campobello, known as "Seaview," on November 19, 1985, Kuca obtained $150,000 from Campobello Properties as an "advance on commissions."[68] Kuca used the "advance" to purchase the Seaview property in his own name. Jim McDougal remained a silent partner in the purchase. Kuca understood that he would have to repay the advance on commission, although he did not himself have the cash to do

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[63] J. McDougal 8/1/96-6/9/97 Int. at 92. Wade was the principal person marketing the Whitewater Development lots at his office in Flippin, Arkansas.

[64] J. McDougal 8/1/96-6/9/97 Int. at 92.

[65] Wade 7/25/95 Int. at 6.

[66] Id.

[67] Tr. at 4644-45, 4648, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca).

[68] Tr. at 4652-54, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca).

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Some time before January 10, 1986, McDougal introduced Hale to Larry Kuca.[69] Kuca and Hale discussed a loan for Kuca's business, which he called Campobello Realty, a real estate brokerage that sold lots for Campobello Properties.[70] At their first meeting, Kuca, Hale, and McDougal agreed that CMS would make a loan to Kuca d/b/a Campobello Realty, and Kuca would use the loan proceeds to reimburse Campobello Properties for the advance on commissions.[71]

On January 10, 1986, Kuca submitted a false loan proposal to CMS with an attached December 30, 1985 financial statement from Larry Kuca d/b/a Campobello Realty.[72] The loan proposal described in general terms the bright economic future of Campobello Realty, but did not refer to the purchase of the Seaview property by McDougal and Kuca.[73] The application did not show that the loan would reimburse Campobello Properties for the advance on commissions it gave to Kuca.[74] Instead, Kuca stated in the application:

> I have invested my previous earnings in real estate. I am requesting this loan for operating capital to carry on my brokerage business. Funds are needed for travel, equipment, advertising and general administration. I have attached my resume, financial statement and brochure of Campobello Island.[75]

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[69] Id. at 4654-55.

[70] Id. at 4655-57.

[71] See id. at 4655-56.

[72] See id. at 4657-58.

[73] Letter from Larry E. Kuca to David Hale (undated) (Doc. No. 0000275-276); Tr. at 4657-58, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca).

[74] Id. at 4657-58 (testimony of Kuca).

[75] Id. at 4658.

On January 10, 1986, Kuca and McDougal went to Hale's office to close the loan.[76] Kuca received a check for $143,000 made payable to Larry E. Kuca d/b/a Campobello Realty Company.[77] The $143,000 was deposited into a Campobello Properties account that day.[78]

4. The Fraudulent CMS Loan to Steve Smith.

Hale made the second of the four subject CMS loans to Stephen Smith d/b/a The Communication Company, on February 21, 1986. Smith was a partner with McDougal in Madison Bank and Trust and later a partner with McDougal and Tucker in a land development that was financed by the Worthen Bank.

In 1981, Steve Smith invested in a partnership called the Kings River Land Company ("Kings River").[79] In addition to Smith, the Kings River partnership consisted of his father (Austin Smith), Jim Guy Tucker, and Jim McDougal.[80] In 1981, Kings River purchased thirty-five acres of land in Madison County, Arkansas, near Huntsville.[81]

Kings River obtained a $165,000 loan from Worthen Bank and Trust in Little Rock, Arkansas, to fund the purchase of the land.[82] In 1984, Kings River refinanced the loan for

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[76] Id. at 4659.

[77] Id. at 4658-59, 4661.

[78] Id. at 4661. Kuca received the remaining loan proceeds, a $6,000 check from CMS, on July 22, 1986. None of those proceeds were spent as described in the loan application.

[79] Tr. at 4810, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith).

[80] Id. at 4809-10.

[81] Id. at 4812.

[82] Id.

$115,000.[83] Steve Smith had no involvement in the refinancing of the Kings River note with Worthen Bank, other than signing the appropriate papers.[84]

In January 1985, Tucker and McDougal negotiated for the renewal of the Kings River note at Worthen Bank.[85] To renew the note, Worthen Bank insisted on receiving the personal guarantees of each of the four Kings River partners.[86] The partners agreed, and the note was renewed for a principal value of $115,000 in January 1985.[87] In late 1985, Worthen said it might not be possible for Kings River to renew the note, which now had an unpaid principal of about $55,000.[88] The Kings River partners did not have the cash to retire the note or any immediate prospect of selling the remaining real estate that secured the note.

McDougal spoke with Worthen Bank about extending the due date, and Worthen Bank sent McDougal a letter, dated January 28, 1986, extending the Kings River note until February 10, 1986.[89] McDougal then told Smith that David Hale's CMS would make a loan to retire the Worthen note.[90]

In early 1986, Smith spoke with McDougal about the Kings River note. That is when McDougal told Smith that Worthen refused to renew the loan, but that instead, CMS would loan

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[83] Id. at 4813-15.

[84] Id. at 4815-16.

[85] Id. at 4814-15.

[86] Id. at 4814-16.

[87] Id. at 4815-16.

[88] Id. at 4817.

[89] Id. at 4769-70 (testimony of Burnett).

[90] Id. at 4817-19 (testimony of Stephen A. Smith).

Kings River the amount to pay off the Worthen loan.[91] Smith later said McDougal told him CMS would not issue a real estate loan to Kings River directly, but instead would loan money to Smith's company -- The Communication Company.[92] Smith agreed that he would draft and submit a loan application to CMS requesting financing for The Communication Company.[93] McDougal then told Smith to prepare a loan proposal, and how to structure a proposal and a funding request.[94]

Smith submitted the proposal to David Hale in February 1986; the application requested a $65,000 loan. Smith later said when he had filled out the application, he had only requested $55,000. He did not know who had increased the amount to $65,000.[95] The proposal described The Communication Company as being a public relations and advertising firm that needed immediate funds.[96] It stated falsely:

> The specific purpose of the loan proceeds is to employ a full time account executive and marketing representative to solicit, acquire, and service new accounts and to cover associated operating expenses for one year. This expansion in personnel is essential at this time if The Communication Company is to continue its account and billing growth beyond the present level of operation.[97]

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[91] Id.

[92] Id. at 4818.

[93] Id.

[94] Id. at 4818-19.

[95] Id. at 4819-21.

[96] Loan Proposal prepared by The Communication Company (Doc. No. G-00001247).

[97] Id. When Smith submitted his loan proposal and financial statement for The Communication Company, he had no intention of using the funds for the stated purpose. See Tr. at 4807, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith) (discussing guilty plea).

On February 21, 1986, Smith and McDougal went to Hale's office to close the loan.[98] Smith signed the paper work, and received a check for $65,000 payable to Steve Smith d/b/a The Communication Company.[99] McDougal and Smith left Hale's office with the $65,000 check, went directly to Madison Guaranty, and used the $65,000 loan proceeds to purchase a $65,000 cashier's check payable to Worthen Bank.[100] The cashier's check was delivered to Worthen Bank with a handwritten note from Steve Smith:

> Enclosed is my check for $65,000 to cover the principal and interest on the Kings River Land Company note, No. 8102962. I'm not sure the exact interest to date, but I'll trust you to figure if I still owe you or you me. Also, please execute the necessary release deed for the mortgage.[101]

The $65,000 check was more than sufficient to cover the outstanding balance for the Kings River note.[102] On February 25, 1986, Worthen Bank sent McDougal a check for $1,611.28 with an attached note that said:

> Enclosed are documents relating to the [Kings River] loan, including the paid note, mortgage release, and cashier's check for overpayment of $1,611.28. Upon filing the mortgage release with the Circuit Clerk of Madison County, our lien will be removed.[103]

After receiving the check for $1,611.28 from Worthen Bank, Jim McDougal deposited the

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[98] Tr. at 4831, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith).

[99] Id. at 4833-34, 4836.

[100] Id. at 4838.

[101] Handwritten Note from Stephen A. Smith (Doc. No. 144-00014630).

[102] Tr. at 4772, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Burnett).

[103] Letter from Robert Burnett to James B. McDougal (Feb. 25, 1986) (Doc. No. 22-00000138); Tr. at 4772-74, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Burnett).

money into James and Susan McDougal's account at Madison Guaranty.[104]

Steve Smith did not think any payments were due on the CMS loan until February 1987,[105] but in the summer of 1986, Tucker sent each of the Kings River partners a memorandum dated August 20, 1986, describing the monthly payments due on the CMS loan and the amount then in arrears.[106] Tucker's memorandum proposed that each partner pay his pro-rata share (25%) of the amount due on the CMS loan; that was $2,590.80 each for the amount past due, and then 431.80 each monthly.[107]

On January 9, 1988, shortly after Jim Guy Tucker had sold a Florida cable television system for approximately $11.75 million,[108] Tucker delivered a check to David Hale.[109] The check, drawn on Jim Guy and Betty Tucker's bank account at First Commercial Bank, was made payable to CMS for $16,351.44,[110] with the "memo" section of the check, reading "Repay 1/4 of

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[104] See Bank Statement for the account of Susan H. McDougal and James McDougal (Feb. 28, 1986) (Doc. No. 174-00000951).

[105] Tr. at 4841-42, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith).

[106] Id. at 4841-45; Memorandum from Jim Guy Tucker to Steve Smith, Austin Smith, and Jim McDougal (Aug. 20, 1986).

[107] Tr. at 4841-45, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith). Smith was able to make the initial payment of $2,590.80, and one or two monthly payments. Id. at 4844. Smith's parents made payments on the obligation to CMS. Id. at 3209 (testimony of Hale).

[108] Tucker and his partner William J. Marks pled guilty to a conspiracy to impede the Internal Revenue Service with this cable venture.

[109] Tr. at 3204, 3212-13, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[110] Id. at 3204, 3212.

Smith Comm. loan for Kings River includes 569.40."[111] Hale said when Tucker delivered his signed check, he asked Hale if Smith and McDougal had paid him on The Communication Company loan from the sale of approximately five to ten acres of land in Madison County.[112] Hale replied they had not.[113] Tucker became angry and said they had promised to pay back the loan with proceeds of the sale.[114]

5. The Fraudulent CMS Loan to Castle Sewer & Water.

The third CMS designated loan related to the $825,000 loan scheme was a $150,000 loan to Castle Sewer & Water on February 28, 1986. When the loan was made, Tucker was listed as owning two-thirds of the Castle Sewer and Water stock, and R. D. Randolph owned the remaining one-third. This loan is discussed in more detail in Chapter 1 of Part B of this Report.

On February 14, 1986, Jim Guy Tucker sent Hale a "loan request" ostensibly for his "client," Castle Sewer and Water.[115] The loan application to CMS requested a $150,000 loan, and "$300,000 if lender is able to do so."[116] The application said: "[l]oan proceeds will be used for initial operating capital and for maintenance and painting of the storage tank."[117] The SBA

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[111] Id. at 3212-13. Tucker signed the check. Check No. 1040 from the account of Jim Guy Tucker or Betty Tucker signed by Jim Guy Tucker payable to CMS, Inc., for $16,351.44 (Jan. 9, 1988) (Doc. No. 083-00021073).

[112] Tr. at 3213, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[113] Id. at 3213.

[114] Id.

[115] Id. at 3236, 3239.

[116] Id. at 3241.

[117] Id. at 3242-43.

Portfolio Financing Report (Form 1031), which Hale forwarded to the SBA, listed the use of the proceeds as "working capital." Tucker did not sign this Financing Report.[118]

Randolph signed a personal guaranty on the $150,000 loan,[119] later testifying that he "didn't realize at the time that all the paper signing was going on that [he] was personally guaranteeing [the loan]."[120] Tucker did not guarantee the loan.[121]

On February 28, 1986, CMS gave Jim Guy Tucker the check made out to Castle Sewer and Water for $150,000.[122] The check was endorsed by Jim Guy Tucker.[123] Tucker used the $150,000 proceeds as a down payment on a $1,200,000 purchase of the sewer and water system from Madison Financial.[124] Castle Sewer and Water gave a $1,050,000 promissory note to Madison Financial to cover the remainder of the purchase;[125] Madison Financial assigned the note to Madison Guaranty the same day.

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[118] Id. at 3261-63.

[119] Id. at 3237.

[120] R.D. Randolph 5/10/95 GJ at 84.

[121] See Tr. at 3237, 3260, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[122] Id. at 3263-64.

[123] Id. at 3264.

[124] Id. at 4002-03.

[125] Id. at 1307 (testimony of Denton).

6. The Fraudulent $300,000 Loan to Susan McDougal.

The final CMS loan resulting from the fraudulent scheme was a $300,000 loan to Susan McDougal, d/b/a Master Marketing, made on April 3, 1986.[126] Hale could not make this loan until after he received the $502,000 in net proceeds from Madison Guaranty's loan to Dean Paul and his loan limit was raised.[127]

a. The Loan.

On April 3, 1986, Susan McDougal came to Hale's office to sign the loan document and to receive the $300,000 check.[128] Before that date Hale had dealt with Jim McDougal about the loan, not Susan McDougal. She executed the relevant loan documents, including a guaranty.[129] Similar to the other loans, Susan McDougal left Hale's office with a check made payable to Susan McDougal d/b/a Master Marketing for $300,000.[130] On April 8, 1986, the Master Marketing loan check was deposited into the Madison Guaranty account for James and Susan McDougal.[131] It was never endorsed but instead was stamped with a guaranteed endorsement

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[126] Id. at 3305, 3310 (testimony of Hale).

[127] Id. at 3224.

[128] Id. at 3329.

[129] Id.; Guaranty signed by Susan McDougal (Apr. 3, 1986) (Doc. No. AAU-00000837); Hale 6/2/94 Int. at 4. Jim McDougal also signed a personal guaranty for the loan. Tr. at 3340, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); Guaranty signed by James McDougal (Doc. No. AAS-00002862-2863).

[130] Tr. at 3342-43, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale). Before the issuance of the Master Marketing loan, Susan McDougal operated an advertising company -- Madison Marketing Company -- for several years. Madison Marketing was incorporated on July 16, 1985 and ceased operating as a corporation on January 22, 1986. Borod & Huggins, Madison Guaranty Savings & Loan Association Special Counsel Investigative Report at 108 (Mar. 3, 1987).

[131] Madison Guaranty Bank Statement for Jim and Susan McDougal (Apr. 30, 1986)

stamp.[132]

Two separate Master Marketing loan application reports existed which purported to state the purpose of the $300,000 Master Marketing loan. The first proposal (identified below as the "original" Master Marketing report) described Master Marketing as "a general purpose advertising and public relations consulting firm with Susan McDougal, a well-known Little Rock advertising personality, as sole owner."[133] It said "This report is prepared for and provided to CMS Corporation for its exclusive internal use in evaluating a loan application by Master Marketing."[134] This report also said:

> To sustain and service current clients, add new account clients, and to expand client services, Master Marketing requests a loan of $300,000 for a period of not less than 5 years. Although some expenditures equal to about 20% of the loan request will be needed for office and technical equipment, the preponderance of funds are required for operating capital as the nature of applicant's business often requires advance payment for media time purchased thus creating heavy capital requirements to cover the cash flow demands arising from the delay between the time the firm pays for media buys and subsequent collection from the firm's clients.[135]

This original loan report was not found in CMS 's loan files or documents produced by David Hale. Rather, it was found on a computer diskette belonging to Sue Strayhorn, McDougal's secretary at Madison Guaranty.[136] Because of the disk's file name, Strayhorn

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(Doc. No. 56-00110465); Deposit Ticket (Apr. 7, 1986) (Doc. No. 054-01006138).

[132] Tr. at 3343, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[133] Appendix A, Confidential Data Master Marketing at 1 (Doc. No. 174-00001173-136).

[134] Id.

[135] Id. (Doc. Nos. 174-00001173-136 through 174-00001173-137).

[136] Tr. at 580, 637-38, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Strayhorn).

concluded that March 19, 1986, was the date she typed the original Master Marketing proposal.[137] Strayhorn typed this proposal at the direction of Jim McDougal.[138]

A second Master Marketing loan report (referred to below as the "second" report) was delivered to Hale by McDougal after the issuance of the loan.[139] The second report described Master Marketing as "a general purpose real estate brokerage and land development firm with Susan McDougal, a well-known Little Rock real estate executive as sole owner."[140] The second report listed the business address as 1308 Main Street in Little Rock,[141] and specified the following use for the proposed loan funds:

> A loan of $300,000 is requested -- approximately $107,000 of the proceeds will be used to complete Phase 2 of Flowerwood Farms II by the extension of water and sewer lines to 127 lots. It is anticipated the improved lots will sell over a three year period for $230,000. This underlying land in this project is free of debt.
>
> The remaining proceeds will be used to complete surveying and road building on approximately 700 acres 8 miles south of Little Rock within 1,300 feet of the Pine Bluff Freeway in an area where applicant has had a highly successful career selling tracts of land. Underlying debt of this property, which has water and sewer available, is approximately $500,000.[142]

The Independent Counsel concluded, from Strayhorn's computer disk analysis, that the

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[137] Id. at 637-38.

[138] McDougal 8/1/96-6/9/97 Int. at 50.

[139] Tr. at 3308, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); Second Master Marketing Report (undated) (Doc. Nos. AAU-00000817 through 819).

[140] Second Master Marketing Report (undated) (Doc. Nos. AAU-00000817 through 819).

[141] Id. (Doc. No. AAU-00000817).

[142] Id. (Doc. Nos. AAU-00000817 through 819). Although the second report was also fraudulent, it was much closer to the truth in describing the actual use of part of the proceeds. See J. McDougal 8/1/96-6/9/97 Int. at 50.

second report was typed on June 16, 1986,[143] long after the loan to Master Marketing was funded and at a time when the FHLBB examination of Madison Guaranty was ongoing and the McDougals' expulsion by the examiners was imminent. By the time the second report was drafted, the McDougals had already spent all of the McDougal-Master Marketing loan.

Hale said McDougal unexpectedly came to his office in late June or early July 1986. Hale said McDougal was frightened and he asked Hale to return to him the original Master Marketing report and substitute the second report; Hale did as McDougal requested,[144] and McDougal then took the original Master Marketing proposal with him, whereas Hale kept the second one.[145]

b. Actual Use of the Master Marketing Loan.

The $300,000 loan proceeds were deposited into Jim and Susan McDougal's personal account on April 8, 1986.[146] In less than seven weeks, the McDougals spent all of the Master Marketing loan.

The McDougals' use of the Master Marketing loan can be divided into six categories: bank and loan payments; payments to businesses and individuals; payments for the McDougals' home at #4 Bettswood in Little Rock; payments for political campaigns; professional fees; and miscellaneous expenses. The expenditures broke down approximately as follows:

Bank and Loan Payments $206,000

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[143] See Tr. at 645, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Strayhorn) (concluding June 16, 1986 was the correct date).

[144] Id. at 3308-09.

[145] J. McDougal 8/1/96-6/9/97 Int. at 50.

[146] See Madison Guaranty Bank Statement for the account of Jim and Susan McDougal (Apr. 30, 1996) (Doc. No. 056-00110465).

Business and Individuals	33,000
#4 Bettswood	21,000
Political Campaigns	15,000
Professional fees	8,500
Miscellaneous	17,000[147]

c. Susan McDougal's Misrepresentations after the Loan.

Subsequent statements by Mrs. McDougal reflected her continuing effort to conceal the true nature of the Master Marketing loan and the purposes to which the loan was put. On April 3, 1987, Mrs. McDougal sent a letter to David Hale stating:

> Reference is made to the note payment I now have due at Capit[a]l Management Services, Inc. Because of the fluctuation between payment of media expenses and reimbursement, it will be 30 to 60 days before I can make this payment to you.[148]

The letter's reference to "the fluctuation between payment of media expenses and reimbursement" was consistent with the false representations set forth in the original Master Marketing report, which represented that Master Marketing was engaged in advertising activities. When the letter was written, the McDougals had received and spent all the proceeds of the $300,000 loan on personal expenses. The letter was signed by Susan McDougal with "Thank you" handwritten under her name.[149]

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[147] See Tr. at 6775-76, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Patkus). In his testimony, Special Agent Patkus broke payments into seven categories and gave precise figures in dollars and cents rather than rounding, as has been done here.

