

an effect (or awareness of having such an effect) is inadequate to secure a reasonable likelihood of conviction.

C. The Evidence is Insufficient to Prove Beyond a Reasonable Doubt that David Watkins or Others Obstructed Justice by Withholding the Watkins Memorandum.

The Independent Counsel also considered whether the evidence regarding the failure to produce the Watkins Memorandum until January 1996 to Congress and this Office warranted prosecution of Watkins for obstruction of either the Congressional investigation or this Office's investigation under 18 U.S.C. § 1503. After granting Matt Moore immunity to obtain relevant testimony regarding Watkins's role in withholding the memorandum, the Independent Counsel concluded that the evidence was insufficient to prove beyond a reasonable doubt that Watkins knowingly withheld the memorandum.

The evidence regarding Watkins's failure to produce the Watkins Memorandum to this investigation at the time Watkins appeared before the grand jury in February 1995 is insufficient to prove beyond a reasonable doubt that he knowingly obstructed this investigation. He was not asked in the grand jury his specific understanding of the subpoena and its requirement to produce Travel Office documents that would have included his memorandum. Accordingly, the evidence is insufficient to prove that Watkins knew that those documents were required to be produced.

* * * * *

Accordingly, in the exercise of his prosecutorial discretion, the Independent Counsel has determined not to present an indictment to the grand jury concerning the testimony or statements of William David Watkins, Hillary Rodham Clinton or others, or for any acts of alleged obstruction of justice arising out of this investigation.