

VI. ANALYSIS OF POTENTIAL STATUTORY VIOLATIONS

The jurisdictional mandates presented the Independent Counsel with the central question of whether William David Watkins or Hillary Rodham Clinton committed any violations of federal criminal law in connection with the interviews or statements before the General Accounting Office, the United States House of Representatives, and the Office of the Independent Counsel during the course of their respective investigations into the firing of the Travel Office personnel. Thus, the Office was tasked to determine whether Mr. Watkins or Mrs. Clinton knowingly made false material statements to those investigative bodies or knowingly engaged in a scheme to conceal the truth concerning their conduct from those investigators. Such a scheme or false statements, if proven, might have constituted violations of federal criminal law, including provisions relating to perjury (18 U.S.C. § 1621), false statements (18 U.S.C. § 1001), and obstruction of justice (18 U.S.C. § 1503).

Perjury Under 18 U.S.C. ? 1621

18 U.S.C. ? 1621 provides in pertinent part:

Whoever -- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered that he will testify, . . . [or] depose . . . truly, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; . . . is guilty of perjury.

Thus, to establish the basic elements of the crime of perjury, the government must show that (1) the defendant took an oath authorized by law; (2) the oath was taken before a competent tribunal, officer, or person, and (3) the defendant then willfully made false statements as to material facts.⁹⁶² In this case, this Office would be required to demonstrate that David Watkins or Mrs.

⁹⁶² United States v. Hvass, 355 U.S. 570, 574 (1958); see also United States v. Dean, 55 F.3d 640, 659 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 1288 (1996); United States v. Dunnigan,

Clinton willfully made false statements under oath as to Mrs. Clinton's involvement in the Travel Office firings.

False Statements Under 18 U.S.C. ? 1001

At the relevant time period of the allegations at issue here, 18 U.S.C. ? 1001 prohibited:

In any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsif[ying], conceal[ing], or cover[ing] up by any trick, scheme, or device a material fact, or mak[ing] any false, fictitious or fraudulent statements or representations.

To establish a violation of the false statements statute the government must prove beyond a reasonable doubt, as in the case of perjury, that a statement involved "actual falsity."⁹⁶³ The government must also prove beyond a reasonable doubt "that the statement was made with knowledge of its falsity."⁹⁶⁴ In this case, the United States would be required to prove beyond a reasonable doubt that the statements of David Watkins and Mrs. Clinton regarding Mrs. Clinton's involvement in the Travel Office firings were knowingly and materially false.

Obstruction of Justice Under 18 U.S.C. ? 1503

A violation of 18 U.S.C. ? 1503 is committed whenever a person:

corruptly . . . endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, . . .

507 U.S. 87, 94 (1993) (perjury occurs when a witness "gives false testimony concerning a material matter with the willful intent to provide false testimony").

⁹⁶³ United States v. Diogo, 320 F.2d 898, 902 (2d Cir. 1963); see also United States v. Milton, 8 F.3d 39, 45 (D.C. Cir. 1993), cert. denied, 115 S. Ct. 299 (1994).

⁹⁶⁴ United States v. Yermian, 468 U.S. 63, 64 (1984); see also United States v. Rodgers, 466 U.S. 475, 483 (1984) ("Section 1001 only applies to those who 'knowingly and willfully' lie to the Government.").

or corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice

In order to prove that a defendant has obstructed justice, the government must prove: (1) the defendant engaged or endeavored to engage in conduct or behavior;⁹⁶⁵ (2) the defendant engaged in such corrupt behavior and with specific intent; and (3) the defendant's intent was to impede the due administration of justice.⁹⁶⁶ There must also be judicial proceedings pending at the time of the defendant's conduct, such as a grand jury investigation, and the defendant must have knowledge of that proceeding.⁹⁶⁷ In light of the evidence in this case regarding the failure to produce the Watkins Memorandum until January 1996, this Office would be required to prove beyond a reasonable doubt that David Watkins or others withheld the documents knowing that they were responsive to a Congressional or a grand jury investigation with the intent to obstruct those proceedings.

**The Principles of Federal Prosecution
as Applied to the Conduct of Mr. Watkins and Mrs. Clinton**

Prior to initiating a prosecution for any of these offenses, a prosecutor must believe that "the admissible evidence will probably be sufficient to obtain and sustain a conviction."⁹⁶⁸

⁹⁶⁵ Section 1503 "requires only proof of an endeavor, irrespective of its success, and makes that act a crime if the endeavor is a corrupt one." United States v. Baker, 611 F.2d 964, 967 (4th Cir. 1979); see also United States v. Friedland, 600 F.2d 919, 930 (3d Cir. 1981) ("endeavoring to obstruct justice . . . is based on an attempt to induce the rendering of false testimony"), cert. denied, 456 U.S. 989 (1982).

⁹⁶⁶ United States v. Bridges, 717 F.2d 1444, 1449 n.30 (D.C. Cir. 1983), cert. denied, 465 U.S. 1036 (1984); see also Pyramid Securities Ltd. v. IB Resolution, 924 F.2d 1114, 1119 (D.C. Cir.), cert. denied, 502 U.S. 822 (1991).

⁹⁶⁷ United States v. Aguilar, 515 U.S. 593, 601 (S. Ct. 1995); Pyramid Securities Ltd. v. IB Resolution, 924 F.2d 1114, 1119 (D.C. Cir.), cert. denied, 502 U.S. 822 (1991); United States v. Smith, 729 F. Supp. 1380, 1382 (D.D.C. 1990).

⁹⁶⁸ United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220(A).

Moreover, no prosecution should be initiated against any person "unless the government believes that the person probably will be found guilty by an unbiased trier of fact."⁹⁶⁹

Concerning Mr. Watkins, the Independent Counsel has concluded that the evidence is insufficient to obtain and sustain a conviction. The evidence is insufficient to prove to a jury beyond a reasonable doubt that any of Watkins's statements to the GAO, Congress, or this Office were materially false, that he was a knowing participant in a scheme to conceal or cover up by trick, scheme, or device any material facts relating to the Travel Office firings from those investigations, or that he knowingly obstructed the due administration of justice. Accordingly, this Office has determined not to seek an indictment of Mr. Watkins, and the investigation of Mr. Watkins's conduct in this matter is now closed.

Concerning Mrs. Clinton, the Independent Counsel has concluded that Mrs. Clinton had a role and input in the decision to fire the Travel Office employees. Accordingly, the Independent Counsel has concluded that a significant aspect on this subject of Mrs. Clinton's sworn deposition testimony before this Office was factually false. The Independent Counsel has, however, also concluded, that the admissible evidence is insufficient to establish beyond a reasonable doubt to the satisfaction of a jury that those false statements were made with the requisite criminal intent. The Independent Counsel has decided that a jury would not conclude that Mrs. Clinton's statements were knowingly false and that the "admissible evidence probably will [not] be sufficient to obtain and sustain a conviction."⁹⁷⁰ Accordingly, the Independent Counsel has determined not to seek an indictment of Mrs. Clinton, and the investigation of Mrs. Clinton's conduct in this matter is now closed.

⁹⁶⁹ United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220(B).

⁹⁷⁰ United States Attorneys' Manual, Principles of Federal Prosecution, § 9-27.220(A).