[148] Letter from Susan McDougal to David Hale (Apr. 3, 1987) (Doc. No. B-00001755); Tr. at 3357-61, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[149] Letter from Susan McDougal to David Hale (Apr. 3, 1987) (Doc. No. B-00001755); Tr. at 3360, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of

Mrs. McDougal also made similar false representations to the SBA. Pursuant to its standard procedure, the SBA sent Mrs. McDougal a questionnaire, dated April 14, 1987, to monitor the Master Marketing loan. Naturally, the SBA requested information about the loan she had received from CMS. Specifically, the following relevant questions were posed and Mrs. McDougal hand wrote out the responses:

> Question 1: What are the terms and the unpaid balance of your company's financing from the SBIC?
>
> Answer: Interest only (12%) payable annually beginning April 3, 1987, through April 2, 1989; then 24 monthly installments of $14,122.05 until paid in full.
>
> . . . .
>
> Question 4: How were the proceeds of this financing used by your company?
>
> Answer: Operating Capital.
>
> . . . .
>
> Question 6: Who were the officers, directors and/or owners of your company at the time of the financing?
>
> Answer: Susan H. McDougal, sole proprietorship.[150]

The questionnaire was signed "Susan McDougal" and dated April 30, 1987.[151]

The grand jury subpoenaed Mrs. McDougal for handwriting exemplars.[152] Throughout one and one-half hours of giving exemplars, Mrs. McDougal was consistently evasive. In the

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Hale).

[150] SBA Questionnaire (Apr. 30, 1987) (Doc. No. H-00005389).

[151] Id.

[152] Grand Jury Subpoena No. 1087 (E.D. Ark. June 5, 1995).

opinion of the handwriting experts, she intentionally disguised her handwriting.[153] Those experts also said other known exemplars showed the handwriting on the SBA questionnaire and the April 3, 1987 letter was Mrs. McDougal's.[154]

d. Evidence That Governor Clinton Had Knowledge of the Susan McDougal Loan.

According to David Hale and Jim McDougal, as discussed in Part A of this Report, Governor Clinton knew of and encouraged the CMS loan to Susan McDougal.[155] When asked about this issue, Susan McDougal refused to answer the grand jury's questions, and spent eighteen months in jail for contempt. President Clinton denied any knowledge of the loan.[156]

Hale said he met with McDougal and Tucker in the fall of 1985,[157] where McDougal said he needed CMS's help to clean some members of the "political family."[158] Hale understood the "political family" to be a reference to Governor Clinton and Jim Guy Tucker, among others.[159]

Hale claimed he had three contacts with Governor Clinton about the loan. In December 1985 or January 1986, Hale first ran into Governor Clinton at the Arkansas State Capitol

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[153] Tr. at 6257, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 30, 1996) (testimony of Heilman); see S. McDougal 6/23/95 Int. at 2-3.

[154] Tr. at 6275-78, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 30, 1996) (testimony of Riordan).

[155] See Tr. at 3221-25, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); J. McDougal 4/3/97 GJ at 17-24.

[156] W. Clinton 4/28/96 Depo. at 24, 34-6, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.).

[157] Tr. at 3094-3102, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[158] Id. at 3102.

[159] Id. at 3105-06.

building.[160] During the encounter, Governor Clinton asked Hale if he "would be able to help Jim and him out."[161] Hale replied that they were working on it.[162] Second, Hale said he met with McDougal and Governor Clinton at McDougal's office at Castle Grande where Susan McDougal's loan was discussed.[163] Governor Clinton allegedly reminded McDougal that "my name cannot show up anywhere on this," to which McDougal responded, "I've already taken care of all of that."[164] Governor Clinton, according to Hale and McDougal, offered to help guarantee the loan by posting his "property in Marion County" as security.[165] Third, Hale said two or three months after CMS had furnished the loan to Susan McDougal, he met Governor Clinton by chance at the University Mall in Little Rock.[166] According to Hale, Governor Clinton said: "Have you heard what that [expletive deleted] Susan has done?"[167] Hale thought that Governor Clinton was referring to Susan McDougal and the Master Marketing loan.[168]

Hale said McDougal delivered a Madison Guaranty assignment stock to him in April or

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[160] Hale 8/2/95 GJ at 24.

[161] Id.

[162] Id.

[163] Tr. at 3221-23, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[164] Id. at 3224.

[165] Id. at 3223. See J. McDougal 4/3/97 GJ at 21-22. (McDougal remembered Governor Clinton saying, "I've got some land up in Marion County I can put up if you need collateral").

[166] Hale 8/2/95 GJ at 25-26.

[167] Id. at 26.

[168] Id. at 27.

May 1987.[169] The Master Marketing loan was in arrears, and the stock assignment was McDougal's show of good faith in trying to secure the debt. Hale said when Jim McDougal delivered the stock assignment to Hale's office, he left a handwritten note that said, in effect, "I'm sorry about what happened. Maybe this will help you. Bill will do his part" (or "Bill will help").[170] Jim McDougal later said he could not remember writing such a note.[171] McDougal later said that he did not feel that Governor Clinton had any obligation to repay the $300,000 Master Marketing loan.[172]

There was some evidence that Governor Clinton might have had an interest in the Master Marketing plan. Part A of this Report discusses in detail the use of some of the proceeds of the Master Marketing loan. That Part shows that Governor and Mrs. Clinton were joint owners, with the McDougals, of Whitewater Development. The Whitewater Development benefited indirectly from a $135,000 Stephens Security loan to Flowerwood Farms, a McDougal Company, which was paid off with proceeds from the Master Marketing loan. Some of the $135,000 was used to fund in part a $3,000 contribution to Governor Clinton's April 1985 fundraiser, and approximately $25,000 went to make a payment owed by Whitewater Development. Another portion of the Master Marketing loan was used to make the down payment for property bought by Whitewater Development, known as Lorance Heights. In addition, Jim McDougal later told investigators he assumed that Governor Clinton and Susan McDougal had discussed the

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[169] Tr. at 3364-66, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[170] Hale 8/2/95 GJ at 27. No such note was ever found.

[171] J. McDougal 8/1/96-6/9/97 at 52.

[172] Id.

$300,000 loan, but that she had never told him they had.[173]

After his 1996 conviction and 1998 guilty plea, Tucker was asked about the fraudulent scheme involving Madison Guaranty and CMS, and about Hale's reference to McDougal wanting to clean some things up for "the political family." Tucker admitted he had only heard the term "political family" used by two people in Arkansas: David Hale and Governor Clinton. Tucker had in 1992 contemporaneously recorded in a journal Governor Clinton's statement about the "political family."[174] Tucker described his April 14, 1992, journal entry for a meeting where Governor Clinton referred to his "political family," which Tucker found remarkable because Hale had also used that term about Governor Clinton:

> "In private, Bill Clinton and I meet. Bill Clinton says he wanted to convince me of two things. One, he doesn't want to quit. Surprise. And two, neither he," quote, "Nor any member of his family or political family," closed quote, "Intend," question mark, "Or want to or have any desire to run for governor in '94, says I have done a wonderful job, had excellent judgment, etc., [etc.], etc., wants me to win in '94.[175]

Tucker also testified:

> A. I'm not going to make it any secret, I have the lowest minimum regard for Mr. Hale and for an awful lot of folks associated with this. But I have to say that as background to this. In his first statement on this, Mr. Hale, in November of --
>
> Q. '93?
>
> A. -- '93, stated and subsequently repeated that in a conversation variously described as having been with me or with me and -- I'm sorry, with Jim McDougal or with Jim McDougal and me, that McDougal had stated that -- in effect, that he and Hale needed to exchange loans with each other in order to take care of the political family.

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[173] Id. at 49.

[174] Tucker 4/21/98 GJ at 107-08.

[175] Id.

> "The political family" is a term that I don't recall ever having heard used in Arkansas. It's not a term I used. It's not a term that is familiar with me. I've been told by others that it's a phrase commonly used in Chicago and in other locations. I never heard it used in Arkansas, never, until David Hale used it in his testimony. I was surprised to note in my notes that that was a phrase that Governor Clinton had used.
>
> Q. So is it -- other than hearing Hale use it --
>
> A. Hale used it and apparently Clinton used it on this occasion. Those are the only two times that I remember having heard it used.[176]

A discussion of President Clinton's testimony on this issue appears in the analysis section of Part A of this Report.

B. Prosecutions Related to the Scheme Involving the $825,000 Fraudulent Loan.

1. Fraudulent Appraisals by Robert Palmer.

a. Facts.

Prior to Independent Counsel Starr's appointment, Independent Counsel Fiske had substantially completed his investigation of three real estate appraisers, including Robert Palmer, who had done work for Madison Guaranty. As noted above, Palmer played an important role in the $825,000 loan scheme; without the inflated appraisals provided by Palmer, the real estate transactions would not have justified the full amount of the loan.

In addition, shortly after Palmer appraised the Hale property to facilitate the $825,000 loan, Palmer engaged in another unlawful practice on behalf of Madison Guaranty. During the 1984 audit of Madison Guaranty, federal regulators found that Madison Guaranty did not consistently comply with federal regulations requiring appraisals for certain loans.[177] Although

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[176] Id. at 109-10.

[177] Statement of Facts at 1, United States v. Palmer, No. LR-CR-94-240 (E.D. Ark. Nov. 1994).

Madison Guaranty entered into an agreement with the regulators to correct this practice, it failed to comply with the agreement.[178] Just prior to the March 1986 examination, Madison Guaranty officers devised a scheme to create false appraisals -- back-dated to the time of the loans for which they would be created -- and put them in the loan files to deceive the regulators.[179] Palmer and others created these false appraisals over a two-week period.[180]

b. United States v. Robert Palmer.[181]

Palmer and the Independent Counsel entered into a plea agreement in which Palmer agreed to plead guilty and cooperate with the government.[182] Palmer waived his right to an indictment, and the government filed a one-count criminal information charging Palmer with a felony violation of 18 U.S.C. § 371.[183] The information charged that Palmer and others conspired to violate 18 U.S.C. § 1006, in making false statements in a savings and loan document. This charge related to the false appraisals Palmer created prior to the March 1986 audit. On December 5, 1994, Palmer pleaded guilty to this charge. On June 16, 1995, Judge Howard sentenced Palmer to three years probation, with home detention for the first year, and a $5,000 fine. Palmer testified as a government witness in the trial of Tucker and the

[178] Id. at 1-2.

[179] Id. at 2-3.

[180] Id. at 3.

[181] United States v. Palmer, No. LR-CR-94-240 (E.D. Ark.).

[182] Letter from Independent Counsel Kenneth W. Starr to David M. Hargis, Counsel to Mr. Palmer (Nov. 10, 1994).

[183] United States v. Palmer, No. LR-CR-94-240 (E.D. Ark.).

McDougals.[184]

2. United States v. Larry Kuca.[185]

The facts relating to Kuca's fraudulent loan from CMS are discussed above. Kuca agreed to plead guilty and cooperate with the government. The government filed a one-count information against Kuca, charging him with a misdemeanor conspiracy offense in violation of 18 U.S.C. § 371.[186] The information related to Kuca's $149,000 loan from CMS, and charged that Kuca conspired with others to misapply SBA funds in violation of 18 U.S.C. § 657. On July 13, 1995, he pleaded guilty to this charge. In pleading guilty, he admitted that he prepared and submitted a false loan application to CMS so he could pay off the advance on commissions.

Kuca was sentenced on October 11, 1995, by United States Magistrate Judge H. David Young of the Eastern District of Arkansas to two years probation and eighty hours of community service, and was ordered to make restitution in the amount of $65,862 to the SBA. Kuca testified as a government witness at the Tucker and McDougals trial.[187]

3. United States v. Stephen A. Smith.[188]

The facts regarding the fraudulent loan from CMS to Steve Smith are discussed above. Smith agreed to plead guilty to a misdemeanor and cooperate with the government. The government filed a one count information against Smith charging him with a misdemeanor

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[184] See Tr. at 2147-70; 2282-84, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Mar. 26-27, 1996) (testimony of Robert Palmer).

[185] United States v. Kuca, No. LR-CR-95-150 (E.D. Ark.).

[186] United States v. Kuca, No. LR-CR-95-150 (E.D. Ark. July 13, 1995).

[187] See Tr. at 4641-94, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 11, 1996) (testimony of Larry Kuca).

[188] United States v. Smith, No. LR-CR-95-118 (E.D. Ark. June 8, 1995).

offense of conspiracy in violation of 18 U.S.C. § 371 relating to the fraudulent $65,000 loan Smith obtained from CMS. The information charged that Smith conspired with others to misapply SBIC funds in violation of 18 U.S.C. § 657. On June 8, 1995, Smith pleaded guilty to this charge. In pleading guilty, Smith admitted that he had never intended to use the proceeds of the $65,000 loan for the purposes stated in the application.[189]

Smith testified as a government witness at the United States v. McDougals and Tucker trial in March 1996.[190] On July 12, 1996, United States Magistrate Judge John F. Forster sentenced Smith to one-year probation, a $1,000 fine, and 100 hours of community service.

On September 17, 1999, Smith filed a letter grievance in the United States District Court for the Eastern District of Arkansas (Western Division), which requested in part that the District Court appoint counsel to investigate whether the "Independent Counsel solicited or attempted to solicit false testimony."[191] Smith claimed that the Independent Counsel tried to persuade him to read a false statement to the grand jury which subsequently indicted the McDougals and Governor Tucker. The district court concluded that Smith's own testimony in the McDougal/Tucker trial refuted his allegation:

> Q. Have I ever asked you to lie about anything, Dr. Smith?
>
> A. No, you haven't.
>
> Q. And in looking at the grand jury statement the day that you came in and reviewed the draft, did anyone try to pressure you to keep the language about Tucker in that grand jury statement?

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[189] Id.

[190] See Tr. at 4804-4940, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 15, 1996) (testimony of Stephen Smith).

[191] Smith v. Starr, 99 F. Supp. 2d 1037, 1038 (E.D. Ark. 2000).

A. No. When I suggested that I wasn't comfortable with that you took it out.

Q. And was it made clear to you, Dr. Smith, when you came in that this was just a draft statement to work off of?

A. Yes.

Q. And that you were the one that had to be comfortable that it was a hundred percent true and accurate?

A. Yes, ma'am.[192]

The district court concluded that the evidence did not support Smith's allegations and did not warrant the appointment of counsel.[193]

4. United States v. James B. McDougal, Jim Guy Tucker, and Susan H. McDougal.[194]

As discussed in detail above, James and Susan McDougal and Jim Guy Tucker were involved in the $825,000 loan scheme. Each played crucial roles in coordinating and executing the scheme, and each was eventually convicted of two or more felony counts.

a. Indictment.

On August 17, 1995, a Little Rock grand jury returned a multiple-count indictment against the McDougals and Tucker, who was then Governor of Arkansas.[195] The indictment charged 21 counts:

- **Count 1:** All three defendants were charged with conspiracy in violation of 18 U.S.C. § 371 regarding the various fraudulent transactions related to the $825,000 Dean Paul loan.

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[192] Id. at 1041.

[193] Id. (Smith's allegation that the Independent Counsel pressured him to lie is directly contradicted by his own trial testimony).

[194] United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Aug. 17, 1995).

[195] Id.

- **Counts 2 and 3:** All three defendants were charged with wire fraud in violation of 18 U.S.C. § 1343 regarding two different SBA transfers of funds to CMS in response to the infusion of the "profits" from the Dean Paul loan.

- **Count 4:** McDougal and Tucker were charged with savings and loan fraud by submitting false loan documents to Madison Guaranty in regard to the Dean Paul loan in violation of 18 U.S.C. § 1344.

- **Counts 5, 6, and 7:** These charges related to McDougal's role in the fraudulent loan to Kuca. Count 5 charged him with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to submit the fraudulent Form 1031. Count 6 charged McDougal with fraudulently concealing from the FHLBB his role in the supposed advance of commissions to Kuca in violation of 18 U.S.C. § 1006. And Count 7 charged McDougal with aiding and abetting the making of false statements to the CMS, a federal licensed SBIC, regarding this loan in violation of 18 U.S.C. § □□ 1014 and 2.

- **Counts 8 through 11:** McDougal and Tucker were charged with various felonies related to the $65,000 loan to Smith. Count 8 charged them with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to mail to the SBA false forms to accomplish the fraudulent scheme. Count 9 charged them with aiding and abetting the misapplication of the proceeds of this loan in violation of 18 U.S.C. §§ 657 & 2. Count 10 charged them with aiding and abetting the defrauding of the SBA regulators by making false entries into records in violation of 18 U.S.C. §□§□ 1006 & 2. Count 11 charged them with aiding and abetting the false statements to CMS to procure the $65,000 loan in violation of 18 U.S.C. §§ 1014 & 2.

- **Count 12:** All three defendants were charged with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to mail a false Form 1031 to the SBA in relation to the CMS loan to Castle Sewer and Water.

- **Counts 13 through 16:** These charges related to the McDougals' roles in the fraudulent $300,000 Master Marketing loan. Count 13 charged them with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to mail a fraudulent Form 1031 to the SBA in connection with the loan. Count 14 charged them with misapplying the loan proceeds, and aiding and abetting the misapplying of the proceeds, in violation of 18 U.S.C. §§ 657 & 2. Count 15 charged them with making false entries in CMS records, and aiding and abetting the making of false entries, regarding this loan, which were made to deceive the SBA auditors in violation of 18 U.S.C. §§ 1006 & 2. And Count 16 charged them with making false statements to CMS and aiding and abetting the making of false statements in violation of 18 U.S.C. §§ 1014 & 2.

- **Counts 17, 18, and 19:** The counts charged McDougal in relation to the 1308

Main Street land flip transactions. Count 17 charged him with misapplying the loan proceeds of the $125,000 loan secured by the 1308 Main Street property, and aiding and abetting such misapplying of proceeds, in violation of 18 U.S.C. §§ 657 & 2. Count 18 charged him with misapplying the funds of Madison Financial, and caused the misapplying of funds, regarding the $18,000 supposed rent payment to Bill Henley in violation of 18 U.S.C. §§ 657 & 2. Count 19 charged McDougal with making false statements, and causing such statements to be made, in the records of Madison Guaranty, namely that Henley owned the 1308 Main Street property since August 1, 1985, to justify the $18,000 "rent" payment in violation of 18 U.S.C. §§ 1006 & 2.

- **Counts 20 and 21:** The counts charged Governor Tucker in relation to the October 1987 fraudulent Southloop loan from CMS. Count 20 charged Governor Tucker with misapplying, and aiding and abetting the misapplying of, this loan in violation of 18 U.S.C. §§ 657 & 2. Count 21 charged him with making, and aiding and abetting the making, of false statements in the records of CMS in violation of 18 U.S.C. §§ 1006 & 2.

The case was assigned to United States District Judge George Howard Jr. in the Eastern District of Arkansas.

b. Pre-Trial Litigation.

Judge Howard initially scheduled the trial for October 10, 1995. The defendants filed dozens of motions on discovery, evidentiary, and other issues. These motions resulted in substantial pre-trial litigation which delayed the start of the trial.

Between September and December 1995, the defendants filed nine motions to dismiss the case, all of which were ultimately denied. On September 25, 1995, Governor Tucker moved to dismiss the indictment, claiming that the Independent Counsel provisions of the Ethics in Government Act, which gave the Independent Counsel the authority to prosecute the defendants, were unconstitutional. That same day, Governor Tucker also filed a motion to dismiss the indictment, arguing that the Independent Counsel lacked jurisdiction and that the Independent Counsel's prejudicial interference with the grand jury violated Tucker's due process rights.

On September 27, 1995, Jim McDougal filed a motion to dismiss the indictment under

Fed. R. Crim. P. 12(b) (1) for prosecutorial irregularity. McDougal argued that, since the Independent Counsel Reauthorization Act of 1987 expired in December of 1992 and, rather than reenact the law, Congress had passed amendments to the Act in June of 1994, there existed the serious legal question of whether amendments to the Act, passed after the Act lapsed, constitute reenactment of the law.

On October 2, 1995, Governor Tucker and Jim McDougal both filed similar motions to dismiss the case for alleged prejudicial delay. That same day, Susan McDougal filed a motion to dismiss, alleging that the Independent Counsel lacked jurisdiction to prosecute her for the stated offenses. On October 20, 1995, Jim McDougal moved to dismiss the indictment under the Fifth Amendment, which prohibits a person from being twice put in jeopardy for the same offense, and Fed. R. Crim. P. 12(b). In the face of all these motions, Judge Howard rescheduled the trial to January 16, 1996.

On October 25, 1995, Judge Howard denied Governor Tucker's motion to dismiss as to the constitutionality of the statute. On November 15, 1995, Judge Howard denied Governor Tucker's motion to dismiss for lack of jurisdiction, and on November 22, 1995, Governor Tucker filed an appeal from this order. The court of appeals eventually dismissed this appeal as untimely.[196] On December 1, 1995, Governor Tucker filed a supplemental motion to dismiss for prejudicial delay.

On December 11, 1995, Judge Howard denied McDougal's motion to dismiss under the Fifth Amendment and Fed. R. Crim. P. 12(b); on December 13, 1995, McDougal filed an appeal from this order. With leave of the court, Governor Tucker filed a second supplemental motion to dismiss for prejudicial delay on December 12, 1995. On December 14, 1995, Judge Howard

[196] United States v. McDougal et al., No. LR-CR-95-3993 (8th Cir.).

rescheduled the trial to March 4, 1996. On January 12, 1996, Judge Howard denied McDougal's motion to dismiss for prosecutorial irregularity.

On February 1, 1996, Susan McDougal moved to subpoena President Clinton for testimony, which Judge Howard granted on February 5, 1996. On February 26, 1996, Jim McDougal filed a motion to compel President Clinton to personally appear at trial. The President in his personal capacity opposed this motion, as did the United States Department of Justice.

c. Trial and Guilty Verdicts.

The trial began on March 4, 1996. On March 20, 1996, Judge Howard ordered that President Clinton's testimony be taken in a videotaped deposition. President Clinton gave that deposition at the White House on April 28, 1996.

On May 3, 1996, various news entities filed a motion to obtain a copy of President Clinton's videotaped deposition, which had been filed under seal by order of the Court. Judge Howard quickly ordered the public release of the transcript of the deposition through the normal procedures after it had been shown to the jury.

On May 7, 1996, the day after Judge Howard ruled, the movants filed a motion for reconsideration, again seeking immediate access to the videotape. Judge Howard quickly denied that motion, and the media immediately appealed the ruling.

Following oral arguments on August 12, 1996, the United States Court of Appeals entered an order stating, "[f]or reasons that will be stated in an opinion to follow, we affirm the district court's denial of access to the videotape."[197] The Court concluded that: 1) the videotape was not a judicial record; 2) even if the videotape were a judicial record, it was not an abuse of

[197] United States v. McDougal et al., 103 F.3d 651, 652 (8th Cir. 1996).

discretion to deny access; and 3) denial of access did not violate the First Amendment where public and press were given access to information in the videotape.[198]

On May 6, 1996, Judge Howard held oral argument on the pending motions for acquittal from all three defendants. He denied the motions for dismissal due to selective prosecution, which merely rehashed arguments Judge Howard had previously rejected. He also denied as to all counts Jim McDougal's motion for acquittal.

Judge Howard denied Governor Tucker's motion in part and granted it in part: Judge Howard directed an acquittal for Governor Tucker on Counts 8 through 11, which had charged him with crimes related to the $65,000 CMS loan to Smith; Judge Howard denied Governor Tucker's motion as to all other counts. Similarly, Judge Howard granted Susan McDougal's motion in part and denied it in part: The Court directed a verdict of acquittal on Count 1, which charged Susan McDougal with joining the overall conspiracy, Counts 2 and 3, which charged her with wire fraud regarding two transfers from the SBA to CMS, and Count 12, which charged her with mail fraud relating to CMS's $150,000 loan to CSW. Judge Howard ruled that the other four counts against McDougal would not be dismissed.[199]

Following these rulings, on May 7, 8, and 9, 1996, Jim McDougal testified in his own defense. On May 9, the defendants presented President Clinton's videotaped deposition to the jury. The defense then rested, calling no other witnesses, and the jury began deliberating on May 16.

On May 28, 1996, the jury returned, in part, guilty verdicts as to each defendant:

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[198] Id. at 657-59.

[199] The government cannot appeal a judge's granting of a motion for acquittal prior to the jury's verdict. Green v. United States, 355 U.S. 184, 188 (1957).

Jim McDougal -- The jury convicted Jim McDougal on eighteen of the nineteen counts against him. The jury acquitted him on Count 12, which charged him with mail fraud relating to the $150,000 CMS loan to CSW.

Susan McDougal -- The jury convicted Susan McDougal of all four felony counts submitted to it, all relating to the CMS loan to Susan McDougal d/b/a Master Marketing.

Jim Guy Tucker -- The jury convicted Governor Tucker of two of the seven counts submitted to it: It convicted him of the overall conspiracy (Count 1) and mail fraud regarding the $150,000 loan to CSW (Count 12). It acquitted him of wire fraud regarding the transfers of SBA funds to CMS (Counts 2 and 3), of bank fraud regarding the $825,000 loan to Dean Paul (Count 4), of misapplying the $100,000 Southloop loan (Count 20) , and of causing false entries regarding that loan (Count 21).

d. Post-Trial Motions, Sentences, and Appeals.

Jim McDougal -- After his convictions, McDougal agreed to cooperate with the government, and began doing so in early August 1996.[200] He informed Independent Counsel investigators that much of his trial testimony was perjurious, and stated that, in his view, President Clinton had also lied during his testimony.

On April 14, 1997, Judge Howard sentenced Jim McDougal to concurrent terms of five years imprisonment for fifteen of the counts for which he was convicted, with two years suspended. On the remaining three counts, Judge Howard suspended the imposition of sentence and imposed a three-year probationary term. McDougal's effective sentence was three years imprisonment followed by three years of probation. The Court also imposed a $10,000 fine and ordered McDougal to pay $4,274,301.27 in restitution**,** divided between the FDIC and the SBA.

[200] J. McDougal 4/2/97 GJ at 3.

McDougal appealed, claiming that the nine-year delay in indicting him violated his due process rights and that trying him for conspiracy after he had been acquitted on a conspiracy charge in 1990 violated the constitutional prohibition on double jeopardy.[201]

The court of appeals concluded that he had not been prejudiced by the delay and that the conspiracy in this case was distinct from the one of which he had been acquitted. The court of appeals affirmed the district court's determination.

McDougal began serving his prison sentence in June 1997. On March 8, 1998, McDougal died at the Federal Medical Center, Fort Worth, Texas. The Bureau of Prisons concluded that his death was due to natural causes.

Susan McDougal -- On August 20, 1996, Judge Howard sentenced Susan McDougal to twenty-four months on three counts of her conviction (the court suspended sentence on the fourth), to be followed by three years probation, restitution of $300,000 to the SBA, a $5,000 fine, and over 300 hours of community service.

McDougal appealed her conviction, raising numerous issues. On February 23, 1998, the United States Court of Appeals for the Eighth Circuit affirmed her conviction.[202] McDougal began serving her two-year sentence on March 8, 1998, after an 18-month term of the imprisonment for her civil contempt of a court order. On June 25, 1998, after McDougal had served three and one-half months of her sentence, Judge Howard granted her motion for reduction of sentence pursuant to Fed. R. Crim. P. 35, due primarily to health reasons, and reduced her sentence to time served. As a condition of probation McDougal was required to serve a ninety-day period of home confinement.

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[201] United States v. McDougal, 133 F.3d 1110, 1113 (8th Cir. 1997).

[202] United States v. McDougal, 137 F.3d 547 (8th Cir. 1998).

Jim Guy Tucker -- After trial, Tucker filed a motion for new trial, alleging juror misconduct. Tucker claimed that during trial the juror had married a former prisoner whom Tucker had denied executive clemency and had not revealed any such connection, thereby denying Tucker an unbiased jury. Tucker also claimed that the juror discussed the trial during its pendency with someone who was trying to influence the outcome. After a hearing, Judge Howard denied the motion, concluding that the jury had not had access to extraneous evidence in deliberating on the verdict.

On August 19, 1996, Judge Howard held a sentencing hearing for Tucker in which Tucker presented medical evidence showing that if he did not have a liver transplant, his life was in jeopardy, and that if he were incarcerated, there was little probability he would get a transplant. Judge Howard sentenced Tucker to eighteen months home confinement as part of a four-year probationary term, restitution of $150,000, a $25,000 fine, and specified community service. Tucker then appealed his conviction and the order denying him a new trial for supposed juror misconduct.

On February 23, 1998, the United States Court of Appeals for the Eighth Circuit rejected Tucker's challenge to the sufficiency of the evidence supporting his conviction. The court of appeals, however, remanded the case to the district court for a further hearing on issues relating to possible juror misconduct. A hearing was scheduled for September 11, 1998, but was continued due to Tucker's recurring health problems. A three-day evidentiary hearing was ultimately held in December 1998. On February 17, 1999, the district court concluded that there was no evidence that the juror was dishonest or biased and there was no evidence of any improper communication with the juror.[203] The district court, therefore, denied Tucker's motion

[203] United States v. Tucker, 36 F. Supp. 2d 1110, 1117 (E.D. Ark. 1999).

for a new trial.[204] Tucker again appealed, and on September 13, 1999, the case was argued before the Eighth Circuit. On February 27, 2001, the Eighth Circuit upheld Tucker's conviction.

IV. WEBSTER HUBBELL'S ROSE LAW FIRM BILLING PRACTICES.

A. Introduction.

Before the appointment of Independent Counsel Starr, regulatory Independent Counsel Fiske was investigating, among other matters, possible fraud and tax violations relating to Hubbell's billing and expense practices at the Rose Law Firm. After his appointment, Independent Counsel Starr continued the investigation and sought explicit jurisdictional authority from the Special Division. The Special Division issued an order dated September 1, 1994 and pursuant to 28 U.S.C. § 594(e), confirming that the Independent Counsel's jurisdiction included the question of "[w]hether Hubbell . . . violated any federal criminal law . . . in his billing or expense practices while a member of the Rose Law Firm," and authorizing prosecution of "all matters arising from that investigation."[205]

Mr. Fiske's investigation discovered that while Hubbell had been a partner at the Rose Law Firm in Little Rock, he had engaged in an extensive scheme to defraud both his clients and the firm. In addition to private clients and the firm, the victims of Hubbell's scheme included the FDIC and the RTC.

Mr. Fiske discovered substantial evidence detailing Hubbell's fraud. Specifically, Mr. Fiske identified approximately 400 firm checks that Hubbell signed or were made payable for his benefit during the period from 1989 until he left the firm in January 1993 to become Associate

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[204] Id. at 1118.

[205] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

United States Attorney General.[206] Approximately 300 of these checks, totaling more than half a million dollars, were made payable to banks and credit card companies where Hubbell had accounts.[207] While Hubbell had indicated brief, work-related justifications for most of the expenditures, the credit card documentation revealed that Hubbell had paid for the vast majority of his personal credit card bills, which included over $300,000 of personal expenditures, with Rose Law Firm client advance checks.[208]

B. United States v. Webster Hubbell.[209]

On December 6, 1994, Hubbell pleaded guilty to one felony violation of the mail fraud statute (18 U.S.C. § 1341) and felony income tax evasion (26 U.S.C. § 7201).[210] Hubbell admitted that from 1989 to 1992 he defrauded the Rose Law Firm and its clients, adding at least $394,000 to the legitimate charges.[211] At sentencing, Hubbell agreed that the amount of the fraud was in fact $482,000.[212] On June 23, 1995, he was sentenced by Judge Howard to twenty-one months imprisonment followed by three years of supervised release, and was ordered to

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[206] Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 42 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal) [hereinafter "Fiske Report"].

[207] Id. at 42-43.

[208] Id. at 43.

[209] United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1997).

[210] Id.

[211] See Plea Proceedings Tr. at 7-9, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1994); Plea Agreement at 3, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1994).

[212] Sentencing Tr. at 26, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. June 28, 1995).

make restitution to the Rose Law Firm in the amount of $135,000.

V. SCHEME TO CONCEAL ROSE LAW FIRM'S CONFLICTS OF INTEREST FROM FEDERAL AGENCIES.

A. Introduction.

On November 13, 1998, in the District of Columbia, a federal grand jury returned an indictment charging Hubbell with 15 felony counts relating to the true nature of the relationship of the Rose Law Firm and Madison Guaranty: Cover-up by Scheme (one count),[213] Corruptly Impeding the Functions of the FDIC and the RTC (one count),[214] Fraud on the FDIC and the RTC (one count),[215] False Statement to the FDIC (four counts),[216] False Statement to the RTC (two counts),[217] Perjury (one count),[218] and Mail Fraud (five counts).[219] These charges all related to Hubbell's efforts to prevent the FDIC, the RTC, and the United States House of Representatives from discovering Rose's relationship with Madison Guaranty that would have precluded Rose from obtaining and maintaining employment contracts with the RTC and FDIC. Hubbell attempted to conceal his prior representation of Seth Ward because many of the loans to Ward identified as fraudulent by federal bank regulators were precisely the same sort of loans that were considered in measuring damages in Madison Guaranty v. Frost and Company ("Frost").

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[213] 18 U.S.C. § 1001.

[214] 18 U.S.C. § 1032(2).

[215] 18 U.S.C. § 1006.

[216] 18 U.S.C. § 1007.

[217] 18 U.S.C. § 1001.

[218] 18 U.S.C. § 1621.

[219] 18 U.S.C. §§ 1341, 1346; see United States v. Hubbell, No. 98-394 (D.D.C.).

The indictment alleged that Hubbell, as lead FDIC and RTC attorney and billing partner on Frost handled by Rose, and later as Associate Attorney General of the United States, falsified, covered up by scheme, and concealed from agents and investigators of the FDIC and RTC the true nature of his, Rose's, and Hillary Rodham Clinton's relationships with Seth Ward, Madison Guaranty, Madison Financial, and a series of transactions that came to be known as the IDC/Castle Grande transactions. These transactions involved, among others, Jim McDougal, Seth Ward, Madison Guaranty, Madison Financial, and Industrial Development Company ("IDC"). Hubbell, Mrs. Clinton, and other Rose attorneys performed legal work on IDC/Castle Grande.

B. The Cover-Up Alleged in the Indictment.

The indictment alleged that Hubbell participated in a scheme that corruptly endeavored to impede and impeded the functions of the FDIC and RTC. As alleged in the indictment, this scheme lasted from March 1989 to December 1995, as Hubbell further schemed to falsify, conceal, and cover up the nature of his, Rose's, and Hillary Clinton's relationships with Ward, Madison Guaranty, Madison Financial, and the IDC/Castle Grande transactions discussed above ("IDC/Castle Grande transactions"). The purpose of this scheme was to defraud the FDIC and RTC of money by means of false and fraudulent pretenses, representations, statements, and promises; to deprive the FDIC and RTC of their rights to Hubbell's honest services; to conceal, through false, evasive, and misleading statements and material omissions the true facts about Hubbell's, Rose's, and Hillary Clinton's relationships with Ward, Madison Guaranty, Madison Financial, and the IDC/Castle Grande transactions; and to cause and create undue delay and unnecessary confusion in FDIC and RTC investigations.

In March 1989, after the FDIC became Madison Guaranty's managing agent, the FDIC

retained Hubbell and Rose to assume the handling of a pending civil lawsuit on behalf of Madison Guaranty, Frost.[220] Hubbell was the lead attorney and billing partner for Madison Guaranty, the FDIC, and, later, for the RTC on Frost.[221] In Frost, which began in 1988, Madison Guaranty sued Frost & Company, Jimmie D. Alford, and other individuals for alleged accounting malpractice in connection with Frost's audits of Madison Guaranty.[222] Ward's Madison Guaranty loans were at issue as potential damages in Frost.[223] As part of the scheme, Hubbell concealed from the FDIC and the RTC the fact that Hubbell and Rose had actual and potential conflicts of interest with the FDIC and the RTC in regard to Frost.[224] It was a further part of the scheme that Hubbell concealed from the FDIC and the RTC the nature and extent of the legal work that Rose had performed for Madison Guaranty from April 1985 to July 1986.[225] The scheme also included Hubbell's efforts to conceal Rose's legal work for Ward, Rose's submission of Frost's audits to the Arkansas Securities Department, and Rose's billing of Madison Guaranty during 1985 and 1986 for legal services performed in connection with the IDC/Castle Grande

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[220] Original Complaint, Madison Guaranty v. Frost and Company, No. 88-1183 (Pulaski County, Ark. Feb. 28, 1988) (Doc. Nos. CT 00000023 through 28).

[221] Description of Hubbell's duties as lead attorney and billing partner (Doc. No. 105-00077232); Speed 3/17/98 GJ at 60.

[222] Original Complaint, Madison Guaranty v. Frost, No. 88-1183 (Pulaski County, Ark. Feb. 28, 1988) (Doc. Nos. CT 00000023 through 28).

[223] Id. at 3 (Doc. No. CT 00000025).

[224] 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, 57-59 (Aug. 10, 1995) (testimony of W. Hubbell) [hereinafter "House Banking Comm. Hearing"].

[225] Id.

transactions.[226] As alleged in the indictment, Hubbell also made multiple false statements and withheld other information as part of this scheme to conceal necessary information from the RTC and FDIC investigations.[227]

C. Hubbell Pleaded Guilty.

On June 30, 1999, pursuant to a plea agreement, Hubbell pleaded guilty to the false statements scheme charged in count one of the indictment,[228] and a superseding misdemeanor information charging a willful failure to pay tax in a separate case, the latter of which was later vacated.[229] On the felony scheme, Hubbell agreed to and was sentenced to one year of probation, no restitution, no fine, and a special assessment of $100.00.[230] On the Independent Counsel's motion, the remaining counts of the RTC/FDIC indictment were dismissed with

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[226] Id.

[227] Breslaw 7/28/94 Sen. Depo. at 28-29; House Banking Comm. Hearing, supra note 224, at 45-46 (Aug. 10, 1995) (testimony of A. Breslaw).

[228] 18 U.S.C. § 1001.

[229] 26 U.S.C. § 7203; Plea Agreement, United States v. Hubbell, No. 98-0394 (D.D.C. June 30, 1999). As part of the plea agreement, the Independent Counsel agreed to dismiss with prejudice the tax indictment (Cr. No. 98-0151, D.D.C.) as to Suzanna Hubbell, Michael C. Schaufele, and Charles Owen; to not further prosecute Hubbell, nor refer him to the United States Department of Justice for prosecution; and to accept a plea to the willful failure to pay tax charge on the condition that the United States obtain a favorable result before the United States Supreme Court on its act of production immunity argument. Plea Agreement at 3-5, United States v. Hubbell, No. 98-0394 (D.D.C. June 25, 1999). When the United States Supreme Court concluded that Hubbell's compelled act of producing certain tax records violated the Fifth Amendment (see United States v. Hubbell, 120 S.Ct. 2037, 2048 (2000)), the Independent Counsel promptly moved to vacate that conviction. Motion of the United States to vacate Judgment of Conviction and Dismiss the Superseding Criminal Information (Oct. 19, 2000). The United States District Court for the District of Columbia vacated the conviction on Oct. 20, 2000. Order of Judge Robertson (Oct. 20, 2000).

[230] Judgment, United States v. Hubbell, No. 98-0394 (D.D.C. July 1, 1999).

prejudice.[231]

VI. TUCKER, MARKS, AND HALEY TAX CONSPIRACY.

A. Introduction.

With information provided by David Hale, regulatory Independent Counsel Robert Fiske began investigating a 1987 bankruptcy filed in the Northern District of Texas which involved cable television properties that Jim Guy Tucker and businessman William J. Marks owned. The investigation focused on possible tax crimes committed through the use of a sham bankruptcy. Independent Counsel Starr continued this investigation, and thereafter sought and received referrals, dated December 19, 1994 and July 28, 1995, from the Special Division covering these aspects of Independent Counsel Fiske's investigation.

The investigation uncovered sham transactions and fraudulent misrepresentations that the co-conspirators -- Tucker, Marks, and John Haley, Tucker's tax attorney -- contrived and executed in order to evade corporate level taxes altogether and to reduce capital gains tax liability by fraudulently increasing the tax bases of assets. One of the corporations involved in the transactions was governed by subchapter C of the Internal Revenue Code.[232] Income earned by a C corporation is generally taxed at the corporate level.[233] If post-tax earnings of a C corporation are distributed to shareholders, that distribution is generally taxed again at the individual level.[234] Certain small business corporations may seek status as a subchapter S

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[231] Id.

[232] 26 U.S.C. §§ 301-385.

[233] 26 U.S.C. § 11(a).

[234] 26 U.S.C. §§ 301-307.

corporation by filing a form with the Internal Revenue Service ("IRS").[235] If subchapter S status is granted, income to the S corporation is generally not taxed at the corporate level, but instead passed through pro rata to the shareholders and taxed only at the individual level.[236]

The two corporations central to this matter were Cablevision Management, Inc. ("CMI"), an S corporation, and Planned Cable Systems Corporation ("PCS"), a C corporation.[237] In early 1987, Tucker, then a practicing lawyer in Little Rock, owned 100 percent of CMI's stock.[238] Marks owned eighteen percent of PCS's stock and served as its president. Meredith Corporation owned the other eighty-two percent of PCS's stock.[239] In addition to its PCS stock, Meredith held a note that obligated PCS to pay Meredith $7.9 million.[240]

Meredith wanted to get out of the cable television business and offered to sell its PCS stock and the income note for approximately $6 million, the amount that Meredith had invested in PCS at that point. PCS owned several cable television systems, including Plantation cable system in Plantation, Florida. In early 1987, Tucker and Marks agreed to form a joint cable venture and divide the profits equally.[241] On March 1, 1987, Tucker signed a stock purchase

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[235] 26 U.S.C. § 1362.

[236] 26 U.S.C. §§ 1363, 1366.

[237] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-00000162 through 171).

[238] Debt Placement Memo Prepared by Waller Capital Corporation (undated) (Doc. Nos. 287-00000311 through 427).

[239] Letter from Frost & Company to National Fleet Bank (June 9, 1987) (Doc. No. 85-00040069).

[240] Income note for $7,906,888.48 (Oct. 10, 1984) (Doc. Nos. 199-00222061 through 062).

[241] Letter from Frost & Company to National Fleet Bank (June 9, 1987) (Doc. No. 85-

agreement with Meredith, agreeing to purchase Meredith's eighty-two percent of PCS and the note for $6 million.[242]

In June 1987, a bank agreed to lend Tucker and Marks $8.5 million, approximately $6 million of which was used to purchase the PCS stock and note.[243] As part of the collateral, the two pledged to the bank all of the cable television assets of PCS and CMI.[244] Tucker and Marks were also required to place $500,000 as collateral into an escrow account, $300,000 of which came from a fraudulent loan from Hale's company, CMS, to another company D&L Telecommunications. When Tucker and Marks learned that they would have to put up $500,000 into an escrow account as collateral, Tucker told Marks that this would be no problem because Tucker had a friend that he had borrowed money from before, meaning David Hale.[245]

According to Hale, Jim Guy Tucker talked with him about a CMS loan to D&L Telecommunications. Hale dealt solely with Jim Guy Tucker on the matter.[246] Hale said at the time the loan was funded, and the funds wired to the bank designated by Tucker, it was his recollection that he had not yet received any loan documents or paperwork from Tucker. CMS ultimately received a letter from Jim Guy Tucker to David Hale bearing the date June 4, 1987

00040069).

[242] Stock purchase agreement between Jim Guy Tucker and William Straw, Meridith Corporation Vice President-Finance (Mar. 1, 1987) (Doc. Nos. 199-00081477 through 485).

[243] Letter from Frost & Company to Fleet National Bank (June 9, 1987) (Doc. No. 85-00040069).

[244] Security Agreement Between Jim Guy Tucker and William Marks and National Fleet Bank (June 10, 1987) (Doc. Nos. 199-00219105 through 117).

[245] William J. Marks Sr. 8/20-11/4/97 Int. at 5.

[246] Hale 6/7/97 Statement to the grand jury.

enclosing certain documents including a promissory note for $300,000 signed by Jim Guy Tucker and William J. Marks. Tucker represented that Marks was a principal owner of D&L and a 50% owner and president of Cablevision Management Inc. Tucker represented that D&L was going to be doing extensive work for CMI in underground cable construction in Arkansas, especially in west Pulaski County.[247]

The "Assurance of Compliance" document submitted on behalf of D&L Telecommunications was signed by William Marks, president, and was attested to be Jim Guy Tucker.[248] The promissory note bearing the date June 4, 1987 to Capital Management Services was signed "D&L Telecommunications, Inc., William J. Marks President," and attested by "Betty Tucker, Secretary." It was also signed individually by Jim Guy Tucker, Betty Tucker, and William J. Marks.[249]

D&L Telecommunications is an underground electrical utility contractor, located in Florida. It primarily was involved in excavating trenches, placing power cables and other cables for cable TV businesses.[250] Donald Smith became president of D&L in 1983 and served in the capacity continuously through the time when he appeared before the grand jury in 1995. No person had ever served as president other than him.[251] At some point, William Marks became a

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[247] Letter from Jim Guy Tucker to David Hale (June 4, 1987) (Doc. No. LL07112).

[251] Assurance of Compliance of D&L Telecommunications Inc. submitted to the Small Business Association (June 7, 1987) (Doc. Nos. LL07116 through LL07117).

[249] Promissory Note to Capital Management Services (June 4, 1987) (Doc. No. LL07102-103).

[250] D. Smith 1/24/95 GJ at 3.

[251] Id. at 4.

50% owner of the company with Smith owning the other 50%.[252] Under their arrangement, Smith had an irrevocable proxy on the majority of the voting shares, and thus, Smith controlled D&L. At no time was William Marks ever an officer of the corporation.[253] Smith never met Betty Tucker, and Betty Tucker was never an officer or director of D&L Telecommunications.[254]

According to Don Smith, D&L Telecommunications never applied for or received a loan from Capital Management Services.[255] According to Smith, the first time that he ever heard that D&L Telecommunications may have received a loan from CMS was a month or two before Smith's appearance before the grand jury on January 24, 1995 when an investigator showed him the loan documents.[256]

Smith testified that he never gave Marks permission to act on behalf of the corporation in getting such a loan in the corporation's name from Capital Management Services. Don Smith testified that he was not aware of the promissory note, Tucker's letter, or associated documents submitted to David Hale, and specifically said he never discussed this with Marks or Tucker.[257] Smith testified that D&L was not beginning to do business in Arkansas as represented in the letter written by Tucker.[258]

Bill Marks stated that he never knew until after he was indicted that the loan was

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[252] Id. at 6.

[253] Id. at 8-9.

[254] Id. at 9.

[255] Id. at 10.

[256] Id.

[257] Id. at 21-22.

[258] Id. at 26.

taken out in the name of D&L.[259] Marks said that the first three paragraphs of the 4-paragraph letter written by Tucker to CMS were false. He said that D&L was not planning on doing any cable construction in Arkansas at that time.[260]

Meredith sold its PCS stock to Tucker and the note was endorsed to him for $3.3 million and to Marks for $4.6 million.[261] On the same date, in accordance with the bank's loan agreement, Tucker and Marks merged PCS into CMI, transferring all of the PCS stock and the income note to CMI.[262] After the merger, Tucker and Marks each owned fifty percent of CMI.[263] Marks was CMI's president and Tucker was its secretary.[264]

One of the documents Tucker had submitted to the bank in support of his financing request was a Debt Placement Memorandum which stated that the Plantation cable system owned by PCS had a present market value of over $10 million, and the market value could be

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[259] William J. Marks Sr. 8/20-11/4/97 Int. at 5.

[260] Id. at 6.

[261] Stock purchase agreement between Jim Guy Tucker and William Straw, Meridith Corporation Vice President-Finance (Mar. 1, 1987) (Doc. Nos. 199-00081477 through 485); Form of Endorsement to Jim Guy Tucker signed by William Straw, Meridith Corporation Vice President-Finance (undated) (Doc. No. 199-00081559).

[262] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-00000162 through 171); see also Letter from Frost & Company to Fleet National Bank (June 9, 1987) (Doc. No. 85-00040069).

[263] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-00000162 through 171); see also Letter from Frost & Company to Fleet National Bank (June 9, 1987) (Doc. No. 85-00040069).

[264] Demand Note (June 10, 1987) (Doc. Nos. 199-00219118 through 120); see also Security Agreement Between Jim Guy Tucker and William Marks and National Fleet Bank (June 10, 1987) (Doc. Nos. 199-00219105 through 117).

increased to $12 million or more in the next year.[265] In August 1987, after several months of discussions with Marks, American Cable Systems ("ACS") offered to buy the Plantation cable system from CMI for $15 million -- fifty percent more than the valuation Tucker had placed on Plantation less than three months earlier.[266] A week later, Tucker wrote to a national accounting firm in Dallas, Texas, stating that they were contemplating a sale of Plantation's assets for $15 million and inquiring as to the tax consequences.[267] On or about September 25, 1987, ACS and Marks, on behalf of CMI, signed a purchase agreement for Plantation at a total price of $14.75 million: $12.75 million, plus $1 million each in non-competition payments to Tucker and Marks.[268]

On October 9, 1987, the accounting firm which Tucker had retained informed Tucker, through his accounting firm, that the tax basis of the Plantation system's assets was approximately $1.75 million, and so the gain on the sale of the system for $15 million would be more than $13 million.[269] On November 18, 1987, the Dallas accounting firm notified Tucker

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[265] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-0000174 through 176); Debt Placement Memorandum Prepared by Waller Capital Corporation (undated) (Doc. Nos. 287-00000311 through 427).

[266] Facsimile Cover Sheet from Representative Mike Wilson (D. Ark.) to Tom Walsh, Vice President of ACF, (Aug. 25, 1987) with letter from John Chappel, Senior Vice President of ACF to William Marks, President of CMS, (Aug. 24, 1987) (Doc. Nos. 284-00000396 through 99).

[267] Memo from Jim Guy Tucker to Richard Jans, Mitchell, Williams, Selig & Tucker attorney, and John Furst, Tax Partner and Regional Tax Director of Coopers & Lybrand, (Aug. 31, 1987) (Doc. No. 445-00000128).

[268] Agreement of Purchase and Sale of Assets between Sattech and Cablevision Management (effective date Sept. 25, 1997) (Doc. Nos. GJ-00000197 through 229).

[269] Facsimile cover sheet and handwritten calculation from Richard Hutchins, Tax Dept. Supervisor at Coopers & Lybrand, to Mike Robinson, Frost & Co. (Oct. 9, 1987) (Doc. Nos. 85-00014694 through 97).

that a corrected calculation showed Plantation's basis to be only $1.26 million, so the gain subject to corporate tax would have been even greater.[270] On that gain, the corporation would have owed income taxes of approximately $4 million.[271] Of course, when those proceeds were distributed to the individual shareholders, there would have been additional personal tax liability.

In early September 1987, Tucker and Marks met with a representative of another cable television company regarding the sale of additional assets of CMI. The representative of that company was advised by Tucker and Marks about the pending offer to sell one of their cable systems for $15 million. According to a contemporaneous memorandum prepared by this person:

> Tucker and Marks are in negotiations on another complicated deal to sell their system in Plantation, Florida to American Cablevision. They have all kinds of tax problems because Plantation is in a corporation and, according to them, of the $15 million purchase price, they are making a profit of $13 million. They do not want to pay a tax of $4.0 million.[272]

In October 1987, Tucker, Haley, and Marks initiated their scheme to defraud the IRS. The scheme included a series of sham transactions to avoid corporate and other taxes the law then required be paid. Tucker, Haley, and Marks fabricated a rescission of the PCS - CMI merger, and Haley arranged for the acquisition of an inactive corporation in Texas called Landowners Management Systems, Inc. ("LMS").[273] They then transferred the PCS assets into

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[270] Facsimile cover sheet and letter from Richard Hutchins, Tax Dept. Supervisor at Coopers & Lybrand, to Jim Guy Tucker (Nov. 18, 1987) (Doc. Nos. 445-00000277 through 80).

[271] Memorandum of Marc Nathanson Re: Acquisition -- Jim Guy Tucker's Cable TV Properties (Sept. 3, 1987) (Doc. No. 502-00001104).

[272] Id.

[273] See Rescission Agreement (Nov. 1997) (Doc. Nos. 199-00222032 through 55); Minutes of Special Joint Meeting of Shareholders and Board of Directors of Planned Cable Systems Corporation (Nov. 20, 1987) (Doc. Nos. 253-00002239 through 40).

LMS, falsely representing that Tucker's only interest in that corporation was as a substantial secured creditor.[274]

Another company, Mikado Leasing, of which Haley had been the President from 1972 to 1987,[275] had been used up until that time solely to acquire and lease cars to members of Haley's law firm. Pleadings filed in the U.S. Bankruptcy Court represented that Mikado Leasing had purchased eighty-two percent of PCS's stock from Meredith. Those pleadings further falsely represented that Marks's wife, Donna, who was President of Mikado Leasing, was the owner of the other eighteen percent.[276] PCS was then ostensibly merged into LMS,[277] and LMS was immediately sent into a pre-packaged bankruptcy in the Northern District of Texas (In re: Landowners Management Systems, Inc., Tax Identification No. 75-2001914).[278]

Marks signed the bankruptcy pleadings as President of LMS,[279] and testified falsely in bankruptcy court that Tucker, who was present, was only a secured creditor of LMS (based on

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[274] General Conveyance, Assignment, and Transfer of Planned Cable Systems Corporation to Landowners Management System, Inc. (Nov. 24, 1987) (Doc. Nos. 253-00002106 through 107).

[275] Corporate Franchise Tax Report (May 1, 1987) (Doc. Nos. 413-00000068 through 89).

[276] Information of Initial Debtor Interview (Dec. 14, 1987) (Doc. No. 253-00002464); Corporate Resolution signed by William and Donna Marks (undated memorializing a resolution of Nov. 20, 1987) (Doc. No. 253-00002317).

[277] Agreement of Merger of Planned Cable Systems into Landowners Management System, Inc. (Nov. 24, 1987) (Doc. Nos. 253-00002287 through 92).

[278] Certified Copy of United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (N.D. Tex.) (filed Nov. 30, 1987) (Doc. Nos. MG-00000001 through 310).

[279] Original Petition Under Chapter 11 at 2, United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (N.D. Tex. (filed Nov. 27, 1987) (Doc. No. MG-00000301).

the recreated note).[280] The reorganization plan presented to the bankruptcy court provided that Tucker would be given Plantation's assets in satisfaction of his claim, and that CMI would be given certain other cable television systems in Texas (previously owned by PCS) in satisfaction of a fabricated $1.15 million unsecured claim.

The Bankruptcy Court was misled to believe that Meredith had sold its eighty-two percent of PCS stock to Mikado for one dollar, when Tucker and Marks both knew that it had been sold with the income note to Tucker (as part of his fifty-fifty relationship with Marks) for $6 million. The Bankruptcy Court also was misled to believe that the fair market value of Plantation was no more than $8.85 million, when Tucker, Marks, and Haley knew that ACS had signed a contract to purchase it for $14.75 million. Further, the Bankruptcy Court was misled to believe that Tucker and Marks had engaged in arms-length negotiations to reach the reorganization plan, when they both knew they were 50-50 partners in a cable television business.

The Bankruptcy Court was also not told about the bank's security interest in the assets put in the name of LMS. The bank, in turn, was not told of the purported rescission of the PCS-CMI merger, of the PCS-LMS merger, or of the LMS bankruptcy.[281] Tucker and Marks then changed the purchase agreement with ACS to reflect a redistribution of the $14.75 million sale price: $11.75 million for Plantation's assets and $3 million in non-competition payments.[282]

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[280] Secured Creditors, United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (N.D. Tex.) (as of Nov. 30, 1987) (Doc. No. MG-00000295).

[281] See Tr. 25-27, United States v. Marks, No. LR-CR-95-117 (E.D. Ark. Aug. 28, 1997).

[282] See Letter from Jim Guy Tucker to Tom Walsh, Vice President of ACS (Dec. 9, 1987) (Doc. Nos. 284-00001653 through 54); Agreement of Purchase and Sale of Assets between Jim Guy Tucker and William Marks (effective Date Dec. 28, 1987) (Doc. Nos. 199-

One effect of the fraudulent bankruptcy proceeding was that the tax basis in the Plantation system assets could be falsely represented as approximately $7.28 million. This fraudulently-inflated basis substantially reduced the taxable gain from the sale to ACS, which in turn reduced the amount of income tax owed by Tucker on the reported sale. "Rescinding" the PCS-CMI merger and the sham bankruptcy also assisted in avoiding a corporate level tax on the sale of corporate assets to ACS and other subsequent purchasers of PCS's assets.[283]

The Bankruptcy Court approved the reorganization plan in December 1987.[284] The sale of Plantation to ACS occurred in January 1988.[285] No tax return for PCS or LMS reported income from the gain on the sale of Plantation. No corporate income tax was paid by CMI on the gain from the sale.[286] Using the falsified tax basis, Tucker reported an individual gain of approximately $4.46 million on the sale of Plantation on his 1988 individual income tax return, and initially reported income tax paid of over $1 million.[287] That amount was approximately $3 million less than Tucker's accountants told him initially the corporation would owe.[288]

00214656 through 88).

[283] See Tr. at 42-43, 45-46, United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark. Aug. 28, 1997).

[284] Order Approving Disclosure Statement and Confirming Plan of Reorganization, United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (No. Dist. Texas Dec. 18, 1987) (Doc. Nos. MG-00000098 through 102).

[285] Closing Statement (Jan. 4, 1988) (Doc. No. 284-00003478).

[286] See Tr. at 27-29, United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark. Aug. 28, 1997).

[287] See James G. and Betty A. Tucker 1988 Federal Income Tax Form 1040.

[288] United States v. Tucker, 217 F.3d 962 (8th Cir. 2000).

B. United States v. Jim Guy Tucker, John Haley & William Marks.[289]

1. Indictment, Dismissal, and Reversal on Appeal.

On June 7, 1995, a federal grand jury for the Eastern District of Arkansas returned an indictment charging then-Governor Tucker, Marks, and Haley with conspiracy to impede the functions of the IRS (commonly referred to as a "Klein Conspiracy"). The indictment also charged Tucker and Marks in two counts with conspiracy and false statements relating to a $300,000 loan from David Hale's CMS to D&L Telecommunications. The case was initially assigned to United States District Judge Henry Woods.

The defendants filed a motion to dismiss the case, claiming that the Independent Counsel lacked jurisdiction to prosecute them. On September 5, 1995, Judge Woods granted the motion and dismissed the indictment.[290] The government appealed and, in March 1996, the Eighth Circuit reversed Judge Woods and reinstated the indictment.[291] The defendants petitioned the United States Supreme Court for certiorari, which was denied.[292] The court of appeals also directed that the case be reassigned, and on remand it was assigned to Chief Judge Stephen Reasoner.[293] The case suffered further delays due to Tucker's health problems, and he underwent

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[289] United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark.).

[290] Tucker moved to discharge the grand jury before he was indicted, claiming that the Independent Counsel lacked jurisdiction. Petitioner Jim Guy Tucker's Motion to Discharge Grand Jury, In re: Special Grand Jury, No. GJ-94-75 (Mar. 30, 1995 E.D. Ark.). That motion was denied and Tucker appealed. Shortly after Judge Woods dismissed the case, the United States Court of Appeals for the Eighth Circuit dismissed the earlier appeal as moot. Judgment dated Oct. 30, 1995.

[291] United States v. Tucker, 78 F.3d 1313, 1315 (8th Cir. 1996).

[292] Marks v. United States, 519 U.S. 820 (1996).

[293] Tucker, 78 F.3d at 1323.

a liver transplant on December 25, 1996.

All three defendants eventually pleaded guilty.[294] Marks pleaded guilty in August 1997 to conspiring to defraud the United States and agreed to cooperate with the United States. Marks was prepared to testify as a government witness against both Jim Guy Tucker and John Haley at the trial scheduled to begin on February 23, 1998.

Tucker pleaded guilty to one felony charge, conspiring "to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes."[295]

2. Marks's Guilty Plea and Sentence.

On August 28, 1997, Marks pleaded guilty to one felony count of conspiracy to defraud the IRS in violation of 18 U.S.C. § 371. Marks agreed to cooperate and testify against his co-defendants. Marks was extensively debriefed by Independent Counsel attorneys and agents and provided information confirming the facts and circumstances set forth in the indictment originally filed against him, Tucker, and Haley.[296] He confirmed the false information which had been submitted to CMS and the SBA concerning the D&L Telecommunications loan.[297] Marks stated that after ACS had offered to buy the Plantation

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[294] Plea Agreement as to Jim Guy Tucker, United States v. Tucker, No. LR-CR-95-117 (E. D. Ark. Feb. 20, 1998); Plea Agreement as to William J. Marks Sr., United States v. Tucker, No. LR-CR-95-117 (E. D. Ark. Aug. 28, 1997); Plea Agreement as to John Haley, United States v. Haley, No. LR-CR-98-29 (E. D. Ark. Feb. 20, 1998).

[295] United States. v. Jim Guy Tucker, William J. Marks Sr., and John H. Haley Indictment at 18.

[296] William J. Marks Sr. 8/20-11/4/97 Int. at 1-31.

[297] Id. at 5-7.

system for $15 million, Tucker seemed obsessed about finding a way to eliminate the taxes on the sale of the Plantation system.[298] Marks said that the entire LMS bankruptcy was a "fantasy" based on the fiction that Tucker was angry and was going to foreclose on Marks.[299] By the time the bankruptcy was filed, Marks knew from discussions with both Haley and Tucker that the only reason for the bankruptcy was to save taxes for Tucker and Marks.[300] According to Marks, both Tucker and Haley told him that they filed a bankruptcy in Fort Worth, Texas to avoid publicity so that none of their customers would find out about it.[301] Marks knew that a number of the statements made in the bankruptcy pleadings were not true, and Marks admitted lying in his testimony in the bankruptcy proceeding in Texas.[302] On May 18, 1998, Marks was sentenced to a four-year term of probation, ordered to perform community service, and ordered to pay $1 million in restitution to the United States.

3. Haley's Guilty Plea and Sentence.

On February 20, 1998, Haley pleaded guilty to one misdemeanor count of aiding and abetting the willful failure to supply information to the IRS, in violation of 26 U.S.C. § 7203. On August 20, 1998, he was sentenced to three years probation with a condition that he perform eight hours of community service per week for three years. He was fined $30,000 and ordered to pay an additional $40,000 in restitution.

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[298] Id. at 16.

[299] Id. at 16, 22.

[300] Id. at 17.

[301] Id.

[302] Id. at 17-19.

4. Tucker's Guilty Plea and Sentence.

On February 20, 1998, Tucker pleaded guilty to one felony count of conspiracy to defraud the IRS in violation of 18 U.S.C. § 371. He agreed to cooperate with the Office of the Independent Counsel. Tucker's plea agreement provided that while he would receive no imprisonment, he would be sentenced to probation for a term to be determined by the court, and a fine as determined by the court. It also provided that he would pay restitution based on the loss sustained by the United States. The agreement further stated that Tucker would not be liable for the full amount of tax loss -- which would include the tax benefit to his co-conspirators -- but only for his appropriate share of the loss, with total restitution not to exceed the tax benefit gained by him.[303]

Before his sentencing hearing, Tucker moved the district court to rule that certain changes in the tax code -- all subsequent to his fraud scheme -- reduced his tax liability to zero. That is, Tucker argued that although he had intended, with his co-conspirators, to defraud the United States, if the new law applied to the relevant events they would have owed no actual tax. The district court rejected this argument. All of the changes to the tax code upon which Tucker relied, in the government's view, did not apply to his situation: they all applied only to corporations that chose S designation after December 31, 1986. Since CMI chose that designation in May 1985 the changes to the code were simply irrelevant. The district court rejected Tucker's argument and ordered him to pay $1 million in restitution, the same amount Marks was ordered to pay -- less than one-third of the more than $3.5 million of corporate tax

[303] Plea Agreement, United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark. Feb. 20, 1998).

owed.[304] Judge Reasoner also sentenced Tucker to serve four years of probation with four hours of community service each week and to pay a $6,000 fine. Tucker appealed this sentence.

5. Reversal on Appeal.

On July 3, 2000, the Eighth Circuit reversed the restitution order and remanded for resentencing. The court of appeals concluded that while the relevant statute seemed to preclude Tucker's claim that he was entitled to the benefits of the new law, the IRS had in private letter rulings and regulations apparently interpreted the statute in that way. The court of appeals decided, therefore, that since the United States had introduced no evidence as to tax loss at the sentencing hearing, and the district court had relied only upon the Pre-Sentence Report and the cross-examination of Tucker's witnesses, it had no alternative but to reverse and remand for resentencing.[305]

Judge Reasoner set the resentencing hearing for December 14, 2000. The Independent Counsel was prepared to introduce testimony that the "old law" applied and that the actual tax loss was as previously testified to at Marks's sentencing hearing. In the alternative, if it were determined that the "new law" applies, then the Independent Counsel was prepared to introduce evidence that substantial tax would still be owed if the correct "fair market value" of the plantation System were utilized. For example, under the "new law" if a fair market value of $11.75 million were used (the sales price ultimately paid), CMI would owe approximately

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[304] Presentence Investigation Report at 17, United States v. Tucker, No. 95-117 (E.D. Ark. Apr. 9, 1998). Governor Tucker's presentence report concluded that the income tax liability evaded by Tucker's scheme as $3,562,257. The report also noted that, had interest and penalties been assessed, the tax loss would have been $4,876,154 as of the date of Tucker's guilty plea.

[305] Tucker, 217 F.3d at 961-62.

$1.698 million in additional taxes, Tucker's half being approximately $846,189.[306]

On December 1, 2000, at a hearing on several pre-sentencing motions, Judge Reasoner stated, as he had at the conclusion of the conclusion of the original sentencing hearing in may 1999, that if there was a civil settlement between the IRS and Governor Tucker, Tucker could move to amend the amount of restitution ordered in the criminal case.[307] The district court ruled that it would defer the issue of any restitution to be ordered paid by Tucker pending resolution of the civil tax liability with the Civil Examination Division of the IRS.[308]

VII. PROSECUTIONS INVOLVING THE PERRY COUNTY BANK.

During regulatory Independent Counsel Fiske's review of information relative to whether Madison Guaranty funds were diverted to Whitewater Development or to campaigns for public office conducted by President Clinton, evidence was developed of possible crimes relating to transactions involving the 1990 Clinton gubernatorial campaign account at the Perry County Bank in Perryville, Arkansas.

Independent Counsel Fiske's investigation involved the alleged failure to file Currency Transaction Reports ("CTRs") for two cash withdrawals made by the Clinton gubernatorial campaign in 1990. The first cash withdrawal, in the amount of $30,000, was made on May 25, 1990 right before the Democratic primary election. The second, in the amount of $22,500, was made on November 2, 1990 shortly before the general election. As of August 5, 1994, Fiske's office was investigating whether the campaign and Perry County Bank officials conspired not to

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[306] Response of the United States to Motion of Defendant Tucker at 10-11 (filed Nov. 8, 2000).

[307] Hearing Before The Honorable Stephen M. Reasoner, United States v. Tucker, No. 4:95CR00117-01SMR at 7-8 (Dec. 1, 2000).

[308] Id. at 27-29.

file the required CTRs and further conspired to conceal one of the withdrawals. Fiske was also investigating whether the withdrawals, which occurred four days before the 1990 primary and general elections, respectively, were used for the purpose of unlawfully providing cash to influence the 1990 primary and general elections.[309]

A. Introduction.

Perry County Bank ("PCB"), was a state chartered bank located in Perryville, Arkansas, a town of approximately 1,100 people, approximately 45 minutes west of downtown Little Rock. As an FDIC insured institution, it was required to complete a Currency Transaction Report ("CTR"), IRS Form 4789, notifying the IRS in writing of each currency transaction in excess of $10,000, including each withdrawal of currency in excess of $10,000. The FDIC was empowered to periodically inspect PCB to ensure compliance with various regulatory requirements, including compliance with the requirements related to the completion of CTRs.

Attorney Herby Branscum Jr. and Certified Public Accountant Robert M. Hill, a former IRS Revenue Agent, were directors of PCB and controlling shareholders of PCB's parent corporation, Perry County Bancshares, Inc., a bank holding company. PCB employed Neal T. Ainley as President of PCB from approximately June 1989 to March 1994. In their dual capacities, Branscum and Hill functioned as Ainley's superiors.

In 1990, then-Governor Clinton was running for re-election as Arkansas governor. On March 9, 1990, the Clinton for Governor campaign opened an account at PCB, listing Bruce Lindsey and Gloria Cabe as the authorized signatories for the account.[310] Then-Governor and

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[309] Fiske Report, supra note 206, at 50.

[310] The Perry County Bank Account Application (Mar. 9, 1990) (Doc. No. 226-00000353).

Mrs. Clinton personally borrowed money from PCB on five occasions in 1990 for the benefit of the Clinton for Governor campaign.[311] The proceeds of those loans were deposited in the campaign's account.

B. Alleged Failure to File Currency Transaction Reports.

The Clinton gubernatorial campaign made at least two large cash withdrawals for which the evidence established PCB failed to file the appropriate documents.[312] On May 25, 1990, the Clinton for Governor campaign withdrew $30,000 in currency from its account at the Perry County Bank.[313] On November 2, 1990, the Clinton for Governor campaign withdrew an additional $22,500 in cash from the same account.[314] The IRS did not receive a CTR from the PCB for either transaction.

1. Multiple Checks Were Used Allegedly to Avoid the Reporting Requirements of 31 U.S.C. § 5324(a) (1) in May 1990.

The investigation found evidence that on May 25, 1990, four days before the Democratic primary election, Clinton's gubernatorial campaign had contact with Branscum. On May 25, 1990, telephone records reflect that telephone calls were made from the Clinton campaign office

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[311] Promissory Note to PCB signed by Hillary Rodham Clinton and Bill Clinton for $100,000 (May 16, 1990) (Doc. No. 226-00000004); Promissory Note to PCB signed by Hillary Rodham Clinton and Bill Clinton for $60,000 (May 23, 1990) (Doc. No. 226-00000037); Promissory Note to PCB signed by Bill Clinton and Hillary Rodham Clinton for $60,000 (June 26, 1990) (Doc. No. 226-00000031); Promissory Note to PCB signed by Bill Clinton and H R Clinton for $75,000 (Oct. 29, 1990) (Doc. No. 226-00000022); Promissory Note to PCB signed by Bill Clinton and Hillary Rodham Clinton for $50,000 (Nov. 5, 1990) (Doc. No. 226-00000014).

[312] These withdrawals were used to provide cash payments for "get out the vote" efforts. Willis Memorandum; Tr. at 18-21, 179, 290, United States v. Branscum, No. LR-CR-96-49 (E.D. Ark. July 16-17, 1996) (statement of Bruce Lindsey).

[313] Ainley 7/5/94 Fiske Int. at 2-3.

[314] Ainley 6/21/94 Fiske Int. at 4; Ainley 7/5/94 Fiske Int. at 1.

telephone number to Branscum's residence at 7:44 a.m.[315] and Branscum's office at 8:55 and 8:58 a.m.[316] Between 9:00 a.m. and 9:20 a.m., telephone records reflect that calls were placed from Branscum's office to the Clinton for Governor phone number at least three times.[317] Testimony and other statements suggested that these calls generally related to the $30,000 cash withdrawal because, according to Ainley, the authorization of either Branscum, Hill, or both would have been needed to approve a $30,000 cash transaction.[318]

According to Ainley, Lindsey called him to coordinate the $30,000 cash withdrawal. [319] Telephone records reflect a 9:30 a.m. PCB call to the Wright, Lindsey, Jennings law firm, where Lindsey was a partner.[320] Ainley determined that PCB lacked adequate cash to provide the $30,000 in cash to Lindsey and, at 9:48 a.m., called another bank in a nearby town to obtain additional currency.[321] PCB issued a Cashier's Check to that bank for $23,000 and Tracy Hill Price, an employee of PCB and daughter of Robert Hill, went to the other bank to obtain $23,000 in cash.[322]

The evidence established that Lindsey drove to Perryville to pick up the cash and

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[315] Clinton for Governor Campaign Telephone Records (June 21, 1990) (Doc. No. 285-00072466).

[316] Id.

[317] Perco Telephone Co. Record (May 1990) (Doc. No. 419-00000915).

[318] Ainley 7/5/94 Fiske Int. at 3.

[319] Id.

[320] Perco Telephone Co. Record (May 1990) (Doc. No. 419-00001088).

[321] Ainley 7/5/94 Fiske Int. at 3-4.

[322] Id.; Perco Telephone Co. Record (May 1990) (Doc. No. 419-00001088).

presented four sequentially numbered checks, each for $7,500, dated May 25, 1990, signed by Lindsey and campaign manager Gloria Cabe, endorsed by Lindsey (as "treasurer, Clinton for Governor Committee"), and payable to several variations on the name of Clinton's campaign committee.[323] Although the total transaction was far in excess of $10,000, Ainley prepared no CTR.[324]

2. PCB Failed to Report the November 1990 Currency Transaction.

On November 2, 1990, Lindsey again called Ainley and requested a withdrawal of $22,500 in cash from the campaign account.[325] Ainley testified that Lindsey also asked if it were possible to avoid reporting this cash transaction and Ainley responded that such reporting was mandatory.[326]

On November 2, 1990, Cabe asked campaign volunteer Glenda Cooper to go to PCB to pick up a package.[327] Cooper received $22,500 in cash at PCB, indicating receipt of the money by signing the back of a debit slip in that amount drawn on the Clinton for Governor campaign

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[323] Ainley 7/5/94 Fiske Int. at 4; Tr. at 52-54, United States v. Branscum et al, (June 27, 1996) (testimony of Neal Ainley); see Check No. 00326 from the account of Clinton for Governor payable to "Committee to Re-elect Governor Clinton" for $7500.00 (May 25, 1990), Check No. 00327 from the account of Clinton for Governor to "Clinton for Governor Campaign Committee" for $7,500.00 (May 25, 1990), Check No. 00328 from the account of Clinton for Governor payable to "Clinton for Governor Committee" for $7,500.00 (May 25, 1990), and Check No. 00329 from the account of Clinton for Governor payable to "Clinton for Governor Committee" for $7,500.00 (May 25, 1990).

[324] Ainley 7/5/94 Fiske Int. at 4.

[325] Id. at 1.

[326] See Tr. at 66, United States v. Branscum et al., (June 27, 1996) (testimony of Neal Ainley); Ainley 7/5/94 Fiske Int. at 1; Ainley 6/21/94 Fiske Int. at 4.

[327] Cooper 2/8/95 GJ at 5-6, 11.

account.[328] A Currency Transaction Report was filled out reflecting that the money was disbursed to Glenda Cooper, and listing her home address and driver's license number.[329] Cooper took the money back to Little Rock, gave it to Cabe, and asked Cabe not to do that to her again.[330] According to Cooper, later that afternoon Cabe said that Bruce Lindsey was not happy with the way that happened, and that if she had any trouble with the IRS to let him know because he was taking care of the paper work.[331]

Later that day, according to Ainley, Hill called Ainley and asked if there were any way to avoid filing a report on this transaction.[332] Once again, Ainley responded that the transaction had to be reported.[333] Ainley also asked Marty Satterfield, PCB Vice-President, if there were any way to keep the transaction from being reported, and Satterfield said no.[334] Still later that same day, Hill telephoned Ainley and asked if there were any way Ainley could intercept the CTR that

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[328] Id. at 11. PCB Debit memo for $22,500 on the Clinton for Governor bank account. (Nov. 2, 1990) (Little Rock GJ Exh. 450). The PCB Debit memo read: "Disbursed funds as requested by Bruce Lindsey per telephone call to Neal Ainley. Funds received by (acct 11-412-9) Glenda Cooper at 11:08 a.m."

[329] Cooper 2/8/95 GJ at 12-13. Currency Transaction Report of PCB reflecting a $22,500 cash disbursement to Glenda Cooper (Nov. 2, 1990) (Little Rock GJ Exh. 255).

[330] Cooper 2/8/95 GJ at 16. Cooper told Independent Counsel investigators in an interview that she did not want to ever be accused of being a bag lady or bag woman. When referred to that prior characterization during her grand jury appearance, she responded, "Yeah. Felt kind of sleazy." Id.

[331] Id. at 18. Cabe explained to Cooper that if you are involved in a cash transaction over $10,000, then that had to be reported to the IRS. Id.

[332] Ainley 7/5/94 Fiske Int. at 1.

[333] Id.

[334] Id.

Satterfield had prepared.[335] Ainley again said no, because Satterfield had handled the transaction.[336] According to Ainley, in spite of his prior refusals, when it became clear that neither Lindsey nor Hill wanted the CTR filed, Ainley went to the mailroom, found the envelope containing the CTR, and removed the CTR from the mailroom.[337]

3. Ainley's Admissions and Prosecution.

On June 21, 1994, agents assigned to Fiske's office interviewed Ainley, the former PCB president.[338] He admitted to having pulled a CTR for the November 1990 $22,500 withdrawal, advising the agents of Lindsey's role.[339] In a second interview on July 5, 1994, Ainley also told the agents of his having not filed the May 1990 CTR for the $30,000 withdrawal.[340] Again, Ainley described Lindsey's role and also that of both Branscum and Hill.[341] This Office also questioned Lindsey, Branscum, and Hill.[342] All three denied having done anything unlawful, and denied knowledge of PCB's failure to file CTRs.

On February 28, 1995, a federal grand jury indicted Ainley on charges relating to the two

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[335] Id. at 1-2.

[336] Id. at 2.

[337] See Tr. at 67, 70-72, United States v. Branscum et al., (June 27, 1996) (testimony of Neal Ainley).

[338] Ainley 6/21/94 Fiske Int. at 1.

[339] Id. at 6.

[340] Id. at 2.

[341] Id. at 1-3.

[342] Lindsey 10/25/94 GJ at 144-46; Branscum 7/6/94 Int. at 2-3; Hill 7/6/94 Int. at 3.

failures to file CTRs and conspiring to do the same.[343] On May 2, 1995, pursuant to a plea agreement, Ainley pleaded guilty to two misdemeanor violations of 26 U.S.C. § 7207, willfully delivering and disclosing to the Secretary of the Treasury documents known to be fraudulent or false as to a material matter.[344] The charges were based upon Ainley's providing a false document to FDIC bank examiners who were reviewing PCB compliance with 31 C.F.R. § 103.[345] On February 20, 1991, Ainley had completed FDIC Form 6410/01, answering "yes" to the question on the form whether PCB filed a CTR for each transaction involving currency in excess of $10,000.[346] Specifically, the document claimed that PCB had completed a CTR for each deposit, withdrawal, transfer, or exchange of currency of more than $10,000 for customers that have not been granted an exemption, when Ainley knew that no CTR had been filed for either the May 25, 1990 or November 2, 1990 cash withdrawals by the Clinton gubernatorial campaign.

In connection with Ainley's guilty plea, he agreed to cooperate with the government.[347] In addition to the information already provided to Fiske concerning the CTR violations, Ainley for the first time in May 1995 told of a scheme involving Branscum, Hill, and himself to use PCB funds to make contributions to the 1990 Clinton for Governor campaign and the 1991 Clinton presidential exploratory campaign. Ainley advised investigators that in 1990 he was

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[343] Indictment, United States v. Ainley, No. LR-CR-95-43 (E.D. Ark. Feb. 28, 1995).

[344] Plea Agreement, United States v. Ainley, No. LR-CR-95-43 (E.D. Ark. May 2, 1995).

[345] Id.

[346] Federal Deposit Insurance Corporation Form 6410/01 at 4 (Feb. 20, 1991).

[347] Plea Agreement at 6, United States v. Ainley, No. LR-CR-9545 (E.D. Ark. May 2, 1995).

instructed to contribute $1,000 to the Clinton for gubernatorial campaign and to reimburse himself by having PCB issue a check to him in the amount of $1,000. He also advised investigators that he caused PCB checks to be issued to Branscum and Hill at the same time. Under Arkansas law, individuals could contribute up to $1,500 per election.[348] The Independent Counsel caused grand jury subpoenas to issue to PCB, and later to Branscum, Hill, and their professional associations to produce records.

This case was substantially delayed by the failure of those involved to cooperate. Then Chief United States District Court Judge Stephen Reasoner, who supervised the grand jury, ultimately 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.[349] They contended that the Independent Counsel was proceeding outside his jurisdiction.[350] 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.[351] 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.[352] Branscum's association and Hill complied with the subpoenas only after the Eighth Circuit affirmed the contempt citation. The district court imposed total fines of $77,000

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[348] Ark. Code Ann. § 7-6-203(b) (1990).

[349] Order, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. Sept. 8, 1995).

[350] Id.; see also In re: Grand Jury Subpoenas Duces Tecum, 78 F.3d 1307 (8th Cir. 1996); In re: Grand Jury Subpoenas Duces Tecum, 85 F.3d 372 (8th Cir. 1996).

[351] Order, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. Sept. 8, 1995); see also In re: Grand Jury Subpoenas Duces Tecum, 78 F.3d 1307 (8th Cir. 1996); In re: Grand Jury Subpoenas Duces Tecum, 85 F.3d 372 (8th Cir. 1996).

[352] In re: Grand Jury Subpoenas, 78 F.3d at 1309.

each against Hill in his individual capacity and Herby Branscum Jr. P.A.[353]

C. Evidence That Individuals Made Contributions to the Clinton for Governor Campaign in Violation of Campaign Contribution Regulations.

1. Branscum Gave Money to Others Who Then Made Campaign Contributions to Clinton's Campaigns.

On April 11, 1990, during the primary election season, Branscum wrote a check for $1,500 from his personal account dated April 7, 1990 to the Clinton campaign.[354] On April 30, 1990, Branscum wrote a check to his daughter, Beth Branscum, for $800.00.[355] Later that day, that check was deposited in her account and she wrote a check for $800.00 to Clinton for Governor.[356]

On May 22, 1990, Branscum wrote a check for $200.00 to his son, John C. Branscum.[357] On that same day, John Branscum deposited the check into his account,[358] and then wrote a check for $200.00 to the Clinton gubernatorial campaign.[359]

After the primary, Branscum continued to transfer money to others who then made

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[353] Order, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. Dec. 5, 1995).

[354] Check No. 1040 from the account of Herby Branscum Jr. payable to Bill Clinton Campaign for $1,500 (Apr. 7, 1980) (Doc. No. 1026-00000081).

[355] Check No. 9235 from of the account of Herby Branscum Jr. or Billie Jo Branscum payable to Beth Branscum for $800.00 (Apr. 30, 1990) (Doc. No. 1101-00000012).

[356] The Perry County Bank Deposit Slip for Elizabeth Ann Branscum for $800 (Apr. 30, 1990) (Doc. No. 1144-00000059).

[357] Check No. 1732 from the account of Herby Branscum Jr. PA payable to Chris Branscum for $200.00 (May 22, 1990) (Doc. No. 1102-00000008).

[358] The Perry County Bank Deposit Slip for John C. Branscum for $200.00 (May 24, 1990) (Doc. No. 1144-00000091).

[359] Check No. 8319 from the account of John C. Branscum made payable to Bill Clinton Campaign for $200 (May 22, 1990) (Doc. No. 1144-00000085).

contributions to the Clinton gubernatorial campaign. Branscum also gave funds to his law office staff who then made contributions to the Clinton campaign. In June 1990, Branscum paid his secretaries, Paula Franklin and Debbie Halbrook, $600.00 each.[360] On June 12, Franklin contributed $250.00 to Clinton for Governor.[361] The next day June 13, Paula Franklin's husband and Debbie Halbrook, and her husband, Wes Halbrook, wrote checks for $250.00 each to Clinton for Governor.[362]

After the general election, Branscum continued to transfer money to others who then made contributions to the Clinton gubernatorial campaign. On December 13, 1990, Herby Branscum Jr. P.A. issued a check for $1,000.00 to his son, James Branscum, and issued another check for $500.00 to another son, John Branscum.[363] Later that day, James Branscum deposited the check into his PCB joint account and John Branscum deposited his check into his PCB account.[364] On December 17, 1990, James Branscum wrote check no. 256 for $500.00 and John

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[360] Check No. 4068 from the account of Herby Branscum Jr. PA payable to Debbie Halbrook for $600 (June 12, 1990) (Doc. No. 1189-00000035); Check No. 8320 from the account of Herby Branscum Jr. PA payable to Paula Franklin for $600 (June 12, 1990) (Doc. No. 1189-00000037).

[361] Check No. 4068 from the account of Gary D. or Paula J. Franklin payable to Bill Clinton Campaign for $250 (June 12, 1990) (Doc. No. 656-00000491).

[362] Check No. 1438 from the account of Wes or Debbie V. Halbrook payable to the Bill Clinton Campaign Headquarters for $250.00 (June 13, 1990) (Doc. No. 1187-00000001); Check No. 1439 from the account of Wes or Debbie V. Halbrook payable to the Bill Clinton Campaign Headquarters for $250.00 (June 13, 1990) (Doc. No. 1189-00000003); Check No. 4091 from the account of Gary D. or Paula J. Franklin payable to the Bill Clinton Campaign for $250.00 (June 13, 1990) (Doc. No. 656-00000493).

[363] These checks were actually drawn on Branscum's PCB business account, Herby Branscum Jr. P.A. Attorney at Law Account No. 0006-797-5 (Doc. Nos. 1144-00000039, 1144-00000041).

[364] The Perry County Bank Deposit Slip for James S. Branscum for $1000 (Dec. 13, 1990) (Doc. No. 1144-00000073).

Branscum wrote check no. 1829 for $500.00, both payable to the Clinton gubernatorial campaign. Herby Branscum never admitted improperly funneling money through John Branscum, although he conceded that he put money in John Branscum's "account when I knew that he was giving campaign contributions. . . ."[365]

The next year Branscum also gave money to his employees who then made contributions to the Clinton presidential exploratory committee. On September 13, 1991, Branscum issued a check for $1,500.00 to Debbie Halbrook and a check for $1,200.00 to Paula Franklin.[366] On September 26, 1991, Mr. and Mrs. Halbrook each wrote checks for $250.00 to the Clinton presidential exploratory committee.[367] That same day, Mr. and Mrs. Franklin wrote a check for $250.00 to the Clinton presidential exploratory committee.[368]

2. Hill Gave Money to Others Who Then Made Campaign Contributions to Clinton's Campaigns.

Hill likewise gave money to family members who then contributed to the Clinton 1990 gubernatorial campaign. In the spring of 1990, Hill wrote a check while his wife, Shirley Hill

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[365] See Tr. at 650, United States v. Branscum et al., (E.D. Ark. July 15, 1996) (testimony of Herby Branscum Jr.).

[366] Check No. 9296 from the account of Herby Branscum Jr. PA payable to Debbie Halbrook for $1500 (Sept. 13, 1991) (Doc. No. 1189-00000044); Check No. 9297 from the account of Herby Branscum Jr. PA payable to Paula Franklin for $1200 (Sept. 13, 1991) (Doc. No. 1189-00000046).

[367] Check No. 2020 from the account of Wes or Debbie V. Halbrook payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1187-00000005); Check No. 2021 from the account of Wes Halbrook payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1187-00000007).

[368] Check No. 4256 from the account of Gary D. or Paula J. Franklin payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1168-00000021); Check No. 4258 from the account of Gary D. or Paula J. Franklin payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1168-00000023).

wrote a check, both for $1,500, to Clinton for Governor.[369] On October 29, 1990, Hill wrote a check for $250.00 to Clinton for Governor.[370] That same day, Hill wrote a check for $250.00 to his daughter, Tracy Hill.[371] Later that same day, Tracy Hill deposited the $250.00 check from Hill and wrote a check for $250.00 to Clinton for Governor.[372] On December 17, 1990, Hill signed a check for $1,000.00 from his business account to his wife.[373] Later that day Shirley Hill deposited the $1,000.00 check into her PCB account, and wrote a check for $1,000.00 to the Clinton gubernatorial campaign.[374]

Hill also gave money to family members and employees who then contributed to the Clinton presidential exploratory committee. On September 30, 1991, Hill signed a check for $250.00 to Mrs. Woodrow Hill, who immediately deposited the check into her PCB account, and also wrote $550.00 checks on Hill's business account to his daughters, Kayla Hill and Tracy

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[369] Check No. 3213 from the account of Shirley Hill payable to the Bill Clinton Campaign for $1500 (Apr. 27, 1990) (Doc. No. 1144-00000127); Check No. (illegible) from the account of Robert M. Hill payable to the Bill Clinton Campaign for $1500 (May 11, 1990) (Doc. No. 1153-00000471).

[370] Check No. 0979 from the account of Robert M. Hill payable to Clinton for Governor for $250 (Oct. 29, 1990) (Doc. No. 1025-00000016).

[371] Check No. 0975 from the account of Robert M. Hill payable to Tracy Hill for $250 (Oct. 29, 1990) (Doc. No. 1153-00000207).

[372] The Perry County Bank Deposit slip for Tracy Hill for $250 (Oct. 29, 1990) (Doc. No. 1153-00000206); Check No. 1030 from the account of Tracy Hill payable to Clinton for Governor for $250 (Oct. 29, 1990) (Doc. No. 656-00001259).

[373] Check No. (Starter Check) from the account of Robert M. Hill payable to Shirley Hill for $1000 (Dec. 17, 1990) (Doc. No. 1103-00000006).

[374] Check No. 3678 from the account of Shirley Hill payable to Clinton for Governor for $1000 (Dec. 11, 1990) (Doc. No. 1144-00000125); The Perry County Bank Deposit Slip for Shirley Hill for $1000 (Dec 17, 1990) (Doc. No. 1144-00000135).

Hill.[375] Later that day, Tracy and Kayla deposited the checks into their respective PCB accounts.[376] The following day, Mrs. Woodrow Hill wrote a check for $250.00, while Kayla and Tracy Hill also wrote $250.00 checks, all to the Clinton presidential exploratory committee.[377]

3. Evidence That Branscum, Hill, and Ainley Unlawfully Received Bank Funds to Reimburse Their Campaign Contributions to Clinton's Gubernatorial Campaign.

On December 11, 1990, Hill approached Ainley and told him that Hill was collecting money for the Clinton gubernatorial campaign.[378] According to Ainley, Hill told him to contribute $800 and to have his wife contribute $200,[379] which they did.[380] Accordingly to

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[375] The Perry County Bank Deposit Slip for Mrs. Woodrow Hill for $250 (Sept. 26, 1991) (Doc. No. 1144-00000099); Check No. (starter check) from the account of Robert M. Hill payable to Elise Hill for $250 (Sept. 26, 1991) (Doc. No. 1144-00000101); Check No. 1135 from the account of Robert M. Hill payable to Kayla Hill for $550 (Sept. 30, 1991) (Doc. No. 1103-00000018); Check No. 1136 from the account of Robert M. Hill payable to Tracy Hill for $550 (Sept. 30, 1991) (Doc. No. 1103-00000020).

[376] The Perry County Bank Deposit slip for Tracy Hill for $550 (Sept. 30, 1991) (Doc. No. 1144-00000113); The Perry County Bank Deposit Slip for Kayla Hill for $550 (Sept. 30, 1991) (Doc. No 1144-00000118).

[377] Check No. 0176 from the account of Kayla Hill payable to the Clinton Committee for $250 (Sept. 26, 1991) (Doc. No. 1144-00000111); Check No. 229 from the account of Tracy Hill payable to the Clinton Committee for $250 (Sept. 26, 1991) (Doc. No. 1144-00000116); Check No. (illegible) from the account of Mrs. Woodrow Hill payable to the Bill Clinton Committee for $250 (Sept. 26, 1991) (Doc. No. 1144-00000155). The previous day Hill and Shirley each wrote $1,000 checks to the Clinton exploratory committee. Ex. 476 and Check No. (illegible) from the account of Shirley Hill payable to the Clinton Committee in the amount of $1000 (Sept. 25, 1991) (Doc. No. 1183-00000016).

[378] These contributions were probably intended to retire the considerable campaign debt, which amounted to at least $100,000. See Tr. at 37, United States v. Branscum et al., (E.D. Ark. July 7, 1996) (testimony of President William J. Clinton).

[379] See Tr. at 111, United States v. Branscum et al., (E.D. Ark. June 27, 1996) (testimony of Neal Ainley).

[380] Check No. 0156 from the account of Neal Ainley payable to Clinton for Governor for $800 (Dec. 17, 1990) (Doc. No. HM-00000004); Check No. 0157 from the account of Neil

Ainley, Branscum or Hill told him to have a PCB employee prepare three PCB expense checks, totaling $7,000, to be charged as "legal and professional expenses." Consecutive checks: no. 13850 for $3,000, payable to Branscum; no. 13851 for $3,000, payable to Hill; and no. 13852 for $1,000, payable to Ainley, were prepared.[381] These checks were entered in the PCB books as "legal expenses." There was no backup documentation in the bank files to justify these payments.[382]

During December 1990, Branscum's family members wrote checks payable to Clinton for Governor, totaling $3,000.[383] The Hill family wrote checks in the exact same total.[384] As

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Ainley for $200 (Dec. 17, 1990) (Doc. No. HM-00000006).

[381] Check No. 13850 payable to Herby Branscum Jr. Attorney for $3000 (Dec. 11, 1990) (Doc. No. 1100-00000020); Check No. 13851 to Robert Hill CPA for $3000 (Dec. 11, 1990) (Doc. No. 1100-00000022); Check No. 13852 payable to Neal Ainley for $1000 (Dec. 11, 1990) (Doc. No. 1100-00000024).

[382] Tr. at 214-15, United States v. Branscum et al., No. 96-49 (E.D. Ark. July 7, 1996) (testimony of Robert Hill) (July 22, 1996).

[383] Check No.1053 from the account of Herby Branscum Jr. payable to Bill Clinton Campaign for $500 (Dec. 13, 1990) (Doc. No. 1144-00000049); Check No. 9647 from the account of Herby Branscum or Billie Jo Branscum payable to Bill Clinton Campaign for $500 (Dec. 12, 1990) (Doc. No. 1144-00000053); Check No. 0951 from the account of Elizabeth Ann Branscum payable to Bill Clinton Campaign for $500 (Dec. 11, 1990) (Doc. No. 1144-00000065); Check No.1829 from the account of John C. Branscum payable to Bill Clinton Campaign for $500 (Dec. 12, 1990) (Doc. No. 1144-00000087); Check No. 0256 from the account of James S. Branscum or Collette R. Branscum payable to the Bill Clinton Campaign for $500 (Dec. 9, 1990) (Doc. No. 1144-00000077); Bank Statement of James S. Branscum or Collette R. Branscum (Nov. 20 through Dec. 20, 1990) (Doc. No. 1100-00000048).

[384] Check No.3678 from the account of Shirley Hill payable to Clinton for Governor for $1000 (Dec. 11, 1990) (Doc. No. 1144-00000125); Check No. 0158 from the account of Tracy Hill payable to Clinton for Governor for $750 (Dec. 10, 1990) (Doc. No. 1144-00000129); Check No. 4330 from the account of Harold W. Hill or Mary Kay Hill payable to Clinton for Governor for $250 (Dec. 14, 1990) (Doc. No. 1144-00000161); Check No. 6544 from the account of Mrs. Woodrow Hill payable to Clinton for Governor for $1000 (Dec. 12, 1990) (Doc. No. 1144-00000 157).

indicated above, Ainley and his wife received a check matching their prior contributions.

As of December 1990 Governor Clinton had a campaign debt - primarily on loans from PCB - in excess of $100,000.[385] Under a new Arkansas law, campaign contributions could not be raised from a period 30 days before a legislative session, through the session, and 30 days after the session.[386] A legislative session was scheduled to begin on January 15, 1991, so the last day that campaign contributions could be received for about four months was December 14, 1990.[387] On December 11, 1990, Fonda Lyle of the Governor's staff sent a memorandum to Nancy Hernreich, the Governor's scheduler, on the subject: "Bruce Lindsey 371-0808 requesting appt. for Rob Hill and Kent Dollar."[388] The text of the memo reads as follows:

> Bruce says Rob Hill, member of banking Commission and Chairman of Perry County Democratic party would like time for himself and Kent Dollar to meet with Gov. about two matters:
>
> 1. He has $5-6,000 to give Gov, and
>
> 2. He wants to put in a word for Herby Branscum to be appointed to Highway Commission.
>
> Please respond to Bruce rather than Mr. Hill.[389]

On December 14, 1990, Rob Hill, and Kent Dollar, a CPA who had done work for PCB,

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[385] See Tr. at 38, United States v. Branscum et al., No. 96-49 (E.D. Ark. July 7, 1996) (testimony of President William J. Clinton).

[386] See id.

[387] See id.

[388] Memo from Fonda Lyle to Nancy Hernreich (Dec. 11, 1990) (Doc. Nos. DEK509995 and 319-00028625).

[389] Id. Robert Hill testified that he called Bruce Lindsey to arrange the meeting. See Tr. at 130, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. July 22, 1996) (testimony of Robert Hill).

met with Governor Clinton, giving him approximately $15,250 in campaign contribution checks.[390] Hill gave the Governor approximately $12,250 in checks that he and Branscum were responsible for. Dollar gave the Governor $3,000 in checks which he had raised.[391] In addition to the $7,000 in checks from Ainley and his wife, Branscum family members, and Hill family members, Branscum and Hill had solicited contributions to help retire the Governor's campaign debt from a number of persons.[392] On December 14, 1990, these checks, delivered by Hill and Dollar, were deposited along with other checks into the Clinton for Governor campaign account at PCB.[393]

On January 23, 1991, Governor Clinton appointed Branscum to a ten-year term on the Arkansas State Highway Commission.[394] On December 31, 1991, Governor Clinton re-appointed Hill to the Arkansas State Banking Commission.[395]

President Clinton testified that although he had no specific recollection of the meeting with Hill and Dollar, he did not doubt that he had met with Hill and received contributions.[396] President Clinton testified that his appointment of Branscum and his re-appointment of Hill had

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[390] See Tr. at 42-51, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. July 7, 1996) (testimony of President William J. Clinton).

[391] See id. at 229 (testimony of Robert Hill).

[392] See id. at 190-213.

[393] See id. 42-44 (testimony of President William J. Clinton).

[394] See id. at 27.

[395] See id. at 30-31.

[396] See id. at 26-27, 33-34.

nothing to do with the contributions received from them.[397] He testified that Branscum was the best person under consideration, and he had known both men for a long time and they had been big supporters of his.[398] The President also testified that he did not question the source of the funds delivered to him by Hill.[399]

D. Indictment and Trial of Branscum and Hill.

On February 20, 1996, a federal grand jury returned indictments against Branscum and Hill, charging them with two counts of conspiracy, four counts of making false entries in bank records, four counts of misapplication of bank funds, and one count of making a false statement:

- **Count One** (Conspiracy with Ainley to impair, impede, obstruct, and defeat the lawful function of the FDIC and to violate 18 U.S.C. §§§ 656 and 1005): This count alleged that Branscum and Hill willfully made or caused to be made false and misleading entries in the books and records of PCB. These false entries included, but were not limited to, causing at least $7,200.00 in checks made payable to Branscum, Hill, and Ainley to be recorded in PCB's books and records in May and December 1990 as payments for convention expenses, miscellaneous expenses, and legal or professional services rendered to PCB, when those checks were actually used to reimburse Branscum, Hill, and Ainley and others for political contributions made at the behest of Branscum and Hill.

- **Count Two** (Conspiracy with Ainley to impair, impede, obstruct, and defeat the lawful function of the IRS and to violate 18 U.S.C. § 1005): This count was based upon facts indicating that on at least two occasions Ainley, at the direction of Branscum and Hill, failed to complete a CTR when the Clinton gubernatorial campaign withdrew cash in excess of $10,000.00. Specifically, Branscum and Hill caused Ainley not to submit a CTR to the IRS for either Lindsey's May 25, 1990 cashing of four sequentially numbered checks totaling $30,000.00 or the Clinton campaign's November 2, 1990 withdrawal of $22,500.00.

- **Counts Three, Four, and Five** (False Entries in Bank Records): This count alleged that Branscum and Hill, with intent to deceive the FDIC, knowingly and willfully made and caused to be made false and misleading entries in PCB's

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[397] See id. at 27, 31.

[398] See id. at 27-29, 32.

[399] See id. at 59.

records. Specifically, Counts Three and Four alleged that Branscum and Hill caused checks numbered 13850 and 13851, payable to Branscum and Hill respectively, for $3,000.00 each, to be recorded in PCB's books as payment for legal and professional services rendered to PCB when the funds were actually for the purpose of reimbursing Branscum for political contributions made by him and members of his family. Count Five alleged that Branscum and Hill also caused check no. 13852, payable to Ainley for $1,000.00, to be recorded in PCB's books as payment for legal and professional services rendered to PCB when Branscum and Hill knew that the money actually reimbursed Ainley and his wife for political contributions made at the behest of Hill and Branscum.

- **Count Six** (Misapplication of Bank Funds): This count alleged that Branscum and Hill misapplied and caused to be misapplied PCB funds of more than $100.00. Specifically, Branscum and Hill caused check no. 13850, payable to Branscum for $3,000.00, drawn on PCB's legal and professional expense account when the funds were actually for the purpose of reimbursing Branscum for political contributions made by him and members of his family. Count Seven alleged that Branscum and Hill misapplied and caused to be misapplied PCB funds of more than $100.00. Specifically, Counts Seven and Eight alleged that Branscum caused checks numbered 13851 and 13852, payable to Hill for $3,000.00 and Ainley for $1,000.00, respectively, drawn on PCB's legal and professional expenses account when the funds were actually for the purpose of reimbursing Hill or Ainley and his wife for political contributions made at the behest of Branscum and Hill.

- **Count Nine** (False Entries in Bank Records): This count was based upon facts indicating that Branscum and Hill knowingly and willfully made and caused to be made false and misleading entries in PCB's books. Specifically, Branscum and Hill caused check no. 40239, a cashier's check payable to Branscum for $3,000.00, to be recorded in PCB's books and records as for payment of legal fees when the funds were actually for the purpose of reimbursing Branscum, members of his family, and certain of his employees for political contributions made at the direction of Branscum.

- **Count Ten** (Misapplication of Bank Funds): This count alleged that in 1991 Branscum and Hill misapplied and caused to be misapplied PCB funds, that is, a cashier's check payable to Branscum for $3,000.00, drawn on PCB, knowing that the $3,000.00 was not in payment for legal services performed for PCB but to reimburse Branscum, members of his family, and certain of his employees for political contributions made at the direction of Branscum.

- **Count Eleven** (False Statement): This count alleged that Branscum and Hill caused Ainley to certify as true and correct a statement that PCB files a CTR for each deposit, withdrawal, transfer, or exchange of currency of more than $10,000.00 for customers that have not been granted an exemption, when Branscum and Hill knew that no CTR had been filed for either the May 25, 1990

or November 2, 1990 withdrawals.

The trial began on June 17, 1996. Ainley testified as a government witness. Branscum and Hill testified in their own defense. In addition, the defense presented testimony by Bruce Lindsey and testimony of President Clinton by videotape. On August 1, 1996, the jury acquitted Branscum and Hill as to counts Two, Nine, Ten, and Eleven, and could not agree on a verdict as to the remaining counts.[400] The Independent Counsel declined to re-try either Branscum or Hill on the counts upon which the jury deadlocked.

VIII. PROSECUTION OF SUSAN McDOUGAL FOR CRIMINAL CONTEMPT OF COURT FOR REFUSAL TO ANSWER GRAND JURY QUESTIONS.

A. Introduction.

In March 1994, at the request of regulatory Independent Counsel Fiske, a federal grand jury was empanelled in the Eastern District of Arkansas regarding the investigation of Madison Guaranty Savings & Loan Association. The first grand jury, which returned indictments against the McDougals, Tucker, and others, expired on March 23, 1996. From May 7, 1996 to May 5, 1998, a second federal grand jury empanelled in the Eastern District of Arkansas investigated whether any individuals or entities committed a violation of any federal criminal law related in any way to the relationships of James B. McDougal, President William Jefferson Clinton, or Mrs. Hillary Rodham Clinton with Madison Guaranty, Whitewater Development, or Capital Management Services, Inc. ("CMS"). This investigation included any federal crimes that arose out of the investigation itself, including perjury and obstruction of justice.

As detailed in other chapters of this Report, during 1982-87, Susan McDougal and Jim McDougal were the controlling owners of Madison Guaranty. From 1979 to 1992, the

[400] Judgment, United States v. Branscum, et al, No. LR-CR-96-49 (E.D. Ark. Aug. 2, 1996).

McDougals were also business partners of the President and Mrs. Clinton in Whitewater Development. Susan McDougal d/b/a Master Marketing received a $300,000 loan from David Hale's CMS on April 3, 1986.[401] On May 28, 1996, a jury convicted Susan McDougal on four felony counts related to that loan: mail fraud for submitting a false SBA Form 1031 in connection with the loan;[402] aiding and abetting in the misapplication of the funds from the loan;[403] aiding and abetting the making of a false entry in the reports and statements of CMS,[404] which stated that the purpose of the loan was for operating expenses of Master Marketing, when Susan McDougal knew that the proceeds would not be so used; and aiding and abetting in making a false statement for the purpose of influencing the actions of CMS by falsely representing that the purpose of the loan was to provide operating capital for Master Marketing.[405]

On August 20, 1996, District Court Judge George Howard Jr. sentenced Susan McDougal to two years in prison. She was subpoenaed on that date to appear before the grand jury. Her attorneys filed a motion to quash the subpoena, which was denied by U.S. District Court Judge Susan Webber Wright, who was overseeing the grand jury.

On September 4, 1996, McDougal was directed to appear before the grand jury. Judge Wright ordered McDougal to testify as to all matters about which she might be interrogated, and, consistent with 18 U.S.C. § 6002, the order precluded the use of any of the testimony against her

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[401] See United States v. McDougal, 137 F.3d 547, 550-52 (8th Cir. 1998).

[402] 18 U.S.C. § 1341.

[403] 18 U.S.C. § 657.

[404] 18 U.S.C. § 1006.

[405] 18 U.S.C. § 1014.

in a criminal case, except a prosecution for perjury, making a false statement, or otherwise failing to obey the order. After the deputy foreman of the grand jury explained to McDougal that she could not simply read a statement but must answer questions, she refused to answer any questions.[406] Judge Wright held McDougal in civil contempt and directed that she be incarcerated until she answered the grand jury's questions. McDougal appealed Judge Wright's contempt order to the Eighth Circuit Court of Appeals, which affirmed.[407]

After the Independent Counsel obtained additional evidence related to Madison Guaranty, on April 23, 1998, Susan McDougal was again subpoenaed to appear before the Grand Jury, where the order granting her immunity and compelling her to testify truthfully remained in effect.[408] The grand jurors requested that Judge Wright explain to McDougal that the Order was still in effect and that there were further consequences if she disobeyed it. Despite the Court's renewal of its prior order, Susan McDougal refused to provide a substantial response to any questions.[409] Susan McDougal's two refusals to testify and her evasive answers to those few questions when she did respond, formed the basis for the grand jury's charge of obstruction of

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[406] United States v. Susan H. McDougal, No. LR-CR-98-82 (E.D. Ark.).

[407] Susan McDougal filed several motions for reconsideration of the contempt order, all of which were denied. See McDougal, 97 F.3d at 1093 n.4 (district court denied motion to vacate and motion to order incarceration for contempt to run concurrent with sentence for mail fraud)

[408] 18 U.S.C. § 6002.

[409] S. McDougal 4/23/98 GJ at 9-14. As noted in passing by the Court of Appeals, Susan McDougal's reticence did not seem to extend beyond those occasions when she was under court order to speak truthfully. See McDougal, 97 F.3d at 1095 (federal law does not prohibit grand jury witness from publicly disclosing grand jury proceedings and record reflects McDougal has extensively exercised that prerogative).

justice charge.[410]

B. The Criminal Contempt and Obstruction of Justice Prosecution.

1. Pre-trial Proceedings.

On May 4, 1998, the grand jury for the Eastern District of Arkansas returned a three count indictment charging Susan McDougal with two counts of criminal contempt under 18 U.S.C. § 401(3) and one count of obstruction of justice under 18 U.S.C. § 1503(a).

Susan McDougal filed a number of motions relating to her indictment, many of them unopposed. On May 21-22, 1998, she filed an unopposed motion for extension of time in which to file motions, which the district court granted, giving her until June 30, 1998. On June 4, 1998, she filed a motion for continuance of trial date and time in which to file motions, which the court granted. On June 29, 1998, McDougal filed motions to dismiss the indictment (with various exhibits accompanied by her attorney's declaration) for a bill of particulars, for discovery, for disclosure of grand jury materials, and to reserve the right to file additional pre-trial motions. The court denied her motion to dismiss the indictment on December 1, 1998. The various continuances requested by McDougal resulted in a delay in the commencement of the trial until approximately 10 months after her indictment.

2. Trial.

On March 8, 1999, the trial began in Little Rock. Many prospective jurors were excused for cause after the completion of juror questionnaires. Jury selection itself lasted several days. Both Susan McDougal and the United States filed motions to exclude certain evidence at the trial. In response to McDougal's motions, the Independent Counsel filed various motions to exclude evidence on the ground that McDougal's evidence was designed to confuse the issues.

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[410] 18 U.S.C. § 1503.

At trial, the Independent Counsel offered evidence that Susan McDougal disregarded the Court's order on September 4, 1996,[411] and, after the Independent Counsel had discovered additional documents related to Madison Guaranty and recalled her,[412] she again disregarded the Court's order on April 23, 1998.[413]

The Independent Counsel 's presentation included uncontroverted evidence as to the content of the Court's order and McDougal's noncompliance.[414] The Independent Counsel also offered evidence that McDougal was withholding relevant evidence from the Grand Jury.[415] Special Agent Michael Patkus of the FBI outlined for the jury certain transactions and documents that Susan McDougal would have been knowledgeable about and about which he would have liked to question her.[416] This evidence included a $27,600 Madison Guaranty cashier's check payable to "Bill Clinton."[417] Agent Patkus testified about another related check, written by

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[411] See Tr. at 506-24, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 10, 1999).

[412] One such piece of evidence which the Independent Counsel gained access to were long lost original Madison Guaranty records produced by happenstance as a result of a 1997 tornado, that had been abandoned in the trunk of a former employee's car. A number of other documents were discovered during the continuing investigation. See Tr. at 574-79, 879, 1013, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 11-16, 1999) (testimony of Michael Patkus).

[413] See id at 659 (testimony of Michael Patkus).

[414] See id. at 507-08 (testimony of Jennifer Castelberry).

[415] See, e.g., id. at 656-60, 893-94 (testimony of Michael Patkus). Some of the evidence related to Susan McDougal's knowledge of a loan the President may have received.

[416] Id. at 574-879 (testimony of Michael Patkus).

[417] Id. at 628 (testimony of Michael Patkus).

"Susan McDougal" to Madison Guaranty, with the notation "pay off Clinton."[418] The Independent Counsel offered evidence that McDougal (like any other witness) was simply required to testify truthfully.[419] Three grand jurors testified about their desire for McDougal's testimony and her consistent refusal to provide it,[420] specifically addressing McDougal's refusal to answer questions necessary to provide the grand jury with information relevant to its investigation.[421]

Susan McDougal took the position that because of her lack of confidence in the Independent Counsel's desire for truth, she was justified in refusing to comply with the Court's order.[422] Specifically, she claimed that the Independent Counsel was not seeking the truth from her but was seeking evidence only to implicate the President in wrongdoing.[423]

McDougal also offered, over the objection of the Independent Counsel, the testimony of Julie Hiatt Steele, a defendant in a prosecution brought by the Independent under a different

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[418] Id. at 624.

[419] See id. at 785-87, 799 (testimony of Amy St. Eve); id. at 2423, 2589 (testimony of Ray Jahn). Susan McDougal's own witness, Stephen Smith, conceded that the Independent Counsel was seeking "truthful information." Id. at 1564 (testimony of Stephen Smith). His own testimony at the McDougals and Jim Guy Tucker's trial also indicated that the Independent Counsel never asked him to lie. Id. at 1571.

[420] See id. at 1095-51 (testimony of Jennifer Castleberry); id. at 1155-89 (testimony of Marsha High); id. at 1202-40 (testimony of John Washam).

[421] See id. at 1109-13 (testimony of Jennifer Castleberry); id. at 1169-70 (testimony of Marsha High); id. at 1202-17 (testimony of John Washam).

[422] See id. at 2162 (testimony of Susan McDougal).

[423] During the trial, Susan McDougal did not testify using the word "lie" in her allegations against the Independent Counsel or his staff, although she did use the word in a television interview with Tim Russert. Id. at 2106-07. The most she ever says is that the Independent Counsel was not seeking the truth. (See, e.g., id. at 2088, 2162).

jurisdictional mandate, that Steele believed that the Independent Counsel wanted her to provide false testimony.[424]

On April 12, 1999, following five weeks of trial, the jury acquitted Susan McDougal on the obstruction of justice charge and deadlocked as to the two counts of criminal contempt.[425] The court denied the Independent Counsel 's motion for permission to contact jurors.[426] On May 25, 1999, the district court granted the Independent Counsel 's motion to dismiss the indictment as a result of the government's decision declining to retry McDougal.[427]

IX. EXECUTIVE GRANTS OF CLEMENCY

In December 2000, names of individuals reportedly being considered for grants of clemency by President Clinton -- including Susan McDougal and Webster Hubbell -- began to appear in the press.[428] The Independent Counsel contacted the Justice Department and asked to be advised of any requests for clemency made on behalf of McDougal, Hubbell, or any other individuals prosecuted by this Office. On December 20, Independent Counsel Robert Ray and Associate Independent Counsel Elliot Berke met with Deputy Attorney General Eric H. Holder Jr. and other officials from the Justice Department to discuss relevant clemency-related matters. During the meeting, Deputy Attorney General Holder informed the Independent Counsel that the

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[424] See id. at 2437-38 (testimony of Julie Hiatt Steele).

[425] Peggy Harris, McDougal acquitted on one count Jury dismisses obstruction charges; mistrial declared on two other charges, Peoria J. Star, Apr. 13, 1999 at A2, 1999 WL 7610983. The President was pleased to learn of Susan McDougal's acquittal. Id.

[426] Memorandum Opinion & Order, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Apr. 28, 1999).

[427] Order, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. May 25, 1999).

[428] See, e.g., Eric Lichtblau, 300 FBI Agents March on White House, Justice, L.A. Times, Dec. 16, 2000, at A27.

Justice Department had been asked to provide National Crime Information Center ("NCIC") criminal record checks for Jim Guy Tucker, Robert Palmer, and John Haley.[429]

On December 21, 2000, Independent Counsel Ray requested that the Justice Department advise him if any clemency requests were presented, formally or informally, for review by the Office of the Pardon Attorney or the Deputy Attorney General involving Webster Hubbell, Susan McDougal, or any other persons prosecuted by this Office.[430] This request paralleled Justice Department procedure as outlined in § 1.2111 of the United States Attorneys' Manual, formally enlisting the assistance of the U.S. Attorney in the district of a petitioner's conviction in aiding the Office of the Pardon Attorney (under the direction of the Deputy Attorney General) with its investigation and ultimate recommendation to the President.[431]

After December 21, 2000, there was no further communication between the Independent Counsel or the Justice Department on any clemency requests for Tucker, Palmer, or Haley -- or any other clemency requests for or by individuals prosecuted by this Office.

On his last day in office, January 20, 2001, President Clinton extended grants of clemency to 140 individuals, four of whom -- Susan McDougal, Chris Wade, Steve Smith, and Robert Palmer -- had been prosecuted by this Office.[432] After the pardons were announced, the

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[429] Neither Jim Guy Tucker nor John Haley was extended a grant of clemency by President Clinton.

[430] Letter from Robert W. Ray, Independent Counsel, to Eric H. Holder Jr., Deputy Attorney General (Dec. 21, 2000). Hubbell was not extended a grant of clemency by President Clinton.

[431] See United States Attorneys' Manual, Title I §§ 1-2.110-111.

[432] List of Presidential Pardons (Jan. 20, 2001) (Doc. Nos. MGSL-FR-00000076 through 83); Memorandum from Roger C. Adams, Pardon Attorney, to Robert Ray, Independent Counsel (Jan. 20, 2001) (concerning full and unconditional pardon of Christopher V. Wade); Memorandum from Roger C. Adams, Pardon Attorney, to Robert Ray, Independent Counsel

Independent Counsel asked Justice Department officials about how and when these pardons were executed. The Justice Department officials told the Independent Counsel that they were not informed of the President's intentions with respect to any individuals prosecuted by this Office.

Forty-seven of the 140 grants of clemency executed by the President on January 20, 2001 reportedly did not go through the normal clemency process (including those extended to McDougal, Wade, and Smith),[433] drawing criticism and negative commentary from both current and former Justice Department officials. Margaret Colgate Love, who served as Justice Department Pardon Attorney from 1990 to 1997, pointed out in a Washington Post editorial that many of these pardons "were never submitted for Justice Department review[.]"[434] Love stated:

> The true scandal lies not so much in the pardon grants themselves as in the departing president's evident disdain for the system and his easy willingness to compromise a public trust. . . . The evident cronyism and irregularity of the final pardons will likely provoke an overhaul of the way pardon power is administered in the White House and the Justice Department.[435]

Roger Adams, the current Pardon Attorney who handled these matters, noted the unprecedented manner in which many of the pardons were executed, stating: "I've never seen anything like this . . . . We were up literally all night as the White House continued to add names of people they

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(Feb. 8, 2001) (concerning full and unconditional pardon of Steven A. Smith); Executive Grant of Clemency, William J. Clinton, President of the United States of America, to Robert William Palmer (A Full and Unconditional Pardon) (Jan. 20, 2001).

[433] Richard Serrano & Stephen Braun, 47 Pardons Skirted Review, Papers Show, L.A. Times, Feb. 8, 2001, at A1. See 28 C.F.R. § 1.1 et seq (1997).

[434] Margaret Colgate Love, Rescuing the Pardon Power, Wash. Post, Jan. 25, 2001, at A19. According to the Los Angeles Times, 30 of the 47 grants of clemency extended by the President involved individuals who did not file clemency applications with the Justice Department. Richard Serrano & Stephen Braun, 47 Pardons Skirted Review, Papers Show, L.A. Times, Feb. 8, 2001, at A1.

[435] Margaret Colgate Love, Rescuing the Pardon Power, Wash. Post, Jan. 25, 2001, at A19.

wanted to pardon."[436] Former Deputy Attorney General Holder commented: "The president, the cause of justice and the American people would have been better served if the normal process had been followed."[437]

In testimony before the Senate Judiciary Committee, Pardon Attorney Adams discussed the Justice Department's lack of information about the pardoning of targets of Independent Counsel prosecutions, and the difficulty faced by the Department in completing the required administrative process:

> In several . . . cases in which the Department received nothing from the pardoned person, we were able to determine that the person had been prosecuted by an Independent Counsel. In these instances, we determined that the Independent Counsel conviction is the person's only federal conviction. We therefore are confident that it was this conviction that President Clinton intended to pardon, and we drafted the individual warrant accordingly. We obtained information as to dates of conviction and exact offenses for which these persons were convicted from the Internet web sites of several Independent Counsels, and in some cases obtained court documents such as the judgment orders, which gave the date of conviction and the United States Code citation for the offense of conviction.[438]

President Clinton's decision not to follow established procedures[439] with respect to individuals prosecuted by Independent Counsels, including McDougal, Wade, and Smith, is also

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[436] Amy Goldstein & Susan Schmidt, Clinton grants 140 pardons on last day, Wash. Post, Jan. 21, 2001, at A1.

[437] John F. Harris & James V. Grimaldi, Clinton: Pardons Served 'Justice', Wash. Post, Feb. 18, 2001, at A1.

[438] Hearing Concerning Recent Presidential Pardons Before the Senate Committee on the Judiciary, 106th Cong. (2001) (statement of Roger Adams, United States Pardon Attorney) (unpublished record). This Office provided judgment orders to the Pardon Attorney at his request.

[439] The regulations codified under 28 C.F.R. § 1.1 et seq concern proper procedures for consideration of clemency petitions. These regulations, however, are advisory only. They do not create an enforceable right in persons applying for executive clemency, and do not restrict the authority granted to the President under Art. II, sect. 2 of the Constitution.

inconsistent with his prior public position regarding the use of his pardon authority. During an interview on The NewsHour with Jim Lehrer on September 23, 1996, President Clinton was asked about Susan McDougal and her refusal to testify before a federal grand jury about matters under investigation by this Office.[440] Jim Lehrer asked the President about Mrs. McDougal's refusal to testify because she believed the Independent Counsel was "out to get the Clintons":[441]

> Q. Susan McDougal told a federal judge in Little Rock the other day that the reason she was refusing to testify before a grand jury is that she believed Kenneth Starr, the independent counsel, was "out to get the Clintons." Do you agree with her?
>
> A. Well, I think the facts speak for themselves. All we know about her is she said what she said, and then her lawyer said that he felt they did want her to tell the truth; they wanted her to say something bad about us, whether it was the truth or not, and if it was false, it would still be perfectly all right, and if she told the truth and it wasn't bad about us, she'd simply be punished for it. That's what her lawyer said.
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> Q. Do you believe him?
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> A. I think that the facts speak for themselves. I think there's a lot of evidence to support that.
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> Q. But do you personally believe that that's what this is all about, is to get you and Mrs. Clinton?
>
> A. Isn't it obvious?[442]

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[440] The NewsHour with Jim Lehrer: Tr. of Jim Lehrer Interview of President William J. Clinton (PBS television broadcast, Sept. 23, 1996).

[441] Id. During a motion hearing held on September 3, 1996, Susan McDougal actually told the Court that the Independent Counsel "[didn't] want the truth" and "[t]hat's not what they're after." Tr. at 9, United States v. McDougal, No. GJ-96-3 (E.D. Ark. Sept. 3, 1996) (testimony of Susan McDougal). The next day, Susan McDougal appeared before the grand jury and was ordered, pursuant to 18 U.S.C. § 6002, to give testimony. S. McDougal 9/4/96 GJ at 40-41. McDougal refused to answer questions before the grand jury, including about whether or not President Clinton testified truthfully at her 1996 trial. S. McDougal 9/4/96 GJ at 46. McDougal repeated these allegations during testimony at her 1999 trial on charges of criminal contempt and obstruction of justice. Tr. at 2088, 2106-07, 2162, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 17, 1999) (testimony of Susan McDougal).

[442] The NewsHour with Jim Lehrer: Tr. of Jim Lehrer Interview of President William J.

President Clinton was then asked whether he would consider pardoning Susan McDougal and other targets of this Office's investigation:

> Q. If you're reelected, would you consider pardoning the McDougals and Jim Guy Tucker in a second term?
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> A. I've given no consideration to that, and you know their cases are still on appeal. And they -- I would -- my position would be that their cases should be handled like others; they should go through -- that there's a regular process for that, and I have regular meetings on that. And I review those cases as they come up and after there's an evaluation done by the Justice Department, and that's how I think it should be handled.[443]

During the first of the 1996 presidential debates, Republican nominee Senator Bob Dole further questioned President Clinton on the pardon issue. President Clinton stated:

> Let me say what I've said already about this pardon issue. This is an issue they brought up. It's under -- there has been no consideration of it, no discussion of it. I'll tell you this: I will not give anyone special treatment and I will strictly adhere to the law, and this is what every president has done, as far as I know, in the past. But whatever other presidents have done, this is something I take seriously and that's my position.[444]

Clinton (PBS television broadcast, Sept. 23, 1996).

[443] Id. at 6-7. After the interview aired, the Independent Counsel wrote President Clinton, through his counsel, several times asking that he encourage Susan McDougal to testify. See, e.g., Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Feb. 14, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Mar. 7, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Apr. 29, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (June 6, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Oct. 23, 1997). The President declined, through counsel, to encourage Susan McDougal to tell what she knew about the matters under investigation by this Office. See, e.g., Letter from Charles F.C. Ruff, Counsel to the President, to Kenneth W. Starr, Independent Counsel, responding to letters from the Independent Counsel dated February 14 and March 7, 1997 (Apr. 4, 1997); Letter from Charles F.C. Ruff, Counsel to the President, to Kenneth W. Starr, Independent Counsel, responding to letter from the Independent Counsel dated October 23, 1997 (Nov. 17, 1997).

[444] Tr. of United States Presidential Debate between President William J. Clinton and Former Sen. Robert J. Dole (Oct. 6, 1996) (Doc. No. MGSL-FR-00000125).

On February 18, 2001, former President Clinton wrote an op-ed in the New York Times in which he stated that he pardoned certain individuals because he believed they were "unfairly treated and punished pursuant to the Independent Counsel statute then in existence."[445] Former President Clinton did not explain how McDougal, Smith, Wade, and Palmer -- or any other individuals prosecuted by Independent Counsels -- had been "unfairly treated."[446] In particular, he did not explain why Susan McDougal warranted a pardon when her co-defendant, former Arkansas Governor Jim Guy Tucker, or David Hale, who was prosecuted in part for the same transactions for which Susan McDougal was prosecuted, did not.[447]

[445] William Jefferson Clinton, My Reasons for the Pardons, N.Y. Times, Feb. 18, 2001, at 13WK.

[446] See id.

[447] Id.

TABLE A - INDICTMENTS, PROSECUTIONS AND CONVICTIONS

NAME	ACTION/DATE	CHARGES	DISPOSITION
1. David Hale	Indictment 9/23/93 Superseding Indictment 2/17/94 Superseding Information 3/22/94	Four Felony Counts: Conspiracy; False Statements. Four Felony Counts: Conspiracy; False Statements. Two Felony Counts: Conspiracy; Mail Fraud.	***Guilty** Plea on 3/22/94. Sentenced 3/25/96: 28 months imprisonment; 3 years supervised release; $10,000 fine; restitution $2,040,000; $100 special assessment (2/6/98 -- sentence reduced to time served and fine abated).*
2. Charles Matthews	Indicted 9/23/93 Superseding Indictment 2/17/94 Superseding Information 6/23/94	Two Felony Counts: Conspiracy. One Felony Count: Conspiracy. Two Misdemeanor Counts: Bribery.	***Guilty** Plea on 6/23/94. Sentenced 1/3/95: 16 months imprisonment; one year of supervised release; $7,500 fine; $25 special assessment.*
3. Eugene Fitzhugh	Indicted 9/23/93 Superseding Indictment 2/17/94 Superseding Information 6/23/94	Two Felony Counts: Conspiracy. One Felony Count: Conspiracy. One Misdemeanor Count: Bribery.	***Guilty** Plea on 6/23/94. Sentenced 10/22/96: 10 months imprisonment - first five months in a halfway house or medical facility and final five months on home detention; 1 year supervised release; $3,000 fine; $25 special assessment.*
4. Robert W. Palmer	Information 12/5/94	One Felony Count: Conspiracy.	***Guilty** Plea on 12/5/94. Sentenced 6/16/95: 3 years probation - first*

NAME	ACTION/DATE	CHARGES	DISPOSITION
			year home detention; $5,000 fine.
5. Webster L. Hubbell	Information 12/6/94	Two Felony Counts: Mail Fraud; Tax Evasion.	***Guilty** Plea on 12/6/94. Sentenced 6/23/95: 21 months imprisonment, followed by 3 years supervised release; restitution of $135,000; 48 hours of community service at ADC.*
6. Neal T. Ainley	Indictment 2/28/95 Superseding Information 5/2/95	Five Felony Counts: Conspiracy, Failure to File Currency Transaction Reports, False Entries, and False Statements. Two Misdemeanor Counts: Willfully delivering/disclosing fraudulent document.	***Guilty** Plea on 5/2/95. Sentenced: 1/18/96; 2 years probation; first year 8 hours per week community service; $1,000 fine; $50 special assessment.*
7. Christopher V. Wade	Information 3/21/95	Two Felony Counts: Bankruptcy Fraud/ False Applications and Certifications to Financial Institution.	***Guilty** Plea on 3/21/95. Sentenced 12/1/95: 15 months imprisonment; 3 years supervisory release; $3,000 fine; $100 special assessment.*
8. William J. Marks Sr.	Indictment 6/7/95 Superseding Information 8/28/97	Three Felony Counts: Conspiracy to Defraud SBA, False Statements, Conspiracy to Defraud IRS. One Felony Count: Conspiracy to Defraud U.S.	***Guilty** Plea on 8/28/97. Sentenced 5/18/98: 4 years supervisory probation; 4 hours community service per week for 4 years; $1,000,000 restitution; $6,000 fine; $50 special assessment.*

NAME	ACTION/DATE	CHARGES	DISPOSITION
9. Jim Guy Tucker	Indictment 6/7/95 Superseding Information 2/20/98	Three Felony Counts: Conspiracy to Defraud SBA, False Statements, Conspiracy to Defraud IRS. One Felony Count: Conspiracy to Defraud U.S.	***Guilty*** *Plea on 2/20/98. Sentenced 5/17/99: restitution of $1,000,000; 4 years probation (4 hours per week of community service); fine of $6,000; $50 special assessment. On 7/3/00, the restitution was remanded to district court. On 12/1/00 resentencing was deferred.*
10. John Haley	Indictment 6/7/95 Superseding Information 2/20/98	One Felony Count: Conspiracy to Defraud IRS. One Misdemeanor Count: Aiding and Abetting Others in Willful Failure to Supply Information to IRS.	***Guilty*** *Plea 2/20/98. Sentenced 8/20/98: 3 years supervised probation; 8 hours community service per week for 3 years; $40,000 restitution; $30,000 fine.*
11. Stephen A. Smith	Information 6/8/95	One Misdemeanor Count: Conspiracy.	***Guilty*** *Plea on 6/8/95. Sentenced 7/12/96: One year probation; 100 hours community service; $1,000 fine; $25 special assessment.*
12. Larry Kuca	Information 7/13/95	One Misdemeanor Count: Conspiracy.	***Guilty*** *Plea on 7/13/95. Sentenced 10/11/95: 2 years probation; 80 hours community service; restitution to SBA of $65,862; $25 special assessment.*

NAME	ACTION/DATE	CHARGES	DISPOSITION
13. Jim Guy Tucker	Indictment 8/17/95 Trial 3/4/96 Verdict 5/28/96	Eleven Felony Counts: Conspiracy, Wire Fraud, Bank Fraud, Mail Fraud, Misapplication of Funds, False Entries in SBA Reports, False Statements.	***Guilty*** *Verdict on two counts: Conspiracy and Mail Fraud (not guilty on Wire Fraud, Bank Fraud, and Misapplication of Funds). Sentenced 8/19/96: 4 years probation (18 months home detention); community service; restitution to SBA of $150,000 plus interest; $25,000 fine. On 2/23/98, 8th Circuit remanded for further hearing on juror misconduct issue. Denied by district court 2/17/99, affirmed by 8th Circuit on 2/27/01. Motion to vacate sentence filed 8/17/00.*
14. James B. McDougal	Indictment 8/17/95 Trial 3/4/96 Verdict 5/28/96	Nineteen Felony Counts: Conspiracy, Wire Fraud, Bank Fraud, Mail Fraud, Misapplication of Funds, False Statements, False Entries in SBA Report.	***Guilty*** *Verdict on eighteen counts (not guilty on one Mail Fraud charge). Sentenced 4/14/97: 3 years imprisonment; 3 years probation after prison (1st year home detention); restitution to SBA and FDIC, if able, of $4,274,301; $10,000 fine; $900 special assessment. Died on 3/8/98.*
15. Susan H. McDougal	Indictment 8/17/95 Trial 3/4/96	Eight Felony Counts: Conspiracy, Wire Fraud, Mail Fraud, False Entries in SBA Report,	***Guilty*** *Verdict on four counts: Mail Fraud, Misapplication of Funds, False Entries in SBA Report, False*

NAME	ACTION/DATE	CHARGES	DISPOSITION
	Verdict 5/28/96	Misapplication of Funds, False Statements.	*Statements. Sentenced 8/20/96: 24 months imprisonment; 3 years probation following prison; 104 hours community service each year; $5,000 fine; restitution of $300,000 plus interest to SBA. Conviction affirmed; jailed on contempt of court charges 9/9/96. Appeal on contempt denied. Commenced sentence 3/8/98. Sentence reduced to time served 6/25/98.*
16. Webster L. Hubbell	Indictment 11/13/98	Fifteen Felony Counts: Impede the FDIC & RTC; Fraud; False Statements to FDIC; False Statements to RTC; Perjury; Mail Fraud.	***Guilty** Plea to Count One entered 6/30/99, to scheme to conceal material facts from FDIC and RTC under 18 U.S.C. § 1001. Sentenced to one year of probation; $100 special assessment.*

TABLE B

OTHER MATTERS NOT RESULTING IN CONVICTIONS

NAME	ACTION/DATE	CHARGES	DISPOSITION
1. Herby Branscum Jr.	Indictment 2/20/96 Trial 6/17-8/1/96	Eleven Felony Counts: Conspiracy; False Entries; Misapplication of Funds; False Statements.	*Verdict:* ***Not Guilty*** *on Counts 2, 9, 10, and 11. Mistrial on Counts 1, 3, 4, 5, 6, 7, and 8.* *Decision made 9/13/96 not to retry.*
2. Robert M. Hill	Indictment 2/20/96 Trial 6/17-8/1/96	Eleven Felony Counts: Conspiracy; False Entries; Misapplication of Funds; False Statements.	*Verdict:* ***Not Guilty*** *on Counts 2, 9, 10, and 11. Mistrial on Counts 1, 3, 4, 5, 6, 7, and 8.* *Decision made 9/13/96 not to retry.*
3. Webster L. Hubbell	Indictment 4/30/98 Superseding Information 6/30/99	Nine Felony Counts: Conspiracy; Impede and Impair IRS; Tax Evasion; Aid in Preparing a False Return; Mail Fraud; Wire Fraud.	*Conditional guilty plea on 6/30/99 to misdemeanor tax charge pending review granted 10/12/99 by Supreme Court on scope of act of production immunity. On 6/5/00, the Supreme Court vacated the indictment. On 10/20/00, conditional plea and misdemeanor tax charge were vacated.*
4. Suzanna W. Hubbell	Indictment 4/30/98	Eight Felony Counts: Conspiracy;	***Dismissed*** *pursuant to Hubbell*

NAME	ACTION/DATE	CHARGES	DISPOSITION
		Impede and Impair IRS; Tax Evasion; Mail Fraud; Wire Fraud.	*guilty plea on 6/30/99.*
5. Michael C. Schaufele	Indictment 4/30/98	Nine Felony Counts: Conspiracy; Impede and Impair IRS; Tax Evasion; Aid in Preparing a False Tax Return; Mail Fraud; Wire Fraud.	***Dismissed*** *pursuant to Hubbell guilty plea on 6/30/99.*
6. Charles C. Owen	Indictment 4/30/98	Nine Felony Counts: Conspiracy; Impede and Impair IRS; Tax Evasion; Mail Fraud; Wire Fraud.	***Dismissed*** *pursuant to Hubbell guilty plea on 6/30/99.*
7. Susan H. McDougal	Indictment 5/4/98 Trial 3/8-4/12/99	Three Felony Counts: Criminal Contempt (two counts); Obstruction of Justice.	*Verdict 4/12/99:* ***Not Guilty*** *on Count Three (obstruction of justice); Hung jury on Counts One and Two (criminal contempt).* *Decision not to retry on 5/25/99.*

TABLE C

EXECUTIVE GRANTS OF CLEMENCY

NAME	ACTION/DATE	BASIS OF CLEMENCY
1. Susan Henley McDougal	Full and Unconditional Pardon January 20, 2001	*For her conviction in the United States District Court for the Eastern District of Arkansas on an indictment (Docket No. LR-CR-95-3993) charging violation of Section 1341, Title 18, United States Code, Section 657, Title 18, United States Code, Section 1006, Title 18, United States Code, and Section 1014, Title 18, United States Code, for which she was sentenced on August 20, 1996, to twenty-four months in prison, three years probation following prison, one hundred and four hours of community service each year, a $5,000 fine, and restitution in the amount of $300,000 plus interest to the SBA.*
2. Robert William Palmer	Full and Unconditional Pardon January 20, 2001	*For his conviction in the United States District Court for the Eastern District of Arkansas on an information (Docket No. LR-CR-94-240) charging violation of Section 371, Title 18, United States Code, for which he was sentenced on June 16, 1995 to three years' probation and a fine of $5,000.*
3. Steven A. Smith	Full and Unconditional Pardon January 20, 2001	*For his conviction in the United States District Court for the Eastern District of Arkansas on an information (Docket No. LR-CR-95-118) charging violation of Section 371, Title 18, United States Code, for which he was sentenced to one year of probation and a fine of $1,000.*

4. Christopher V. Wade	Full and Unconditional Pardon January 20, 2001	*For his conviction in the United States District Court for the Eastern District of Arkansas on an information (Docket No. 4:95CR00048-1) charging violation of Sections 152 and 1014, Title 18, United States Code, for which he was sentenced to 15 months' imprisonment, three years' supervised release, and a fine of $3,000.*